

IN THE MATTER OF
THE APPLICATION OF
TIMOTHY MAGUIRE

REPORT AND
RECOMMENDATION
RG 303 PANEL

PRELIMINARY STATEMENT

Timothy Maguire passed the bar examination in July, 1991. Mr. Maguire disclosed in his Certified Statement that he had received a "letter of reprimand from the Law School for disclosing statistical information obtained during employment in admissions office." Georgetown Law Center informed the Committee on character that disciplinary charges had been filed and resolved by a joint disposition. Mary J. Maudsley, Esquire, after an personal interview with Mr. Maguire, requested a three-member RG 303 hearing. On April 16, 1992, the hearing was held with Mary J. Maudsley, Esquire presiding. Richard Hluchan, Esquire and Richard Fauntleroy, Esquire are the other members of the panel. Mr. Maguire appeared pro se with a witness, Thomas Mack, Esquire, an attorney admitted to practice in Washington, DC. Martha K. Treese, Esquire was present. Subsequent to the hearing, Mr. Maguire requested and received a stay of the decision pending the possible reopening of the proceedings for further evidence. After retaining George W. C. McCarter, Esquire, he and his attorney waived further hearing by submitting a letter brief and additional letters of recommendation on September 21, 1992.

STATEMENT OF FACTS

Timothy Maguire was born June 15, 1960 in Pompton Plains, New Jersey. After graduating from high school in 1978 and from Rutgers College in 1983, he served in the Peace Corps until 1986. Thereafter, he worked in New York City with the College Board until he entered Georgetown Law Center in August, 1988. It was while at Georgetown that the incident arose which led to the instant inquiry. Mr. Maguire was employed by the Admissions Office of Georgetown University Law Center as a file clerk from January through March 1991. Shortly after the termination of that employment, on April 8, 1991, Mr. Maguire published an article entitled "Admissions Apartheid" in the student newspaper. The article discussed the GPAs and LSAT scores of minority students who applied for and those who were granted admission to Georgetown Law Center during the 1990-1991 academic year. The information was gleaned from student files to which he gained access through his employment.

The School brought disciplinary charges against Mr. Maguire alleging that he violated confidentiality restrictions by disseminating information that he obtained in the course of employment. A hearing panel was appointed. Before the scheduled hearing, an agreement was reached and signed by the parties. In this agreement, Mr. Maguire acknowledged that he intentionally violated the explicit condition of employment that he should not

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disclose any information obtained during his employment. In accordance with the agreement, he received an official reprimand. Georgetown agreed not to release the details of the reprimand without prior approval from Mr. Maguire, although both parties were free to comment on the matter.

Specifically the agreement read in part as follows:

Mr. Maguire acknowledges that he was orally advised that he should not disclose any information which he obtained during the course of his employment in the Admissions Office. Mr. Maguire acknowledges that he intentionally violated this explicit condition of his employment when, in the course of his duties, he gathered information from applications and used the information in an article which was published in the Law Weekly.

And later, in part:

The following points constitute this disposition:

1. Mr. Maguire's conduct in disclosing information in violation of an explicit oral directive was a breach of his duty of nondisclosure, a duty he accepted when entering into employment in the Admissions Office.
2. Given the intense nationwide publicity attendant to those charges, no notation on the official transcript is necessary or will be permitted. GULC shall not distribute this reprimand in response to request for copies of Mr. Maguire's records, and or information from Mr. Maguire's records, without Mr. Maguire's prior approval.

. . .
5. Both Mr. Maguire and the Law Center shall have the right to comment publicly concerning this disposition.

When Mr. Maguire submitted his Certified Statement, he reported that he had "received letter of reprimand for disclosing statistical information obtained during employment in admissions office no transcript notation or other sanction deemed appropriate." (Certified Statement, p. 4) Simultaneously, he

granted permission to the Law Center to forward a copy of the official record to Board of Bar Examiners.

ANALYSIS

At the outset of the hearing, the Panel had basically two questions: whether Mr. Maguire had made full disclosure to the Committee and whether his actions constituted a breach of confidentiality which impacted negatively on his character and fitness to practice law in New Jersey.

While Mr. Maguire's account of the incident in his Certified Statement is sketchy and somewhat misleading, he simultaneously with the filing of his Statement gave permission to the Law Center to forward the letter of reprimand to the Board of Bar Examiners. Therefore, in considering the issue of full disclosure, we find that Mr. Maguire did sufficiently appraise the Committee of the incident.

The second question causes more difficulty. Mr. Maguire was hired as a file clerk in the Admissions Office. Mr. Maguire, as well as the other students hired, were told orally that the information they acquired as a result of their employment was confidential. Mr. Maguire perused the files of prospective minority students in order to determine their LSAT, grade point average and other statistical data. After his employment ended,

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he used the data to publish an article focusing on the disparity between the scores of minority and white students admitted to the law school. It was the use of this data which he acquired by actually reviewing student files which raises the issues herein.

Mr. Maguire testified that the information which he acquired and used for his article was available from other sources, so he was not violating any confidentiality provisions. He did not explain why he failed to use the already published data, if indeed it was available or, in the alternative, did not ask permission to collect and disseminate the data. He defined confidentiality as "what I believe confidentiality refers to and what I still believe it refers to is the use of identification through which specific individuals can be identified and harmed." Transcript: p. 19: 4-8. He testified that he believed it was not improper to search the student personal file to retrieve the information. When asked why he did not request permission to do so or to use the data, he admitted that he knew permission would not be granted. However, since he did not use any specific names, he felt no one was harmed and therefore he violated no confidence.

The disciplinary matter was resolved by a joint disposition with the law center. The first point in that document was that "Mr. Maguire's conduct in disclosing information in violation of an explicit oral direction was a breach of his duty of nondisclosure..." Mr. Maguire signed this document, thus

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concluding the matter without a hearing. At our hearing, he denied knowing of the confidentiality provision of his employment. When asked why he would sign the document acknowledging his knowledge and his intentionally violation thereof, he responded....

Q: Mr. Hluchan: And your agreed to the contents otherwise you would not have signed it, correct?

A: Mr. Maguire: No, there are many reasons you would or would not sign a document if you did not completely agree with the document. Transcript: p. 40: 18-24

and later:

A: Mr. Maguire: The issue is very clear as to why I signed this document. One of the reasons were the consequences of not signing it were more grave than signing a false document. I did not think of the truth or falsity of the document. The prosecutor had indicated to my defense attorneys that based on my failure to sign this document we would have a hearing on the process. If we had the hearing my graduation would be held up a year and also they would use the hearing to paint me as a racist and further harm my future reputation as a lawyer. Transcript: p. 44: 10-23

In brief, Mr. Maguire signed the settlement document even though he did not believe either that he had been advised of the confidentiality requirement or that he had violated any confidentiality. By signing the document, the issue was resolved without the possibility of repercussions.

When asked whether, as an attorney, he believed it proper for someone to sign a false document to avoid a more unpleasant consequence. He responded:

As a general rule, no, but I think there are exceptions to that....There are exceptions where the failure to sign an untrue document presents consequences so severe that a lawyer in good conscience would have to tell a client to sign it,..." Transcript: pp. 56:20 .57:5

Mr. Maguire sums up his position:

I think I was treated unfairly and it pains me to say that. As a result of all I signed something I would not have signed in the event that I could expect a fair hearing....

Was it worth it for me to do all that I have done and knowing the consequences as to what might happen if this was sent to the New Jersey Bar? I don't believe so. I was told by representatives of the Law Center that this is not going to hurt me, that I will be admitted to the Bar, and that there would be no problem... "I acted the way I did at Georgetown because I was a law student and I did not feel that obligations of an attorney attached to me being a law student; and specifically I did not believe I was bound to keep silent about information which I can say to you unequivocally I would keep silent about as an attorney. If I was an attorney there would be situations when I would violate a client's confidence and if that hurts my standing with this bar that is fine...I think there are values more important than rules... Transcript pp. 77-78

Mr. Maguire's witness, Thomas Mack, Esquire, who was one of Mr. Maguire's attorneys representing him during the proceedings with the Law Center contends that no confidentiality was breached because the information would have been available from other sources. Therefore, Mr. Maguire was advised that he was free to sign the disposition agreement even though he did not subscribe to the statements. He was not under oath. "I told him in signing it that all he is acknowledging is that if he disclosed anything there it was both privileged and public fact. He disclosed no private facts. Georgetown did not want to put in that language. Fine." Transcript, p. 62: 1-6

Mr. McCarter in his brief contends that the signing of the disposition was not incorrect. Since the document was not "a unilateral affirmation of fact," Mr. Maguire was free to sign it even though he did not endorse it.

RECOMMENDATION

We unanimously recommend that certification be withheld in this matter. Before discussing the merits of our decision, we wish to clarify the Panel's position regarding Mr. Mack's status at Mr. Maguire's hearing. Mr. Maguire was informed in advance that the panel would not grant pro hac vice admission and that Mr. Mack could not formally represent Mr. Maguire. Mr. Mack was permitted to be present during the entire proceeding, and indeed a recess was called at one point so that Mr. Maguire could confer with Mr. Mack. In addition, the panel was more than receptive to reopening the hearing when and if Mr. Maguire obtained counsel admitted in New Jersey.

In disposing of the original issues presented, we find that Mr. Maguire did make full disclosure to the Committee when he authorized the Law Center to forward the joint disposition to the Committee.

As to the second issue, whether Mr. Maguire violated the confidentiality of his position, we find that he did. Regardless

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of whether the information was available elsewhere, he reviewed personal individual student files to compile the data to use without permission. He further admits that he did not request permission since he believed that it would be denied. Standing by itself, this breach of duty might have been resolved in his favor. However, inquiry into this breach uncovered a disturbing pattern of belief.

First, Mr. Maguire signed a joint disposition even though he believed the statements therein to be untrue. He justifies it by stating that he believed that the consequences of the failure to sign to be so severe that he had no option. He would be forced to undergo a hearing which he characterized as knowing would be unfair. In addition, he believed that no adverse consequences would inure to him. The document would not be released without his approval, and the reprimand would not prevent his admission to the New Jersey Bar.

His witness, Mr. Mack, justifies the signing in that it was not under oath and was merely a settlement of a dispute. Therefore it was perfectly acceptable to sign even though it contained false statements.

We are not so cynical as to believe that because a document is not under oath that one can sign it with impunity. Attorneys are responsible for the filing of many documents which the Court and adversaries rely on. Some are under oath; others are not. Whether under oath or not, false documents should not be executed

because the perceived consequences of not signing a false statement might be severe.

Of major concern to us is Mr. Maguire's view of confidentiality. One of the principal cornerstones of the practice of law is the confidential relationship which exists between client and lawyer. The Committee on Character can only look to past behavior and stated beliefs to make its determinations. The implications of Mr. Maguire's actions in disclosing material obtained under confidential circumstances concern us. It has been suggested that his breach is cured by his assertions to the panel that "I would not do it btain the information in the same way] again. I do not know if this is to my credit or not but I would not do this again." Transcript, 83: 21-24. However, he acknowledges that his reluctance to do so may be because of the seriousness of the consequences, not necessarily because of a belief in the underlying ethical principles. If an attorney cannot respect the concept of confidentiality, he cannot honor that with his clients. Mr. Maguire has candidly stated that there are situations in which he would violate a client's confidence. While we can applaud Mr. Maguire's candor, his stated beliefs are utterly inconsistent with his responsibilities as an attorney to his clients, the Courts, and to the bar. Rather than accept a lawyer's duty to his clients, Mr. Maguire would impose his own private ethical standards to determine when to remain silent and when to speak.

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We can not accept either his justifications for signing a document that he knew to be untrue or his belief that attorney-client confidentiality is subject to individual interpretation. The administration of justice is founded upon the truthfulness of those who advocate in its service. An attorney may not sign false documents nor may he advise his clients to do so. A client must have complete trust in the privilege to speak freely and confidentially with his attorney. An attorney who betrays either the obligation of truthfulness or the obligation of confidentiality betrays the fundamental assumptions of the search for justice.

Based on the above, the RG 303 panel recommends that certification be withheld in the matter of Timothy Maguire.

Respectfully submitted,

/s/Mary J. Maudsley
Mary J. Maudsley, Esquire
(Chair, for the committee)

Richard Hluchan Esquire and
Richard T. Fauntleroy, Esquire
(concurring)