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[Filed 11-Apr-2007]

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In re: Bradney Griffin, Esq.
PRB File No 2007.071

Decision No. 98

Respondent is charged with failure to cooperate with disciplinary counsel in violation of Rule 8.4(d) of the Vermont Rules of Professional Conduct. Disciplinary Counsel has moved that the charges be deemed admitted because Respondent did not file a written response to the Petition of Misconduct and requested the imposition of sanctions. The Hearing Panel finds that the charge of violation of Rule 8.4(d) is deemed admitted due to Respondent's failure to file a response to the Petition of Misconduct, pursuant to Rule 11(D)(3) of the Vermont Rules of Professional Conduct. The Hearing Panel orders Respondent suspended from the practice of law for a period of thirty (30) days, to be followed by period of probation of ninety (90) days.

I. Statement of Facts

In July 2006, an ethics complaint was filed against Respondent. By letter dated July 19, 2006, Disciplinary Counsel informed Respondent of the complaint and directed him to file a written response by August 8, 2006. Respondent did not file a response to the complaint. By letter dated August 17, 2006, Cathy Janvier, administrative assistant to Disciplinary Counsel, informed Respondent that Disciplinary Counsel had not received Respondent's answer to the complaint, as required by the Vermont Rules of Professional Conduct. The August 17th letter informed Respondent that Disciplinary Counsel intended to charge Respondent with failure to cooperate with Disciplinary Counsel if Respondent did not file a response to the Complaint by August 24, 2006. Again, Respondent did not respond.

On October 16, 2006, Disciplinary Counsel filed the Petition of Misconduct charging Respondent with violation of Rule 8.4(d) of the Vermont Rules of Professional Conduct for failure to cooperate with disciplinary counsel. As required by Rule 14(A) of Administrative Order 9, the Petition was served on Respondent by certified mail, restricted delivery. On October 19, 2007, Respondent accepted delivery of the Petition. Respondent did not file answer to the Petition, nor did Respondent file a response to the underlying complaint.

On November 21, 2006 Disciplinary Counsel moved to have the charges deemed admitted, pursuant to Rule 11(D)(3). Disciplinary Counsel asked the Hearing Panel to set this matter for a sanctions hearing.

On November 22, 2006, the Hearing Panel issued a letter through the Program Administrator asking Disciplinary Counsel to file a written request for sanctions, including a memorandum of law supporting Counsel's request. The November 22nd letter informed Respondent that Respondent would have 15 days from the date of Disciplinary Counsel's request for sanctions to

request a hearing and to file a memorandum explaining why sanctions should not be imposed. Respondent did not file a request for hearing and did not file a memorandum on the issue of sanctions.

II. Conclusions of Law

A. Charge Deemed Admitted

Failure to respond to a request from Disciplinary Counsel is prejudicial to the administration of justice, §8.4(d) of the Rules of Professional Conduct, and grounds for discipline. Rule 7(D) of Administrative Order 9. Twice Disciplinary Counsel requested that Respondent provide a response to an ethics complaint. Twice Respondent failed to respond.

Rule 8.4(d) of the Vermont Rules of Professional Conduct prohibits attorneys from engaging in conduct that is prejudicial to the administration of justice. The administration of the lawyer discipline system is predicated on the cooperation of the attorneys involved. Vermont Professional Responsibility decisions make it clear that without this cooperation the system is prejudiced and the Rule violated. In re Heald, PRB No. 19 (June 5, 2001); In re PRB File No. 2000.019, Decision No. 15, (October 23, 2000); In re Blais, PCB No. 118, 1 V.P.C.R. 226, 227 (1997).

Disciplinary Counsel properly filed the Petition of Misconduct and served the Petition upon Respondent in accordance with Rule 14(A) of Administrative Order 9. Respondent did not file a response to the charge of unprofessional conduct within the time required by Rule 11(D)(3) of Administrative Order 9. Rule 11(D)(3) provides: "In the event the respondent fails to answer within the prescribed time, the charges shall be deemed admitted, unless good cause is shown." The Hearing Panel has no information indicating that the Respondent has good cause for not filing a timely response to Disciplinary Counsel's Petition.

The Hearing Panel concludes that the charge of violation Rule 8.4(d) of the Vermont Rules of Professional Conduct is deemed admitted and Respondent is subject to discipline, pursuant to Rule 7(D) of Administrative Order 9.

B. Sanctions

At the request of the Hearing Panel, Disciplinary Counsel filed a sanction memorandum recommending a sanction of public reprimand combined with probation for a period of forty-five (45) days. We do not disagree with much of Disciplinary Counsel's reasoning. We believe, however, that the importance of the attorney's obligation to the profession requires a serious response, particularly when an attorney, without offering any explanation, chooses to ignore a critical duty owed to the profession. See In re Conduct of Crist, 327 Or. 609, 615, 965 P.2d 1023, 1027 ("This court considers the complete failure to cooperate with a disciplinary investigation to be a serious ethical violation."). The purpose of the disciplinary system is not to punish lawyers. Sanctions, when imposed, are intended to protect the public from harm and to maintain confidence in our legal institutions by deterring future misconduct. In re Hunter, 167 Vt. 219, 226 (1997); see also In re Keitel, 172 Vt. 537, 538, 772 A.2d 507, 510 (2001) (citing In re Berk, 157 Vt. 524, 532, 602 A.2d 946, 950 (1991); Florida Bar v. Feinberg, 760 So.2d 933, 939 (Fla. 2000); Lawyer Disciplinary Board v. Veneri, 206 W.Va. 384, 524 S.E.2d 900, 905-06

(1999)).

We have two purposes in imposing a sanction in this matter. The first is to underscore to Respondent, the members of the Bar and the public the seriousness of an attorney failing to cooperate with Disciplinary Counsel. The second is to fashion a term of probation that will assist Disciplinary Counsel in investigating the underlying complaint.

The Vermont Supreme Court has "adopted the ABA Standards for Imposing Lawyer Discipline, which requires [the Hearing Panel] to weigh the duty violated, the attorney's mental state, the actual or potential injury caused by the misconduct, and the existence of aggravating or mitigating factors. In re Andres, 2004 VT 71, 14, 177 Vt. 511, 513, 857 A.2d 803, 807 (2004). In applying the ABA Standards, we consider three factors which lead us to a presumptive sanction: the duty violated; the lawyer's mental state, and the potential or actual injury caused by the misconduct. Once a presumptive sanction is determined, we weigh both aggravating and mitigating factors to determine if the presumptive sanction should be modified.

1. The Duty Violated

All lawyers have a duty to cooperate with the disciplinary system. Failure to respond to a request from Disciplinary Counsel is prejudicial to the administration of justice, §8.4(d) of the Rules of Professional Conduct, and grounds for discipline, pursuant to Rule 7(D) of Administrative Order 9. The legal profession is "a system of self-regulation that requires the co-operation of all members of the bar if it is going to work fairly and efficiently. In re Blais, 1 V.P.C.R. 227-228. Failure to comport with the duty of cooperation seriously impedes the efficient administration of justice and erodes the public's confidence in the profession. See e.g., In re Disciplinary Action Against Flatten, 611 N.W.2d 340, 342 (2000) ("it is imperative that an attorney cooperate with a disciplinary authority in the investigation of a complaint against that attorney."); In re Conduct of Crist, 327 Or. 609, 615, 965 P.2d 1023, 1027 (1998) ("This court considers the complete failure to cooperate with a disciplinary investigation to be a serious ethical violation.").

2. The Attorney's State of Mind

The Hearing Panel has no direct evidence from Disciplinary Counsel or Respondent regarding the Respondent's state of mind. Absent any direct evidence, the hearing panel may draw inferences from the surrounding facts and circumstances. Respondent personally signed the return receipt for the Petition of Misconduct. There is no question that Respondent received the Petition. All of the other correspondence, including Disciplinary Counsel's letters requesting cooperation and the Hearing Panel's letter request for memorandum were sent to the same address. Respondent received a number of communications regarding this disciplinary matter and all were ignored. The evidence establishes that Respondent knew of the investigation and intentionally chose not to cooperate with the disciplinary process. Respondent knowingly failed to comply with his duty to the profession.

3. Injury

Respondent's conduct caused injury. His failure to answer the

original complaint has impeded and delayed Disciplinary Counsel's investigation. There is harm to the disciplinary system as its limited resources are expended unnecessarily by reason of Respondent's failure to cooperate. His conduct also causes harm to the profession and the judiciary in that it undermines public confidence in the profession's system of self-regulation. In re Conduct of Koliha, 330 Or. 402, 409, 9 P.3d 102, 105 (2000) (the "accused's failure to cooperate with the Bar's investigation caused actual harm to both the legal profession and the public, because it delayed the investigation and, consequently, the resolution of the complaint against her.")

4. Presumptive Sanction

The ABA Standards provide that "[s]uspension is generally appropriate when a lawyer engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system." ABA Standards §7.2. We have determined that Respondent violated his duty, that he acted knowingly, and that there was injury to the public and the legal system. We now must turn to the existence of aggravating and mitigating circumstances to determine whether this sanction should be modified.

5. Aggravating & Mitigating Circumstances

We have little evidence of either aggravating or mitigating circumstances in this case. Respondent was admitted to practice in Vermont in 1974. Respondent appears to be an attorney with long experience, which may be considered in aggravation. ABA Standards §9.22(i). As noted above, Respondent's conduct was intentional, suggesting Respondent does not acknowledge the seriousness of the violation. See, In re Disciplinary Action Against Flatten, 611 N.W.2d at 342. In mitigation, there is no evidence that Respondent has been subject to prior discipline. ABA Standards §9.32(a). Neither of these factors dissuades us from the presumptive sanction of suspension.

The Hearing Panel notes that Disciplinary Counsel has not informed the Hearing Panel about the nature of the underlying ethics complaint. This information may have been helpful in this case. The nature or seriousness of the alleged offense may have qualified as an aggravating or mitigating factor.

6. Precedent

We now turn to case law to determine if suspension in this matter is supported by prior cases. In the case of In re Bailey, 157 Vt. 424 (1991), the Vermont Supreme Court suspended Respondent's license to practice law in Vermont, "in part, from the Respondent's failure to respond to requests from disciplinary authorities." In re Bailey, 174 Vt. 447, 448, 800 A.2d 493, 495 (2002). The Bailey court opinion suggests that respondent's "unwillingness or inability" to provide information to disciplinary counsel raised questions about respondent's fitness to practice law. In re Bailey, 157 Vt. at 426, 599 A.2d at 1051.

In a more recent case, a Hearing Panel found that a lawyer had violated Rule 8.4(d) by failing to cooperate with a disciplinary investigation and ordered the attorney suspended for forty-five days, followed by one year probation. In re Grady, PRB Decision No. 96 (Dec. 14,

2006). The Supreme Court has ordered review of this case on its own motion, pursuant to Rule 11(E) of Administrative Order 9. Although the decision is currently under review, the reasoning of the Hearing Panel is helpful. In that case both Disciplinary Counsel and the Hearing Panel expressed reluctance to impose suspension, believing that "Respondent's failure to cooperate with disciplinary counsel stemmed from her medical problems, not from a cavalier attitude toward the disciplinary process." Nonetheless, the Panel concluded that suspension was the appropriate sanction.

We have no such evidence before us that would constrain us from suspension. Respondent has been afforded a number of opportunities to present his position, the last of which was the opportunity to request a hearing on the issue of sanctions. He did not do so, suggesting his refusal to meet his responsibility to the profession was both willful and intentional.

Other jurisdictions have suspended lawyers who have failed to respond to requests from disciplinary authorities. See Matter of Uzodike, 155 N.J. 354, (1998) (attorney suspended for failure to cooperate with a disciplinary investigation and to attend a demand audit); In re Fagre-Stroetz, 710 N.W.2d 783, 788 (2006) ("'[w]hen an attorney commits misconduct and then refuses to cooperate with the ensuing investigation, indefinite suspension is "a reasonable and necessary sanction, especially where respondent has offered no evidence of mitigating circumstances."'"); In re McCabe, 591 N.W.2d 723 (Minn. 1999) (indefinite suspension for failure to cooperate and for neglect of client matters); In re DeRuiz, 152 Wash.2d 558 (2004) (6 month suspension for failure to cooperate with investigation); People v. Nelson, 35 P.3d 641 (Colo. 2001) (two months suspension for failure to cooperate with disciplinary authorities); see generally Failure to Co-operate With or Obey Disciplinary Authorities as Ground for Disciplining Attorney -- Modern Cases, 37 A.L.R.4th 646.

Suspension under our rules must be for a time certain. Thus we cannot suspend Respondent for an indefinite time or until Respondent complies with requests for information from Disciplinary Counsel. A suspension of thirty days duration should be sufficient to put Respondent on notice of the seriousness of his conduct, deter similar misconduct and maintain the public confidence in the attorney disciplinary system.

III. Order

The Panel finds and concludes that Respondent has violated Rule 8.4(d) of the Vermont Rules of Professional Conduct and Respondent is subject to discipline, pursuant to Rule 7(D) of Administrative Order 9.

It is hereby ordered that Respondent, Bradney Griffin, is suspended from the practice of law for the period of thirty (30) days for violation of Rule 8.4(d) of the Vermont Rules of Professional Conduct (conduct that is prejudicial to the administration of justice). The suspension shall commence 30 days from the date of this Order. During the period of suspension, Respondent shall file with Disciplinary Counsel a written response to the complaint filed in the matter of PRB File No. 2007.015.

It is further ordered that, upon reinstatement, Respondent shall be placed on probation for a period of ninety (90) days. The following conditions are imposed during Respondent's probationary period:

1. Respondent shall promptly respond to all requests for information from Disciplinary Counsel.

2. Respondent shall make himself available to be deposed in Vermont at a time and place set by Disciplinary Counsel.

3. Respondent shall not violate the Vermont Rules of Professional Conduct during the period of probation.

A violation of any of the terms of probation shall be grounds for a motion by Disciplinary Counsel for immediate interim suspension, pursuant to Rule 8(6)(c) of Administrative Order 9.

It is further order that Respondent shall immediately comply with the provisions of Rule 23 of Administrative Order 9, regarding providing notice to clients, adverse parties and other counsel.

Dated this 11th day of April 2007.

Hearing Panel No. 10

/s/
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Lon T. McClintock, Esq., Chair

/s/
_____
Kristina Pollard, Esq.

/s/
_____
Bob Bergman, D.V.M.