

IN RE: PAUL J. GRELLA

S.J.C. Order of Disbarment entered by Justice Cordy on August 9, 2006.¹

MEMORANDUM OF DECISION

Paul J. Grella is before the court on an Information filed by the Board of Bar Overseers (board) recommending that he be disbarred. The recommended sanction is for violations of Mass. R. Prof. C. 1.2(a), 1.3, 1.4(a), 1.15(a), 1.15(b), 8.1(b), 8.4(c), 8.4(d), 8.4(g), and 8.4(h). I held a hearing on July 27, 2006, and have carefully reviewed the record of proceedings before the board, including the special hearing officer's report, which the board adopted. I conclude that disbarment is the appropriate sanction (an issue not disputed by Grella), and reject the respondent's claim that the disbarment should be retroactive to the date he was eligible to be reinstated following an earlier suspension on an unrelated matter.

1. Background. Grella was first suspended from the practice of law on December 12, 2002. The suspension was the result of Grella's conviction for assaulting his wife, and was to last two months. Pursuant to S.J.C. Rule 4:01, § 17(3), the suspension became effective on January 12, 2003. Grella became eligible for automatic reinstatement on March 12, 2003.

The terms of Grella's suspension were dictated by S.J.C. Rule 4:01, § 17(1), which provides that Grella was required to (a) resign all appointments; (b) file a notice of withdrawal with the courts; (c) provide notice to clients and beneficiaries of the suspension; (d) provide notice to counsel in pending matters; (e) make available to clients all property to which they are entitled; (f) refund any part of fees paid in advance but not earned; and (g) close every IOLTA account and disburse or transfer all client or fiduciary funds in his possession, custody, or control. Grella was also required by S.J.C. Rule 4:01, § 17(5), to file within twenty-one days from the effective date of the suspension an affidavit certifying that he had complied with the order and disciplinary rules. Grella did not close his IOLTA account until 2005, and has never filed an affidavit of compliance. A similar affidavit is required to apply for reinstatement, but Grella never sought to be reinstated.

The complaint leading to the present disbarment proceeding was filed with the board in 2001. It arose from Grella's handling of a client's probate and debt related matters (the probate matter). On January 3, 2005, a petition for discipline was filed against Grella. The board appointed a special hearing officer to hear the case, and a hearing was held on June 9, 2005. On January 9, 2006, the special hearing officer filed her findings of fact, concluded that Grella had violated several rules of professional conduct, and recommended that he be disbarred. The board adopted the hearing officer's report and recommendation of disbarment. Grella urged the board to make the disbarment retroactive. The board, however (as had the hearing officer), rejected this request and recommended that the disbarment be effective thirty days from the entry of the judgment of disbarment. Whether the disbarment should be retroactive to some date is the sole contested issue before me, the respondent having conceded that disbarment is the appropriate sanction.

2. Discussion. Grella argues that his disbarment should be made retroactive to March 12, 2003 - the date Grella was eligible to be reinstated from his prior two month suspension - or at least retroactive for some substantial period of time. In support of his argument, he contends that he substantially complied with the terms of his suspension, and that any application for reinstatement would have been resisted by the board, and denied by the court, because he

was under investigation for the probate matter at the time. Consequently, his inability to practice law since March, 2003, was the direct result of the matter now presented for disbarment.

In evaluating the sanction, "substantial deference" is given to the board's recommendation. *Matter of Kersey*, 432 Mass. 1020, 1020 (2000); *Matter of Doyle*, 429 Mass. 1013, 1013 (1999); *Matter of Tobin*, 417 Mass. 81, 88 (1994). In essence, Grella's claim is that by failing to make his penalty retroactive, the board has made the penalty markedly disparate from penalties in comparable cases. *Matter of Shaughnessy*, 442 Mass. 1012, 1013 (2004). Specifically, if not made retroactive, the penalty will have effectively barred him from applying for readmission to the bar for eleven years (from March, 2003), rather than for eight years, the normal outcome of a judgment of disbarment.

The decision to make a penalty retroactive lies within the sound discretion of the court. S.J.C. Rule 4:01, §17(3) ("orders imposing disbarment or suspension . . . shall be effective thirty days after entry, unless otherwise ordered by the court"). See *Matter of Dawkins*, 432 Mass. 1009, 1010 (2000) (describing single justice rejecting board's judgment of disbarment and entering judgment of retroactive indefinite suspension); *Matter of Kennedy*, 428 Mass. 156, 159-160 (1998) (full court vacates single justice's judgment of indefinite suspension and orders retroactive disbarment); *Matter of O'Malley*, 12 Mass. Att'y Discipline Rep. 390, 391 (court refuses to make disbarment retroactive). There are circumstances when retroactivity, back to the date of a prior suspension, has been properly considered and allowed. Those include when the prior suspension was for the same matter as the disbarment, e.g., *Matter of O'Malley*, 12 Mass. Att'y Disc. R. 390, 391 (1996), and when the terms of the prior suspension were complied with; *Matter of Spearing*, 14 Mass. Att'y Disc. R. 731, 735 (1997) (indefinite suspension retroactive to date of compliance with temporary suspension). Cf. *Matter of Debole*, 13 Mass. Att'y Disc. R. 118, 120 (1997) (disbarment not retroactive to date of temporary suspension when attorney did not comply with suspension).

In Grella's case, the prior suspension was plainly not related to the probate matter, and its terms were not complied with. While Grella artfully suggests that his suspension for assault was in fact converted into a suspension for the misconduct of the probate matter at the moment his two month suspension had expired, this argument is unpersuasive. Grella never applied for reinstatement which would have been automatic had he complied with the terms of the suspension. While it would be mere speculation to conclude that the board would have challenged and defeated an application for such reinstatement, based on its ongoing investigation of the probate matter, what is certain is that he would not have been reinstated because he failed to comply with the terms of his suspension. That failure has nothing to do with the probate matter, and Grella's contention that he was rendered unable to practice law after March 12, 2003, because of the probate matter is without merit.

Grella's contention that he substantially complied with the suspension order is supported only by his conclusory remark that "[t]here was no evidence that Respondent had practiced law since his suspension became effective." While this may be true, Grella has filed no affidavit to such effect. Moreover, the terms of his suspension required more than simply ceasing the practice of law. See S.J.C. Rule 4:01, § 17(1) (setting out duties of individuals "disbarred, suspended, temporarily suspended, or placed on disability inactive status"); S.J.C. Rule 4:01, § 17(5) ("lawyer shall file with the Office of Bar Counsel an affidavit certifying that the lawyer has complied with the provisions of the order and with bar disciplinary rules"). While Grella argues that the failure to close his IOLTA account is "trivial," and the failure to file his certification affidavit, a matter of "paperwork," I disagree.¹ Grella's failure to timely close the account, file the necessary affidavit, and take the other steps required by law, show more than the "slightest failure to comply with all aspects of a prior suspension." The suspension against Grella has never been lifted, not because of the complaint in the probate matter, but because of Grella's own actions.

Grella points to little relevant caselaw in his favor. While he repeatedly cites *Matter of*

Shaughnessy, 442 Mass. 1012 (2004), this case has little relevance to the claim presented.

Shaughnessy stands only for the proposition that punishment should not be "markedly disparate from what has been ordered in comparable cases." *Id.* at 1013. It deals with a direct challenge to a penalty, not a challenge to the effective date of the penalty. Grella makes no claim that the judgement of disbarment is in itself "markedly disparate," and in the circumstances of this case, there is nothing markedly disparate about it commencing on judgment.

Finally, Grella relies on *Bar Counsel vs. Kevin P. Curry*, BBO File Nos. CI-97-0602, CI-97-0589, CI-97(9)589, for the proposition that unreasonable delay on the part of bar counsel is a mitigating factor. The next line of his brief however states: "Of course, Mr. Grella is not claiming delay as a defense to the charges nor does he offer it as mitigation." He goes on to note, however, that the special hearing officer suggested in a footnote that, if her report was not filed in a reasonable amount of time, retroactivity could be granted to move the date of disbarment back to when the report should have been filed. Her report was filed in a reasonable period of time, and there is no other discernible support for Grella's contentions regarding undue delay.

3. Conclusion. For these reasons, Grella is disbarred, and the disbarment is effective on the entry of judgment.

¹ The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

Please direct all questions to webmaster@massbbo.org.

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