STATE OF MICHIGAN

Attorney Discipline Board

Grievance Administrator,

Petitioner/Appellant,

v

Richard C. Littlefield, P 32222,

Respondent/Appellee,

Case No. 04-152-GA

Decided: June 30, 2005

Appearances:

Rhonda S. Pozehl, for the Attorney Grievance Commission.
Richard C. Littlefield, In Pro Per, did not appear

BOARD OPINION

The Grievance Administrator petitioned for review of a hearing panel order which suspended the respondent's license for 3 years for misconduct which included his abandonment of a legal matter entrusted to him by a client, his failure to comply with the affidavit requirement in a prior order of discipline, his failure to answer three requests for investigation and, most importantly, his continued representation of two clients in criminal matters in direct violation of an order of suspension. Proper application of the American Bar Association's Standards for Imposing Lawyer Sanctions, together with the established precedent in this jurisdiction, warrants revocation of the respondent's license to practice law. The hearing panel's order of suspension is therefore vacated and respondent's license is revoked. The condition requiring the respondent to make restitution to complainant Jonathan Ratliff is affirmed.

As outlined in the formal complaint, respondent Richard Littlefield was served on October 13, 2003 with a request for investigation filed by a former client, Michael P. Hunt. A request for investigation filed by Ginny M. Ratliff was served on respondent on August 3, 2004. On August 23, 2004, the request for investigation in the name of the Grievance Administrator was served on

respondent. Despite written notices in each matter reminding him of his duty to file an answer within 21 days pursuant to MCR 9.113(A) and advising of the consequences of his continued failure to answer, the respondent failed to answer any of these requests for investigation. A count for failure to answer these three requests for investigation, along with four other counts of misconduct, was included in a formal complaint filed November 29, 2004, and served by regular and certified mail on December 2, 2004. The respondent was defaulted for failing to file an answer to that complaint. Indeed, the respondent has not filed any pleading or written communication with the Attorney Discipline Board in this matter. The respondent did not appear at the public hearing conducted by Tri-County Hearing Panel #56 on January 24, 2005 and, not surprisingly, did not appear at the review hearing conducted by the Board on May 19, 2005.

As charged in Count Two of the complaint, the respondent did participate in an earlier discipline matter, Grievance Administrator v Richard C. Littlefield, ADB Case No. 02-55-GA. In that case, the respondent and the Grievance Administrator entered a stipulation for consent order of discipline. On January 21, 2003, the respondent was served with an order suspending his license to practice law for sixty days commencing February 12, 2003. Despite his consent to the entry of that discipline order, the respondent failed to file the affidavit of compliance required by MCR 9.119; failed to pay the restitution of $750.00 to a former client as ordered and failed to take any other action to terminate that suspension. His license to practice law in Michigan has been continuously suspended since February 12, 2003.

Count Three of the complaint describes the respondent's acceptance of $2,600.00 between March 12 and June 1, 2004 from Ginny Ratliff to undertake the representation of her brother, Jonathan Ratliff, in a criminal matter. On March 31, 2004, the respondent appeared for a preliminary examination on Mr. Ratliff's behalf at the 23rd District Court. After the Ratliff matter was bound over to the 3rd Circuit Court on that date, the respondent appeared on Mr. Ratliff's behalf before Circuit Judge Vonda Evans on April 14, April 21 and May 7, 2004. All of these acts were in violation of the January 21, 2003 order of suspension.

As described in Court Four of the complaint, the respondent again violated the order of suspension in May 2004 by appearing in court on at least two occasions on behalf of Tracey Pitts who had been charged with racketeering, conspiracy to commit racketeering, and numerous charges of delivery and possession with intent to deliver cocaine.

At the hearing before Tri-County Hearing Panel #56, the Grievance Administrator's counsel

argued that revocation of the respondent's license was not only supported by prior opinions of the Attorney Discipline Board but was, in the absence of mitigating factors, the appropriate discipline under Standard 8.1 of the American Bar Association's Standards for Imposing Lawyer Sanctions.

Although it does not specifically cite ABA Standard 8.1, the hearing panel's report refers to its consideration of aggravating factors, described as:

1. Prior disciplinary offenses[1]

2. A dishonest or selfish motive

3. A pattern of misconduct

4. Multiple offenses

5. Bad-faith obstruction of the disciplinary proceedings by intentionally failing to comply with the rules or orders of the disciplinary agency; and

6. Substantial experience of law and indifference to making restitution.

The panel noted further in its report that it had considered as mitigation the fact that respondent had previously participated and cooperated in the disciplinary process as evidenced by the fact that the 60 day suspension in March 2003 was the result of a consent discipline stipulation.

In Grievance Administrator v Lopatin, 462 Mich 235 (2000), the Supreme Court ordered that the Attorney Discipline Board and its hearing panels apply the American Bar Association's Standards for Imposing Lawyer Sanctions. In analyzing respondent's conduct under those Standards, we must initially follow a three-step inquiry.

The first step is to identify the ethical duties violated. In this case, it is clear that respondent violated duties owed to the public, the courts and the legal profession.

The second step is to identify the lawyer's mental state. (Was the conduct intentional, knowing, or negligent?) As to the most egregious conduct, it is difficult to conclude that the respondent's practice of law and holding himself out as an attorney in violation of his suspension order was other than knowing, if not intentional, conduct. On this point, the respondent's prior 30-day suspension in 2000 (Grievance Administrator v Littlefield, Case No. 99-193-GA) is significant.

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[1] 30 Day Suspension (by consent) in Case No. 99-193-GA, effective 6/7/00; 60 Day Suspension (by consent) in Case No. 02-55-GA, effective 2/12/03.

In that case, the respondent terminated a 30-day suspension by filing an affidavit of compliance under Rule 9.123(A). It is therefore established in the record, prima facie, that the respondent had actual knowledge of the reinstatement requirements under Rule 9.123(A). He could not have claimed, if he had appeared before the panel, that he somehow presumed that his license was automatically reinstated in May 2003 upon the expiration of the 60-day suspension period in Case No. 02-55-GA.

The third step is the determination of the extent of the actual or potential injury caused by the misconduct. Just as the respondent violated duties to the public, the courts and the legal profession, his conduct here caused serious injury or potentially serious injury to clients as well as serious injury to the integrity of our Court's system for regulating attorney conduct.

The Administrator correctly notes that consideration of disbarment under ABA Standard 4.41 would also be appropriate in light of the respondent's abandonment of his client's action [Count One]. However, it is ABA Standard 8.1 which is particularly apt in this case. That Standard provides:

> Disbarment is generally appropriate when a lawyer:
>
> a. intentionally or knowingly violates the terms of a prior disciplinary order and such a violation causes injury or potential injury to the client, the public, the legal system or the profession . . .

Once the appropriate ABA Standard has been identified, a panel should then move to the final step in the analysis - consideration of appropriate aggravating and mitigating factors, including those factors enumerated in Standards 9.22 and 9.32.

After listing six factors considered in aggravation, the panel stated in its report:

> The factor considered in mitigation was the prior consent discipline which showed that at least one point the respondent did participate in the disciplinary process.

While this statement might have relevance if the Grievance Administrator had claimed that the respondent had never, in his 24 years as a licensed attorney, cooperated in a disciplinary proceeding, we fail to see how the respondent's agreement to discipline by consent in 2000 and 2003 can be afforded serious consideration as a mitigating factor, much less compelling or exceptional mitigation, in the case at hand. Apart from the self-interest which presumably motivated the respondent's agreement to the entry of a 60-day suspension in 2003, the record amply demonstrates that the respondent has utterly failed to cooperate with the discipline process or comply with the

rules for at least the past two years.

Having agreed, in writing, to the entry of an order suspending his license for 60 days in Case No. 02-55-GA, the respondent then failed to comply with any of the terms of that order - he failed to make the restitution which was ordered; he failed to file the affidavit required under MCR 9.119 and, most importantly, he continued to undertake representation and accept fees in at least two cases in flagrant disregard of the order. In the instant case, the respondent has not cooperated with the discipline process in any way. He has failed to answer requests for investigation; failed to answer the complaint; failed to appear at the hearing before the panel and failed to appear before the Board.

The commentary to ABA Standard 8.1 states:

> Disbarment is warranted when a lawyer who has previously been disciplined intentionally or knowingly violates the terms of that order and, as a result, causes injury or potential injury to a client, the public, the legal system or the profession. The most common case is one where a lawyer has been suspended but, nevertheless, practices law. The courts are generally in agreement in imposing disbarment in such cases. As the court explained in Matter of McInerney, 389 Mass 528, 451 NE2d 401, 405 (1983), when the record establishes a lawyer's willingness to violate the terms of his suspension order, disbarment is appropriate "as a prophylactic measure to prevent further misconduct by the offending individual."

We would add that disbarment is generally appropriate in such a case as a prophylactic measure to prevent other respondents from violating orders of suspension with impunity.

By his conduct since the spring of 2003, this attorney has repeatedly demonstrated his indifference to the rules governing licensed attorneys in Michigan. The record below does not support the imposition of discipline less than revocation.

Board members William P. Hampton, Marie E. Martell, Ronald L. Steffens, George H. Lennon, Billy Ben Baumann, M.D., Lori McAllister and Hon. Richard F. Suhrheinrich concur in this decision.

Board members Theodore J. St. Antoine and Rev. Ira Combs, Jr., did not participate in the argument or decision in this case.