

IN RE: WILLIAM C. SHERIDAN

S.J.C. Judgment of Term Suspension entered by Justice Greaney on July 24, 2006, with an effective date of June 20, 2006.¹

Amended Memorandum and Order

Before me is bar counsel's petition for reciprocal discipline. I have read the papers in the file, considered the arguments of counsel (the respondent has represented himself), and held a hearing.

The background of the case is as follows. On March 29, 2006, bar counsel filed a petition for reciprocal discipline based on discipline imposed on the respondent, on four separate occasions and in four separate orders, by the Supreme Court of New Hampshire. The orders and the underlying misconduct were as follows: (1) on November 19, 1998, the respondent was publicly censured for allowing a civil case to go to default and for commingling trust and operating accounts (there was no misappropriation of funds for his own use); (2) on September 6, 2001, the respondent was publicly censured for neglect (lack of diligence and competence) in the handling of a probate estate; (3) on December 6, 2002, the respondent was suspended for one year for conduct involving the failed incorporation of a business, with resulting monetary harm of at least \$2,000 in damages to his client¹ and (4) on March 10, 2006, the respondent was suspended for six months (retroactive to the commencement of the one year suspension imposed on December 6, 2006) for assisting, despite having been administratively suspended for thirty days for failing to satisfy his continuing legal education requirements, two individuals in the preparation of pro se pleadings.

Bar counsel alleges that the respondent violated S.J.C. Rule 4:01, § 16 (6), by failing to provide, to the Board of Bar Overseers (board) or to bar counsel, certified copies of the above-specified orders imposing discipline. Based on the respondent's disciplinary history, bar counsel requests a suspension of one year and one day, see S.J.C. Rule 4:01, § 18 (2) (c) , thereby requiring a reinstatement hearing before the respondent would be able to resume the practice of law in Massachusetts. See also S.J.C. Rule 4:01, § 16 (3). Bar counsel also points out that the respondent previously had been suspended in Massachusetts by order dated March 1, 2002, and effective March 31, 2002, in connection with a different petition for reciprocal discipline that was based on a one-year suspension entered in the United States Bankruptcy Court for the District of New Hampshire (NH Bankruptcy Court), see Matter of Sheridan. 18 Mass. Att'y Discipline Rep. 461 (2002), and had failed to comply with the terms of that prior suspension. Based on this action, bar counsel argues that any sanction imposed in connection with the present petition should not be imposed retroactively.

In his reply to the petition, the respondent requests that, based on "similar conduct," a maximum suspension of six months retroactive to April 1, 2002, should be imposed. He argues for a retroactive suspension relying on a written decision entered on March 29, 2004, by the United States Court of Appeals for the First Circuit (First Circuit) which vacated the NH Bankruptcy Court order imposing his one-year suspension. See Matter of William C. Sheridan, 362 F.3d 96 (1st Cir. 2004). Just hours before I conducted a hearing on the instant petition for reciprocal discipline on June 6, 2006, the respondent filed a motion to vacate the March 1, 2002 order of suspension that had been predicated on the NH Bankruptcy Court order of suspension.² The respondent maintains, essentially, that his prior suspension in Massachusetts

(by order dated March 1, 2002) is invalid and must be vacated because the underlying NH Bankruptcy Court order of suspension is void ab initio because it was vacated by the First Circuit. Insofar as this petition of reciprocal discipline is concerned, the respondent argues that, in fairness, because he has been (but should not have been) suspended in Massachusetts since March 31, 2002, any discipline imposed should be retroactive.

I first note that the respondent fully acknowledges that reciprocal discipline is currently warranted based on his disciplinary history in New Hampshire cited in the instant petition for reciprocal discipline, namely, the two public censures, the December 6, 2002 order of a one-year suspension, and the March 10, 2006 order of a six-month suspension (retroactively applied). Also, the respondent admits that he violated S.J.C. Rule 4:01, § 16 (6), by failing to provide certified copies of the pertinent orders imposing discipline. In dispute is the appropriate sanction and whether it should be retroactive. In effect, the respondent is seeking to satisfy any discipline imposed in connection with this petition for reciprocal discipline with discipline previously imposed, namely his one-year suspension in Massachusetts ordered on March 1, 2002.

The respondent has waited over two years to respond to the First Circuit's decision, which entered on March 29, 2004. While the First Circuit vacated the NH Bankruptcy Court order of suspension on the ground that "the bankruptcy court was not empowered to arrive at a final resolution of the disciplinary matter absent further district court participation and oversight," it also observed that the respondent had stipulated to most of the facts involving his lack of diligence. See *Matter of William C. Sheridan*, supra at 98, 110 (emphasis in original). Those facts had served the basis for the NH Bankruptcy Court's finding of eighty-eight ethical violations. *Id.* This quantity of violations is no badge of honor and reflects serious infractions by the respondent. That said, even if I were to vacate the earlier March 1, 2002 suspension order (based on the First Circuit decision), a retroactive sanction is not appropriate here because the respondent admittedly failed to comply with S.J.C. Rule 4:01, § 16 (6), which obligated him to provide, to the Board of Bar Overseers (board) or to bar counsel, certified copies of the pertinent orders imposing discipline, namely, the two orders imposing public censures, the December 6, 2002 order of a one-year suspension, and the March 10, 2006 order of a six-month suspension (retroactively applied). See *Matter of Mangan*, 14 Mass. Att'y Discipline Rep. 454, 455 (1998) (no retroactivity for lawyer who failed to notify bar counsel of his suspension in Maine); *Matter of Luongo*, 14 Mass. Att'y Discipline Rep. 440, 441 (1998) (no retroactivity for lawyer who failed to notify bar counsel in accordance with S.J.C. Rule 4:01, §§ 12 [8] and 16 [6]). Compare *Matter of Hoare*, 14 Mass. Att'y Discipline Rep. 306, 309 (1998) (no retroactivity for period when lawyer voluntarily refrained from practicing law in Massachusetts while petition for reciprocal discipline was pending).³

Having concluded that a retroactive sanction is not appropriate, I turn to the issue of what sanction to impose.⁴ The right to practice law is "continued only to those who demonstrate special fitness in intellectual attainment and in moral character." *Matter of Keenan*, 314 Mass. 544, 546 (1943). Attorney discipline, and indeed reciprocal discipline, is intended not only to preserve the integrity of the bar, but also to protect the public. *Matter of Kersey*, 444 Mass. 65, 69 (2005). Under S.J.C. Rule 4:01, § 16 (3), "[t]he court may impose the identical discipline [that had been imposed in the other jurisdiction] unless (a) imposition of the same discipline would result in grave injustice; (b) the misconduct established does not justify the same discipline in this Commonwealth; or (c) the misconduct established is not adequately sanctioned by the same discipline in this Commonwealth." Ultimately, the discipline should not be "markedly disparate from that ordered in comparable cases." *Matter of Kersey*, supra at 70.

The respondent requests a three to six month suspension, or "certainly no more than [a one] year suspension." The cases he cites in his reply to bar counsel's petition are not helpful because they are not comparable. Each case may contain one or two similar types of wrongdoing, but none deal with the sum total of wrongdoing involved in this case. The

respondent's recommendation falls well short of what the public interest requires.

Here, we have repeated instances of, or a pattern of, neglect in handling client matters; co-mingling trust and operating accounts; practicing law after an administrative suspension; neglect in handling the incorporation of a business with resulting monetary harm to the clients (who were residents of Massachusetts); failing to keep clients informed (a level of convenient dishonesty to mislead); failing to return client files at the termination of the representation,⁵ and repeated failures to notify bar counsel of discipline imposed in New Hampshire. Further, the respondent has been neglectful in handling his own matters, as shown by his two-year delay in pointing out the First Circuit decision. This repetitive and continued neglect and wrongdoing, as well as the cumulative effect of multiple violations, see *Matter of Saab*, 406 Mass. 315, 326-327 (1989), and the absence of sufficient mitigating circumstances, support a sanction that requires a reinstatement proceeding. It is not in the public interest to permit the respondent to resume the practice of law without any demonstration of fitness. Effective as of June 20, 2006, the date of the original order of term suspension, the respondent will be suspended from the practice of law in the Commonwealth for a period of one year and one day.⁶

In evaluating any application for reinstatement, the board should consider the appropriateness of making reinstatement conditioned on the need of the respondent to work with Lawyers Concerned for Lawyers, Inc., both with respect to any physical or mental infirmity that may affect his resumed practice of law, as well as with any Law Office Management Assistance Program (LOMAP) that may be implemented in the future.

An amended judgment shall enter in accordance with this memorandum.

Footnotes

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

² More specifically, the respondent violated the New Hampshire Rules of Professional conduct by failing to: (1) represent clients in a competent matter; (2) pay attention to schedules and details in incorporating the client's business, so as to assure that the legal matters undertaken would be completed with no avoidable harm to the client's interest; (3) undertake actions with regard to the incorporation in a timely and effective manner; (4) act with reasonable promptness and diligence; (5) keep the clients reasonably informed regarding the status of the matter; and (6) return the clients' file at the termination of the representation.

³ During the hearing, which was conducted by way of a telephone conference, the respondent stated that he was unaware that the conference was going to be his "hearing." He did not, however, ask for a continuance or for another hearing. Afterward, he filed a written response (that is, a document entitled "Sheridan's Response to Bar Counsel's Memorandum Concerning the Affect Sheridan's Motion to Vacate Has on Bar Counsel's Petition for Reciprocal Discipline"), which I considered, concerning the issues raised by his motion to vacate the suspension order of March 1, 2002. I note also, that the June 6, 2006, hearing (by way of telephone conference) was scheduled prior to the respondent's filing his motion to vacate the March 1, 2002 order of suspension that had been predicated on the NH Bankruptcy Court order of suspension.

⁴ The respondent certainly could be said to have voluntarily refrained from practicing law in Massachusetts because he failed to timely bring forth the First Circuit's decision to this court's attention.

⁵ The sanction here is imposed only in connection with the four matters described in the instant petition for reciprocal discipline. The respondent is not being sanctioned for any

conduct underlying the NH Bankruptcy Court order of suspension (that was vacated by the First Circuit).

⁶ The discipline imposed by the Supreme Court of New Hampshire with respect to these matters took into account the respondent's claims of mitigating factors when such claims were credited. In these proceedings, the respondent stated that his "physical condition no longer impair[s] his ability to practice law." Although he painted a troubled past during the telephone conference, he has not presented sufficient mitigating circumstances to alter my conclusion in this case.

⁷ There do not appear to be many comparable cases. I have found one somewhat analogous case. Matter of Walsh. 6 Mass. Att'y Discipline Rep. 322, 322 (1990) (imposing one-year suspension for conduct involving misleading client, neglecting case, practicing law after having been suspended for failing to register with board, and failing to cooperate with bar counsel).

Please direct all questions to webmaster@massbbo.org.

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