

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

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MILTON MOLLEN, P.J.
GUY J. MANGANO
WILLIAM C. THOMPSON
LAWRENCE J. BRACKEN
RICHARD A. BROWN, JJ.

Motion Nos. 572 and 572A Atty.

DECISION & ORDER ON MOTION

In the Matter of Alton H. Maddox, an
attorney and counselor-at-law, admitted
under the name Alton H. Maddox, Jr.

Grievance Committee for the Second and
Eleventh Judicial Districts, petitioner;

Alton H. Maddox, respondent.

Motion by the petitioner Grievance Committee for the Second and Eleventh Judicial Districts to suspend the respondent Alton H. Maddox from the practice of law pending ~~consideration of charges of professional misconduct against him pursuant to section 691.4(1) of the Rules Governing the Conduct of Attorneys of the Appellate Division, Second Department (22 NYCRR 691.4[1])~~ based upon his failure to comply with the lawful demands of the Grievance Committee, and cross motion by the respondent Alton H. Maddox (a) to dismiss the proceeding pending against him before the Grievance Committee as violative of Judiciary Law § 90, Civil Rights Law §§ 10 and 40-c, New York Constitution article I, §§ 6, 8, 9 and 11 and the First, Fifth, Sixth, Ninth and Fourteenth Amendments of the United States Constitution; (b) to dismiss the proceeding as violative of (i) public policy, (ii) evidentiary principles including the right to protect privileged materials, (iii) the New York Court Rules and Regulations, (iv) the Code of Professional Responsibility, and (v) the Model Rules of Professional Conduct and the Disciplinary Rules; and (c) alternatively, to require the petitioner Grievance Committee to accord the respondent a public proceeding under Judiciary Law § 90 and appropriate State and Federal constitutional guarantees.

Upon the papers filed in support of the motion and the cross motion and the papers filed in opposition thereto, it is

ORDERED that the respondent is directed to appear before the petitioner Grievance Committee on a date and time to be determined by that Committee which shall be within 30 days of the date of this decision and order, to give testimony and to provide materials relevant to its pending investigation of allegations of professional misconduct involving the respondent; and it is further,

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ORDERED that the petitioner's motion to suspend the respondent from the practice of law pending consideration of charges of professional misconduct is denied, upon condition that the respondent appears as above directed; and it is further,

ORDERED that respondent's cross motion is denied, except that as to issues involving the respondent's right to protect privileged information, those contentions be raised before the Grievance Committee.

The respondent was admitted to the practice of law at a term of the Appellate Division, First Judicial Department, on March 15, 1976, under the name Alton H. Maddox, Jr. He is the subject of three separate complaints alleging that he engaged in serious professional misconduct in connection with the highly publicized Tawana Brawley matter and his representation of Ms. Brawley with respect thereto.

One of these complaints, made by the Attorney-General of the State of New York, was received by the Grievance Committee on October 6, 1988, at which time the respondent was served with a copy thereof and asked to respond thereto in writing within 10 days. Although the respondent was advised that his unexcused failure to answer the complaint would constitute professional misconduct, his response did not address the substance of the complaint against him, but instead accused the Grievance Committee of racial discrimination and insidious bias and open hostility toward him, and asked that the matter be transferred to the Appellate Division, First Department. The Grievance Committee's Chief Counsel, by letter dated October 20, 1988, advised the respondent that he saw no basis for such a transfer and again reminded him of the consequences of his failure to cooperate with the Committee (*see*, 22 NYCRR 691.4[1][1][i]). In response, the respondent wrote to the Chairman of the Grievance Committee asking that the full committee consider his application for a transfer. Additionally, he accused the Attorney-General of vindictiveness and maliciousness in his filing of the complaint, but again did not respond to the substance thereof. By letter dated November 3, 1988, the respondent was, for a third time, reminded of his obligation to cooperate with the Committee and advised that his continuing failure to respond to the substance of the Attorney-General's complaint might result in the Committee's request that he be suspended from the practice of law. Again no response to the complaint was forthcoming.

At its monthly meeting in November 1988 the Grievance Committee denied the respondent's request that the matter be transferred to the Appellate Division, First Department, and the Chairman of the Committee thereupon wrote to the respondent, advised him of that determination, and further advised him that his failure to submit a written answer within 10 days of his receipt of the Chairman's letter, responding in detail to the factual allegations of professional misconduct, would result in a motion by the Committee for his suspension. The respondent's reply accused the Committee of "egregious and racially discriminatory behavior" and the Attorney-General of "prosecutorial vindictiveness, political posturing and the abuse of legal process", but again did not respond to the charges contained in the complaint. As a result, the Grievance Committee applied to this court pursuant to 22 NYCRR 691.4(1)(1)(i) for an order suspending the respondent from the practice of law pending consideration of the charges against him. Faced with the threat of suspension, the respondent finally filed a written answer to the complaint, and the Grievance Committee thereupon withdrew its motion.

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By the motion sub judice the Grievance Committee again seeks to suspend the respondent from the practice of law pending consideration of the charges against him. The Committee alleges that rather than cooperate with its investigation of the Attorney-General's complaint and the two other complaints received with respect to respondent's representation of Ms. Brawley, the respondent has engaged in a continuing effort to obstruct its inquiry. Specifically, the Committee points to its letter dated October 20, 1989, in which the respondent was informed that his presence was required before the Committee on November 13, 1989, for the purpose of giving testimony regarding its investigation of the complaints, and respondent's answer thereto dated November 6, 1989, in which he challenged the jurisdiction of the Committee, as well as the validity of the complaints filed against him, and stated that he would not appear unless the proceedings were open to the public and the press. A copy of the respondent's letter was furnished to the news media by the respondent. Several days later, the Committee's Chief Counsel reminded the respondent in writing that he was still expected to appear before the Committee on November 13, 1989, and that if he failed to appear, the Committee would move for his suspension. He was also informed that the proceedings would not be open to the public. The respondent, however, failed to appear at the November 13 hearing, although he did subsequently ask that his letter dated November 6, 1989, be considered in lieu of his appearance. His stated intention to defy the Committee was published in several newspapers.

22 NYCRR 691.4(1)(1) permits the suspension from the practice of law of an attorney who is the subject of an investigation or of charges by a Grievance Committee, pending consideration of the charges against the attorney, "upon a finding that the attorney is guilty of professional misconduct immediately threatening the public interest". It provides further that such a finding shall be based, *inter alia*, upon "the attorney's * * * failure to submit a written answer to pending charges of professional misconduct or to comply with any lawful demand of this court or the Grievance Committee made in connection with any investigation" (22 NYCRR 691.4[1][1]).

The respondent has been repeatedly informed of his obligation as an attorney admitted to the practice of law in this State to comply with the lawful demands of the Committee, and of the consequences of his noncompliance. The Committee's investigation involves serious allegations of professional misconduct which have been made against the respondent, including knowingly making a false statement of fact in the representation of a client, counselling a client to refuse a lawful mandate of the Grand Jury, and rendering assistance to that client in order to evade arrest. We have consistently held that an attorney's failure to appear before the Grievance Committee and respond to serious allegations of professional misconduct and to assist the Committee in its investigation thereof poses an immediate threat to the public interest justifying the attorney's suspension from the practice of law pending consideration of the charges against him. The fact that the attorney raises issues with respect to the jurisdiction of the Committee, or to the validity of the complaint filed against him, or to the invocation of the attorney-client privilege, does not affect his obligation to appear before that body when so requested. Accordingly, the respondent is directed to personally appear before the Grievance Committee on a date and time to be determined by it, which shall be within 30 days of the date of this decision and order, to give testimony and to provide the Committee with relevant materials as requested by it. The respondent's failure to appear as directed will result in his suspension from the practice of law pending consideration of the charges against him (*see*, 22 NYCRR 691.4[1][1]).

With respect to the respondent's application that these proceedings be made public, it has been held that the subject of a disciplinary proceeding may waive the confidentiality of that proceeding, and upon such a waiver the proceeding may be open to the public (*see, Matter of Capoccia*, 59 NY2d 549). At a formal disciplinary proceeding the requirement of confidentiality inures primarily, if not solely, to the benefit of the subject of the proceeding and thus, unless due cause to maintain confidentiality is established, he should be permitted to waive that requirement (*see, Matter of Capoccia, supra*, at 554). Here, however, no disciplinary proceeding has yet been commenced, and the matter is merely in an investigatory stage. The need for confidentiality to promote the voluntary giving of evidence and to minimize outside interference with the investigatory process outweighs the interest of the respondent in being provided with a public forum during the investigatory process (*see, e.g., People v Di Napoli*, 27 NY2d 229; *Matter of District Attorney of Suffolk County*, 86 AD2d 294 [dealing with Grand Jury proceedings]). Accordingly, we conclude that good cause exists for the maintaining of the confidentiality of the proceeding at this juncture. Should a formal disciplinary proceeding be authorized by this court, the respondent may then request that the confidentiality afforded by Judiciary Law § 90(10) and the Rules of this Court (22 NYCRR 691.4[j]) be waived.

We have examined the respondent's remaining contentions and find them to be without merit or not properly raised at this stage of these proceedings.

MOLLEN, P.J., MANGANO, THOMPSON, BRACKEN and BROWN, JJ., concur.

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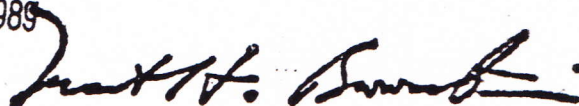
I, MARTIN H. BROWNSTEIN, Clerk of the Appellate Division of the Supreme Court, ^{ENTER:}

Second Judicial Department, do hereby certify that I have compared this copy with the original filed in my office on NOV 30 1989 and that this copy is a correct transcription of said original.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of this Court on NOV 30 1989

MARTIN H. BROWNSTEIN

Martin H. Brownstein
Clerk


Clerk