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[Filed 31-Jan-2011]

STATE OF VERMONT

PROFESSIONAL RESPONSIBILITY BOARD

In Re: Jasdeep Pannu, Esq.

PRB File No. 2011.029

Decision No. 136

The parties filed a Stipulation of Facts and Joint Recommendations as to Conclusions of Law and Sanctions. Respondent waived certain procedural rights including the right to an evidentiary hearing.

The Hearing Panel accepts the stipulated facts and the recommendations and orders that Respondent be publicly reprimanded for introducing evidence in a criminal case that was wholly irrelevant and inadmissible and in disobedience of a court's pre-trial ruling in violation of Rules 3.4(c), 3.4(e) and 8.4(d) of the Vermont Rules of Professional Conduct.

Facts

Respondent was admitted to the Vermont Bar in 2005, and during the time relevant to this case had a contract with the Public Defender's office to handle criminal cases in which the Defender General's Office had a conflict.

In August of 2008, Respondent was assigned to represent James Spearman who, in March of that year, had been charged with one count each of Aggravated Sexual Assault, Domestic Assault and Resisting Arrest.

In the week prior to the trial, which began on March 9, 2009, the court made several specific pre-trial rulings that prohibited the defense from referring to the complaining witness' sexual behavior. On the first day of the trial, before the jury came in, Respondent asked that the court reconsider the rulings. The request was denied, and the court noted that these rulings had been made on at least three prior occasions. On Respondent's cross-examination of Detective Tyler Kinney, one of the State's witnesses, Respondent asked the detective if he had learned during his investigation that the complainant had had sex with three other men. The court sustained the State's objection to the question. The court then excused the jury and told Respondent that he was in direct contempt of the earlier rulings. The court later granted the State's motion for mistrial.

Respondent stipulated that his disobedience of the court order was knowing. The trial court found that his conduct "was an intentional violation of the court's pre-trial rulings and the Vermont Rape Shield Law." The court found him directly in contempt and fined him $2000.00, the cost of drawing the jury and one day of trial. Respondent appealed to the Vermont Supreme Court. The Supreme Court affirmed the trial judge's ruling in rather strong language. "Counsel's conduct is particularly egregious given the purpose of the rape-shield law. . . . Under no

circumstances could counsel have reasonably believed that his question about the victim's sexual encounters in 2006 was appropriate, and the court's finding that he willfully violated its prior rulings is amply supported by the evidence. The only purpose of this question was to intentionally prejudice the jury, and the court correctly characterized counsel's conduct as calculated and outrageous. It acted well within its discretion in finding Pannu in contempt." *In re Pannu*, 2010 VT 58 ¶ 21, ¶ 25.

Respondent has entered into an agreement in which he is making regular installment payments of the fine imposed by the trial court. Respondent has no prior discipline. He self-reported the Supreme Court's decision to Disciplinary Counsel and has been cooperative with the process. At the time of the misconduct, Respondent had been practicing for just over three years.

Conclusions of Law

The Vermont Rules of Professional Conduct were recently amended, taking effect September 1, 2009. Respondent's misconduct took place prior to that date and is therefore governed by the rules in effect at that time.

Then Rule 3.4(c) provided that "[a] lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists." Respondent's knowingly violated the court's pretrial order and was held in contempt for so doing. This conduct violates Rule 3.4(c).

Rule 3.4(e) of the Vermont Rules of Professional Conduct in effect in March of 2009, provided that "[a] lawyer shall not, in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible

evidence. . ." The Supreme Court concluded that Respondent attempted to introduce evidence that was "wholly irrelevant" and "inadmissible." *In re Pannu,* 2010 VT 58 ¶ 20. This conduct violates that Rule 3.4(e) of the Vermont Rules of Professional Conduct.

In March of 2009 Rule 8.4(d) of the Vermont Rules of Professional Conduct prohibited attorneys from engaging in conduct prejudicial to the administration of justice. The facts of this case are similar to *In re Duckman,* PRB Decision No. 103 (2007), in which the attorney was found in violation of Rule 8.4(d) for contempt in the course of a criminal proceeding.

An attorney's failure to abide by rules and orders of the court is detrimental to the efficient working of the judicial system, can affect the rights of the parties and, as here, can increase costs of the court system. All of this is prejudicial to the administration of justice, and we find a violation of Rule 8.4(d).

Sanction

In determining the appropriate sanction, we look to the ABA Standards for Imposing Lawyer Sanctions and Vermont case law. The recommendation of the parties for public reprimand is in accord with both authorities.

Under the ABA Standards we need first arrive at a presumptive sanction and then look to the presence of mitigating or aggravating factors to determine if the sanction should be either increased or decreased.

Section 6.22 of the ABA Standards states that "[s]uspension is appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding." Respondent stipulated that his violation of the court's order was done knowingly; that he interfered with a legal proceeding; and that his acts caused financial injury to the court system. Absent other factors present here, a suspension is therefore justifiable under ABA Standards. We decline to suspend Respondent for two reasons.

The first is the presence of several mitigating factors. Respondent has no prior disciplinary record, *ABA Standards §9.32(a),* he was relatively inexperienced in the practice of law (three years) at the time of the offense, *ABA Standards §9.32(f),* he self-reported the matter and has cooperated with Disciplinary Counsel, *ABA Standards §9.32(e),* and he is making restitution to the trial court, *ABA Standards §9.32(d).* There are no aggravating factors, and we believe these carry weight in reducing the sanction to public reprimand.

The second reason we believe that recommended sanction is appropriate is that it is consistent with the decision in *In re Duckman*, PRB Decision No. 103 (2007) in which reprimand was imposed following a finding of contempt in the course of a criminal proceeding. The facts in *Duckman* are similar to the present case, however, there were no mitigating factors considered in imposing reprimand in that case.

Order

Based upon the foregoing the Panel PUBLICLY REPRIMANDS Respondent, Jasdeep Pannu, Esq. for violation of Rules 3.4(c), 3.4(e) and 8.4(d) of the Vermont Rules of Professional Conduct.

Dated: January 31, 2011

Hearing Panel No. 7

/s/

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Harland L. Miller, III Esq., Chair

/s/

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Mark G. Hall, Esq.

/s/

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Stephen V. Carbone