

REPORT TO THE AAR BOARD OF DIRECTORS --
WITH COPY TO MARK GOTTLIEB -- FROM THE
AAR ETHICS COMMITTEE

Pursuant to the AAR's Bylaws, the AAR Ethics Committee submits this report with recommendations to the AAR Board of Directors concerning complaints against AAR member Mark Gottlieb. As provided in the Bylaws, a copy of this report is being sent simultaneously to Mr. Gottlieb.

Background

In 2017 the Ethics Committee received a complaint against Mr. Gottlieb concerning his refusal to provide submission (and related) information to a former client. Interpreting the provision of the AAR Canon of Ethics that "A member shall keep each client apprised of matters entrusted to the member and shall promptly furnish such information as the client may reasonably request" to apply to former clients (at least under the immediate-in-time circumstances presented), the AAR determined that Mr. Gottlieb had violated that provision of the Canon. However, the AAR also determined that it would not impose any sanction based on those violations.

Mr. Gottlieb was duly advised of those actions and responded by arguing that the provision did not apply to former clients. In response, AAR Counsel Ken Norwick wrote to Mr. Gottlieb on December 19, 2017, as follows:

I am the lawyer for the AAR, which has referred to me your email to Vicky Bijur dated December 18, 2017. I write to advise you that you are mistaken in your interpretation of the "keep each client apprised" provision of the AAR Canon.

The Canon has numerous references to members' "clients." For example, the second paragraph states: "Members shall take responsible measures to protect the security and integrity of clients' funds." We trust – we hope – that you will agree that that provision applies as fully to "former clients" as it does to "current clients," especially when members continue to receive client funds after the agent-client relationship terminates. Please advise us immediately if you do not agree.

Similarly, as you have now been formally advised, the AAR interprets the reference to "client" in the "keep apprised" provision of the Canon to apply to "former clients" -- especially as in the current circumstances -- as well as to "current clients." And based on that interpretation, the AAR has determined that your failure to do so violates that provision of the Canon. However, because that interpretation was not communicated to you before the events underlying the two recent complaints against you occurred, the AAR decided not to impose sanctions for those violations. But you are now fully aware of that interpretation, which means that any future violations will be treated differently. We urge you to immediately begin complying with that provision of the Canon.

As a result, at least as early as December 19, 2017, Mr. Gottlieb was on full notice of his obligations under the “keep apprised” provision of the Canon.

In May 2018, the AAR Ethics Committee received a complaint against Mr. Gottlieb from Lois Leveen that included, among other issues, a claim that Mr. Gottlieb was in violation of the “keep apprised” provision of the Canon. Specifically, Ms. Leveen advised the Committee that on May 16, 2018, Mr. Gottlieb wrote to her as follows (emphasis added):

I would like to kindly ask that you please retract your email to the AAR Ethics Board and Authors Guild, as it is highly damaging to my career. (I have a family of my own with mouths to be fed and so their well being to worry about). After you retract said email, at that point, I will gladly furnish you with the submission list and materials sent to the editors/publishers.

In addition, Ms. Leveen also provided to the Committee a voicemail message that Mr. Gottlieb left for her that day. That message stated in relevant part (emphasis added):

Hi Lois, it's Mark calling from Trident again. I'm wanting to make sure you saw my last email. You know, I'd just like to see this wrapped up nicely if possible so if I could hear from you by the end of today that would be great. Otherwise I just simply plan to delete the client folder -- all of the contents of the submissions and materials and move on from this on my own.

Committee's Recommendation

The AAR Ethics Committee met on July 18, 2018, to consider Ms. Leveen's complaint, including the email and voicemail quoted above relating to the “keep apprised” obligation of the Canon. In addition to that provision of the Canon, the Committee also considered the provision of the Canon that states that AAR members “undertake never to mislead, deceive, dupe, defraud or victimize their clients, other members of the Association, the general public, or any person with whom they do business as a member of the Association.”

After fully considering the underlying facts and circumstances, the Committee unanimously determined a) that Mr. Gottlieb was in violation of the above-cited provisions of the Canon and b) that it would recommend to the Board that the appropriate sanction for such violation be the expulsion of Mr. Gottlieb from membership in the AAR. The Committee also determined to defer consideration of other aspects of Ms. Leveen's complaint against Mr. Gottlieb.

Respectfully submitted,

Vicky Bijur
Chair, AAR Ethics Committee