

**Supreme Court**

No. 2020-127-M.P.

In the Matter of Dennis D. Bossian. :

**ORDER**

This attorney disciplinary matter came before the Court pursuant to Article III, Rule 6(d) of the Supreme Court Rules of Disciplinary Procedure. On April 18, 2023, the Disciplinary Board of the Supreme Court forwarded to us a decision finding that the respondent, Dennis D. Bossian, had violated the Supreme Court Rules of Professional Conduct, along with its recommendation that we publicly censure the respondent. Rule 6(d) provides:

“If the [Disciplinary] Board determines that a proceeding should be dismissed, or that it should be concluded by public censure, suspension or disbarment, it shall submit its findings and recommendations, together with the entire record, to this Court. This Court shall review the record and enter an appropriate order. Proceedings, if any, before this Court shall be conducted by [Disciplinary] Counsel.”

We directed respondent to appear before the Court at its conference on May 31, 2023, to show cause, if any, why we should not accept the recommendation of the board. The respondent appeared before the Court, without counsel. Having heard the representations of respondent and this Court’s Disciplinary Counsel, we

concur with the decision of the board that respondent violated the Rules of Professional Conduct, and we hereby publicly censure respondent for his actions.

The relevant facts are undisputed. The respondent was trial counsel for a plaintiff in a personal-injury action with respect to damages sustained as the passenger in an automobile accident. The matter was reached for trial in March 2020 before a justice of the Superior Court. By agreement of counsel, the defendants convened the second day of trial by calling Thomas Morgan, M.D., as an expert witness out of time. Doctor Morgan presented a written report, which in part described how he concluded the accident had occurred and related that to the plaintiff's injuries and the duration thereof, which was entered into evidence in the trial as an exhibit without objection. Dr. Morgan's report stated in pertinent part:

"INJURY EVALUATION

"On 04/26/13, around 8:00 p.m., at the intersection of Laban Street and Webster Avenue in Providence, RI, Ms. Chavez, a 41 year old, 4'5" and 178 pound female restrained passenger in a 2000 Isuzu Rodeo when the passenger's front fender was in collision with the front *passenger's side of a 2008 Jeep Cherokee.*" (Emphasis added.)

However, on direct examination of Dr. Morgan by defense counsel, the following occurred:

"Q. Now, in looking at your report, Doctor, could you review what you know of the history of this accident?"

“A. Yes. So this says on 4/26/13 around 8:00 in the evening, it was at an intersection of Laban Street and Webster Avenue in Providence, Ms. Chavez, who was at that time a 41-year old, four-foot-five, 170-pound female, restrained passenger in a 2000 Isuzu Rodeo when the front fender of the passenger side, of her passenger side, was in collision with the *driver’s side of the Jeep Cherokee \* \** \*.” (Emphasis added.)

On his cross-examination, it appears to have been respondent’s intent to reveal the inconsistency between the report’s recitation of how the accident occurred and Dr. Morgan’s testimony as to what the report stated. The following exchange took place:

“MR. BOSSIAN: May I approach, Your Honor?

“THE COURT: For what purpose?

“MR. BOSSIAN: Because I’m going to show this Court and this jury what --

“THE COURT: He’s got the report. Do you have the report with you, Doctor?

“THE WITNESS: I do, Your Honor.

“THE COURT: He can follow along.

“Q. I’m going to read Page 2 of your report.

“A. Yes.

“Q. You’re smiling, because you know what I’m going to say.

“A. Well, I --

“Q. Let me read it.

“A. I’m sorry. I’m sorry.

“Q. Let me read it. The record is going to bear out what you testi-lied to.

“THE COURT: Excuse me. What was that last, testi-lied?

“MR. BOSSIAN: Yes, Your Honor.

“THE COURT: Testi-lied?

“MR. BOSSIAN: I’m going to read --

“THE COURT: Take the jury out.

“THE SHERIFF: Jurors rise, please.

“(JURY EXITS COURTROOM)

“THE COURT: Can you read that back, the stenographer read that back.

“(REQUESTED PORTION READ BACK)”

The trial justice next attempted to caution respondent. In response, the transcript reflects that respondent insisted that his conduct was appropriate and suggested that the trial justice should commence proceedings against the expert witness for perjury. The trial justice thereafter declared a mistrial and reported respondent’s conduct to Disciplinary Counsel.

The respondent is authorized to practice law in the State of Rhode Island and has been authorized to practice in the State during all times material to this matter.

The respondent is subject to the Rules of Professional Conduct as adopted and promulgated as Article V of the Rhode Island Supreme Court Rules. Rule 3.4(e) of the Rules of Professional Conduct states: “A lawyer shall not \* \* \* in trial \* \* \* state a personal opinion as to the \* \* \* credibility of a witness \* \* \*.”

On October 26, 2022, a hearing was held before a three-member hearing panel of the Disciplinary Board. Both respondent and Disciplinary Counsel presented their respective positions. Based on the facts and evidence presented at the hearing, the board concluded that respondent clearly violated Rule 3.4(e) by stating in the presence of a jury on cross-examination that a witness had “testi-lied.”

The board next turned to the issue of an appropriate sanction to recommend to this Court. In fashioning an appropriate sanction, the board and this Court are cognizant that the purposes of professional discipline are to protect the public and to maintain the integrity of the profession, *In re McBurney*, 13 A.3d 654, 655 (R.I. 2011) (mem.), and not to punish the attorney. *In re Almonte*, 678 A.2d 457, 458 (R.I. 1996). Mitigating and aggravating factors must be weighted to determine the proper level of discipline that should be imposed. *In re Fishbein*, 701 A.2d 1018, 1020 (R.I. 1997).

The board noted the following mitigating and aggravating factors in this matter. The respondent has been actively engaged in the practice of law in this state since 1987 and has received no prior discipline in those thirty-six years. The board

also noted that a timely, good-faith effort to rectify the consequences of misconduct would mitigate discipline. Here, however, the board found that respondent made no timely, good-faith effort to rectify the consequences of his misconduct and instead persisted in contending that his conduct—causing a mistrial with its impact of time and negative financial impacts upon the judicial system, the parties to the proceeding, and opposing counsel—was appropriate. The board posited that had respondent made a timely, good-faith effort, such as an immediate apology to the trial justice, opposing counsel, and witness, and a suggestion that the trial justice issue a cautionary instruction to the jury regarding the word “testi-lied,” he could have avoided a mistrial, may have avoided a disciplinary complaint and the subsequent proceedings, and could have benefited from a mitigation of the discipline recommended by the board.

This matter was the first before the board involving a public disciplinary sanction for violating Rule 3.4(e). “While this Court gives great weight to the recommendations of the board, we remain the final arbiter of professional discipline.” *In re Hellew*, 828 A.2d 531, 533 (R.I. 2003) (mem.). Here, we believe the board faithfully carried out its duties in this matter of first impression and fashioned an appropriate sanction. At this Court’s show cause hearing, respondent read a letter he sent the trial justice by email on April 27, 2023, after the conclusion of the board’s proceedings. The respondent’s letter apologized for use of the term

“testi-lie” and explained that it was not his desire or intent to cause a mistrial for his client. While the apology to the trial justice was long-delayed, we commend respondent for now taking responsibility for his actions. The respondent has also indicated to the Court that he will never use the term “testi-lie” or the like again.

Accordingly, we hereby publicly censure Dennis D. Bossian for his conduct in this matter.

Entered as an Order of this Court this 22<sup>nd</sup> Day of June 2023.

By Order,

/s/ Debra A. Saunders  
Clerk



**STATE OF RHODE ISLAND**  
**SUPREME COURT – CLERK’S OFFICE**  
Licht Judicial Complex  
250 Benefit Street  
Providence, RI 02903

**ORDER COVER SHEET**

<b>Title of Case</b>	In the Matter of Dennis D. Bossian.
<b>Case Number</b>	No. 2020-127-M.P.
<b>Date Order Filed</b>	June 22, 2023
<b>Justices</b>	Suttell, C.J., Goldberg, Robinson, Lynch Prata, and Long, JJ.
<b>Source of Appeal</b>	N/A
<b>Judicial Officer from Lower Court</b>	N/A
<b>Attorney(s) on Appeal</b>	For Petitioner: Kerry Reilley Travers, Esq. Chief Disciplinary Counsel
	For Respondent: Dennis D. Bossian, <i>pro se</i>