Grievance Administrator
State of Michigan
Attorney Grievance commission

Petitioner/Appellant,

v

Allen Meyers, P 17672,

Respondent/Cross-Appellant.

93-94-JC

Decided: June 7, 1995
Corrected: June 16, 1995

CORRECTED BOARD OPINION

Respondent was convicted of three counts of criminal sexual conduct in the 4th degree, MCL 750.520e(1)(a); MSA 28.788(5)(1)(a), after pleading nolo contendere in Oakland County Circuit Court. The Circuit Court sentenced respondent to a three-year term of probation, the conditions of which included home confinement, psychological testing, mental health treatment, community service and restitution to the victim.

Upon the filing of the judgment of conviction, respondent was ordered to show cause why a final order of discipline should not be entered under to MCR 9.120(B)(3). After a hearing at which respondent testified concerning the incident and introduced mitigating evidence, the hearing panel imposed a suspension of ninety days with conditions. The Grievance Administrator has filed a petition for review urging that discipline be increased to a suspension of at least 180 days. We decline to do so and affirm the order of discipline with a minor modification.

Respondent was admitted to practice in 1968. He has no record of discipline. At the hearing, he testified as to the circumstances surrounding the incident which gave rise to his conviction. Two of his partners also testified, one of which has known respondent

since he was eighteen or nineteen years old. A former law clerk testified that as a practicing attorney in her own law firm, she works closely with respondent on a referral basis.

In a report which carefully considered the factual setting in which respondent's conduct occurred, and the mitigating evidence, two members of the hearing panel concluded that respondent should be suspended from the practice of law for a period of ninety days.

In so ruling, the panel majority rejected the Grievance Administrator's argument that our opinion in Grievance Administrator v Stephen D Duggan, 92-140-JC (Brd. Opn. 7/19/93) requires a minimum suspension of 180 days in order to trigger reinstatement proceedings under MCR 9.123(B) and MCR 9.124. In Duggan, we held:

> The Board has ruled in previous cases that there are some types of misconduct which, by their nature, require suspension of sufficient length to trigger the reinstatement proceedings described in MCR 9.123(B) and MCR 9.124. . . . We believe that the criminal conduct in this case by its nature, has sufficiently called the respondent's "moral character" into question that reinstatement proceedings are required.

Duggan, p. 4.

After consideration of the evidence, the panel majority exercised its independent judgment and concluded that respondent does not pose a threat to the public or to his clients, that circumstances surrounding this incident and respondent's conduct are extremely unlikely to recur, and that no purpose would be served by requiring respondent to undergo reinstatement proceedings. The panel majority stated:

> It is not probable that new information will be presented to a second panel that is not now available that will provide more assurance to the Bar and the public that Mr Meyers will act appropriately in a professional capacity and his private life . . . .

Panel Majority Opinion, p 8.

The Grievance Administrator correctly reads the dicta in Duggan as requiring a minimum level of discipline. As such Duggan

was erroneously decided. It is well-established (as our concurring colleagues acknowledge below) that attorney misconduct cases are fact specific, and that discipline must, accordingly, be imposed on a case by case basis. Therefore, we expressly overrule Duggan's holding to the contrary.

The order of discipline is affirmed as amended in this Board's January 5, 1995 interim order granting respondent's motion to satisfy counseling provision.

Board Members Elaine Fieldman, George E. Bushnell, Jr., Albert L. Holtz, Miles A Hurwitz and Paul D Newman concurring.

Concurring Opinion

We agree that the discipline imposed by the panel majority is appropriate. To the extent that our opinion in Duggan, supra, may be read to require the imposition of a minimum level of discipline in every case arising out of an attorney's conviction of criminal sexual conduct in the 4th degree, we expressly disavow such a reading, and reaffirm the importance of individualized determinations in the imposition of discipline.

However, we do not believe it is necessary to overrule the Board's decision in Duggan because we do not believe that Duggan was decided erroneously. We recognized in Duggan that "[a]s a general rule, strict reliance upon the level of discipline imposed in other cases is inappropriate." Duggan, p 2. As our Supreme Court has said, attorney discipline cases are not "comparable beyond a limited and superficial extent," but, rather, "must stand on their own facts." State Bar Grievance Administrator v DelRio, 407 Mich 336, 350; 285 NW2d 277 (1979). Echoing this principle in a later decision, the Court stated:

> In reviewing the discipline imposed in a given case, we are mindful of the sanctions meted out in similar cases, but recognize that analogies are not of great value.

In re Grimes, 414 Mich 483, 490; 326 NW2d 380 (1981) (quoting DelRio, supra, with approval).

We do not believe Duggan demands "strict adherance to the

level of discipline imposed" therein. Yet, it may serve as a starting point in the deliberations of a hearing panel faced with a similar case. This use of Duggan does not violate the principles discussed above--so long as the panel recognizes that the opinion is a guide and not a straightjacket.

In this case, the hearing panel majority carefully considered the mitigating evidence, and reached a reasoned determination that requiring respondent to demonstrate his fitness in reinstatement proceedings would not serve to protect the public, the courts or the profession. Upon review of the record, we find no basis for disturbing this determination.

Board Members John F Burns, C Beth DunCombe and Barbara B Gattorn.

Board Member Marie Farrell-Donaldson was absent.