



BEFORE THE SUPREME COURT OF IOWA

**IOWA SUPREME COURT
ATTORNEY DISCIPLINARY BOARD,
Complainant,**

v.

**MATTHEW BRICK,
Respondent.**

**GC Case No. 955-d
Board File No. 2022-198**

**COMPLAINANT’S RESPONSE TO
RESPONDENT’S CONSENT TO
SUSPENSION
(Iowa Ct. R. 34.16)**

The Iowa Supreme Court Attorney Disciplinary Board (“Board”) hereby submits its response to Respondent Matthew Brick’s (“Brick”) affidavit consenting to suspension, pursuant to Iowa Court Rule 34.16:

1. On April 23, 2001, Brick was admitted to practice law in Iowa.
2. On or about June 21, 2022, the Board received a complaint containing allegations that Brick had violated conflict-of-interest rules arising out of his representation of a municipality. The Board opened a disciplinary investigation.
3. On June 29, 2023, Brick executed an Affidavit consenting to up to a 30-day suspension of his license to practice law in the state of Iowa.
4. The misconduct admitted by Brick his Affidavit would likely result in the suspension of his license to practice law.

5. Brick outlines material facts in Paragraph 4 of his Affidavit. By this reference, the Board incorporates Brick's Affidavit, together with the documents contained in the Confidential Appendix.

6. The Board cites the following legal authorities in support of its conclusion:

RULE VIOLATIONS

Brick's misconduct violates Iowa Rules of Professional Conduct 32:1.6(a), 32:1.7(a), 32:1.8(b), and 32:8.4(c).

Rule 32:1.6(a) states: "A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b) or required by paragraph (c)." An attorney violates rule 32:1.6(a) "when an attorney discloses information learned through the attorney-client relationship even if that information is otherwise publicly available." *Iowa Sup. Ct. Att'y Disciplinary Bd. v. Marzen*, 779 N.W.2d 757, 766 (Iowa 2010).

Similarly, rule 32:1.8(b) provides: "A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these rules." Rule 32:1.8(b) implicates the indispensable duty of loyalty to the client; it

applies to the disadvantageous use of client information to the benefit of either the lawyer or a third party. Iowa R. Prof'l Conduct 32:1.8 cmt. [5].

Rule 32:1.7(a) provides, in relevant part:

[A] lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.

Notwithstanding this prohibition, an attorney may represent clients with a concurrent conflict if “the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation” and “each affected client gives informed consent, confirmed in writing.” *Id.* r. 32:1.7(b)(3)–(4). Informed consent requires a disclosure to the client that is comprehensive enough “to allow the client to be sufficiently informed to decide whether to waive [a] potential conflict or seek new counsel.” *Iowa Sup. Ct. Att’y Disciplinary Bd. v. Said*, 983 N.W.2d 126, 152 (Iowa 2021); *see also* Iowa R. Prof'l Conduct 32:1.0 cmt. [6] (“Ordinarily, [informed consent] will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and

disadvantages of the proposed course of conduct, and a discussion of the client's or other person's options and alternatives.").

Rule 32:8.4(c) states: "It is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit, or misrepresentation." To violate this rule, an attorney must have "acted with 'some level of scienter' rather than mere negligence." *Iowa Sup. Ct. Att'y Disciplinary Bd. v. Beauvais*, 948 N.W.2d 505, 515 (Iowa 2020) (quoting *Iowa Sup. Ct. Att'y Disciplinary Bd. v. Meyer*, 944 N.W.2d 61, 69 (Iowa 2020)). "The dispositive question 'is whether the effect of the lawyer's conduct is to mislead rather than to inform.' " *Meyer*, 944 N.W.2d at 69 (quoting *Iowa Sup. Ct. Att'y Disciplinary Bd. v. Noel*, 923 N.W.2d 575, 588 (Iowa 2019)).

The Iowa Supreme Court has previously found attorneys to have violated both conflict-of-interest rules and rule 32:8.4(c) by failing to reveal a personal interest in a business transaction with a client. *See, e.g., Iowa Sup. Ct. Att'y Disciplinary Bd. v. Willey*, 965 N.W.2d 599, 613 (Iowa 2021) (finding violations when an attorney presented a consent waiver to a client for a business transaction, which contained a material misrepresentation); *Iowa Sup. Ct. Att'y Disciplinary Bd. v. Wright*, 840 N.W.2d 295, 301–02 (Iowa 2013) (finding violations when an attorney failed to inform his clients of his own pecuniary

interest in a matter in which he used funds from clients to assist another client obtain what he believed was an inheritance from Nigeria).

Brick's misconduct strikes at the very core of what is sacred in the attorney-client relationship. Over the course of nearly a year, Brick repeatedly violated the fundamental duty of loyalty to his municipality-client by covertly providing legal assistance directly against their interests and by falsely assuring them that he was not providing this assistance to Mandsager. Brick both revealed information to Mandsager relating to his representation of the city without the city's informed consent and used that information to the city's disadvantage. Brick assisted Mandsager—knowing full well that the city was taking steps to discharge Mandsager—by providing advice to Mandsager about ways delay the vote on the termination of his contract, sharing the hired evaluator's emails with Mandsager, and informing Mandsager that council member Brackett had not worded the termination letter in accordance with the advice Brick had given him. (App. 36–61). Brick engaged in an impermissible concurrent conflict of interest because his representation of the city was materially limited by his relationship with Mandsager. Brick advised Mandsager about claims he could bring against Brick's current client, counseled Mandsager about FMLA leave in relation to the city's steps to terminate

Mandsager, and assisted Mandsager in finding an attorney to help Mandsager file a lawsuit against the city. (App. 11–12, 17–27, 31–34, 36–61).

By acting contrary to the interests of his client and to the benefit of a third party, who was planning to take legal action directly adverse to his client, Brick violated Iowa Rules of Professional Conduct 32:1.6(a), 32:1.7(a), and 32:1.8(b). By falsely representing to council members that he would not assist Mandsager by email on October 18, 2019, and by phone on October 25, 2019, Brick violated Iowa Rule of Professional Conduct 32:8.4(c). (App. 29–30).

MITIGATING AND AGGRAVATING FACTORS

The Board agrees with Brick that there are mitigating factors to consider. Brick cooperated with the investigation and has admitted his misconduct. *See Iowa Sup. Ct. Att’y Disciplinary Bd. v. Bixenman*, 973 N.W.2d 522, 531 (Iowa 2022) (“Cooperation with the Board and acceptance of responsibility by an attorney are mitigating factors in considering proper discipline.”). In addition, Brick has no prior disciplinary record. *See Iowa Sup. Ct. Att’y Disciplinary Bd. v. Waterman*, 890 N.W.2d 327, 332 (Iowa 2017).

There are also aggravating circumstances here. Brick’s more than twenty years of experience as an attorney is aggravating. *See Iowa Sup. Ct. Att’y Disciplinary Bd. v. Heggen*, 981 N.W.2d 701, 714 (Iowa 2022) (finding attorney’s fifteen years of experience to be aggravating). Brick’s deliberate deception of

his client is aggravating. *See Iowa Sup. Ct. Att’y Disciplinary Bd. v. Janssen*, 981 N.W.2d 1, 7 (Iowa 2022). Brick’s role as city attorney during his misconduct is also aggravating, as his misconduct had a clearly detrimental effect on public perception of the bar. *See Iowa Sup. Ct. Att’y Disciplinary Bd. v. Bauermeister*, 927 N.W.2d 170, 176 (Iowa 2019); *Iowa Sup. Ct. Att’y Disciplinary Bd. v. Howe*, 706 N.W.2d 360, 379 (Iowa 2005) (“Perhaps the most troubling aspect of Howe’s misconduct is the impact of his actions on public confidence in our system of justice.”); *see also Disciplinary Counsel v. Dann*, 979 N.E.2d 1263, 1268–69 (Ohio 2012) (misconduct while serving as attorney general warranted enhanced sanction because of harm to public perception of government).

SANCTION

A thirty-day suspension is warranted here. Sanctions for conflict-of-interest cases have generally ranged from a public reprimand to a suspension of four months. *See Willey*, 965 N.W.2d at 614–15 (collecting cases). Longer suspensions have been reserved for matters involving multiple violations, multiple clients, and deceit resulting in client financial loss. *Id.* at 615.

Although conflict-of-interest violations involving municipal attorneys are not common in Iowa, they are not unprecedented. Nearly twenty years ago, the court suspended two Northwest Iowa attorneys for matters involving both

conflicts of interest and allowing numerous individuals to plead guilty to charges of cowl-lamp violations, which were not supported by probable cause. *See Iowa Sup. Ct. Att’y Disciplinary Bd. v. Zenor*, 707 N.W.2d 176 (Iowa 2005); *Howe*, 706 N.W.2d 360. While the misconduct in these matters was much more pervasive than in the present matter, the nature of the conflicts is similar. For instance, *Howe*, a part-time city attorney tasked with prosecuting violations of city ordinances, represented multiple criminal defendants for violations of the Iowa Code brought by the local law enforcement of his city–client. *Howe*, 706 N.W.2d at 372, 376. In one matter, *Howe* was simultaneously representing the client on state charges while prosecuting that client for violations of city ordinances. *Id.* at 372. In two other matters, *Howe* participated in both the prosecution and the defense of city charges. *Id.* at 377–78. Similarly, *Zenor*, a county attorney, participated in both the prosecution and the defense of a speeding ticket. *Zenor*, 707 N.W.2d at 181. The court suspended *Zenor* and *Howe* for four months, based in part on the truly pervasive nature of their misconduct. *Zenor*, 707 N.W.2d at 186–87; *Howe*, 706 N.W.2d at 382. *But see Iowa Sup. Ct. Att’y Disciplinary Bd. v. Borth*, 728 N.W.2d 205, 211–12 (Iowa 2007) (reprimanding attorney for engaging in similar misconduct when misconduct was more isolated than in *Howe* or *Zenor* and attorney “ceased negotiating plea bargains to cowl-lamp charges and stopped asking defendants

to agree to make charitable contributions immediately upon learning these practices were questionable”).

More similar in scope is *Said*, where attorney Said represented two immigrant clients who had previously used false Social Security numbers to register vehicles and who wanted to obtain valid drivers’ licenses. 953 N.W.2d at 131, 137. Said informed an investigator for the Department of Transportation (“DOT”) of his clients’ crimes without getting consent from his clients and then represented the clients in their resulting criminal cases. *Id.* The court found Said violated Iowa Rule of Professional Conduct 32:1.4 by failing to adequately inform his clients about the risks of the planned course of action, rule 32:1.6(a) by failing to get his clients’ consent before communicating with the DOT investigator, and rule 32:1.7(a)(2) by failing to obtain his clients’ informed consent to continued representation after Said was listed as a witness in the resulting criminal proceedings. *Id.* at 151–54. Identifying the issue as primarily a failure to “take the time to properly provide his clients with the understanding necessary to permit them to determine the most appropriate course of conduct to protect their interests,” the court suspended Said’s license for thirty days. *Id.* at 155–56. Brick similarly deprived his client, the city, of the opportunity to determine how best to protect its interests by not only failing to

notify them of the extent of his communications with Mandsager but also by affirmatively denying those communications.

Although Brick's misconduct appears to be isolated to one matter, both the extended period over which these violations occurred as well as Brick's intentional deceit necessitate a sanction greater than a public reprimand. However, because this matter does not concern a pattern of behavior involving multiple clients or a client's financial loss from a conflicted business transaction, along with the mitigating factors discussed above, a thirty-day suspension rather than a more significant sanction is warranted here.

The Board notes that Brick has requested that the Court consider beginning his suspension on August 1, 2023. The Board's position is that any suspension should begin either on the date the Court issues its order or ten days from the date of the order pursuant to Iowa Court Rule 34.23.

CONCLUSION

Based on the foregoing, the Board respectfully recommends the Court accept Brick's affidavit consenting to suspension and impose a suspension of his license for thirty days.

Respectfully submitted,

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