

IN RE: BRIAN J. DOBIE

S.J.C. Judgment of Term Suspension entered by Justice Botsford on June 12, 2008, with an effective date of July 14, 2008.¹

MEMORANDUM AND ORDER ON BAR COUNSEL'S PETITION FOR RECIPROCAL DISCIPLINE

Bar counsel has filed a petition for reciprocal discipline against the respondent, Brian J. Dobie. The petition is based on an order of the Supreme Court of Oregon accepting a stipulation for discipline executed by the respondent on November 9, 2007, and suspending the respondent from the practice of law in Oregon for a period of two years, effective February 22, 2008. The stipulation for discipline describes three matters of misconduct by the respondent: (1) an incident of theft (shoplifting) and making misrepresentations about that incident during investigations; (2) making false representations concerning the location of the respondent's principal office in order to secure an exemption from the general statutory and regulatory requirement that members of the Oregon State Bar carry professional liability insurance; and (3) practicing law during a period of ten days when the respondent had been administratively suspended for failing to file the forms demonstrating his compliance with the Oregon State Bar's continuing legal education requirements.

A hearing was held on bar counsel's petition for discipline on April 1, 2008; the respondent did not attend, although he had notice. Thereafter, he requested additional time to submit a further response to the petition. The respondent was given until April 18, 2008, to file a further response, and he did so, filing an affidavit. On May 15, 2008, another hearing was held, attended by the respondent and the assistant bar counsel.

The order of the Oregon Supreme Court, accepting the respondent's stipulation for discipline and ordering him suspended for two years, operates as a final adjudication by that State that the respondent has been guilty of misconduct. Under S.J.C. Rule 4:01, § 16(3), this order serves as "conclusive evidence of the misconduct [charged] ..." unless it is established that the respondent did not have reasonable notice or an opportunity to be heard in Oregon. On this last point, an affidavit filed by the assistant disciplinary counsel of the Oregon State Bar indicates that the respondent had adequate notice of all disciplinary proceedings in Oregon; it also supports the conclusion that, as the stipulation for discipline signed by the respondent itself recites, the respondent entered that stipulation freely and voluntarily. Thus, in accordance with the rule, I consider that the three separate incidents of misconduct set out in the stipulation have been proved factually. See Matter of Kersey, 444 Mass. 65, 67-68 (2005).

While the respondent's underlying conduct is deemed proved for purposes of considering reciprocal discipline, it is not automatic that the respondent should receive the same level of discipline in Massachusetts as he received in the State of Oregon. See *id.* at 68; Matter of Lebbos, 423 Mass. 753, 755-756 (1996), cert. denied, 520 U.S. 1275 (1997). Our rule provides that "[t]he court may impose the identical discipline 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 the Commonwealth." S.J.C. Rule 4:01 § 16 (3), as appearing in 425 Mass. 1319 (1997). See generally Matter of Watt, 430 Mass. 232, 234 (2000) (under Rule 4:01, § 16, "we may impose whatever level of discipline is warranted by the facts even if the discipline exceeds, equals, or falls short of the discipline imposed in another

jurisdiction").

After reviewing the record before me, I conclude that the misconduct at issue here does not justify a suspension of the respondent for two years in the Commonwealth. The respondent was admitted to practice in Massachusetts in 1977, and from 1977 to 1989, he served as an assistant district attorney in Suffolk County. He left that position to serve as an assistant attorney general for the Commonwealth of the Northern Mariana Islands. Upon leaving his position in the Northern Mariana Islands, the respondent and his family moved to Oregon, where he practiced law in private practice between 1990 and 2001. The respondent returned to Massachusetts in 2001, working as an assistant district attorney in Bristol County, but his family remained in Oregon. When the family decided not to move to Massachusetts, the respondent moved back to Oregon in or around 2004, and sought to resume his work as a private attorney. At some time in 2006 or 2007, it appears, the respondent and his family decided to, and did, move back to Massachusetts. The respondent states in an affidavit that the time leading up to his return to Oregon in 2004 was traumatic, and he sought professional help for depression and its consequences. There is nothing in the record indicating that the respondent has ever been subject to discipline in the Commonwealth during the two separate periods he practiced here.

The theft at issue concerns an incident of shoplifting: according to the stipulation, the respondent took a Hewlett Packard personal digital assistant from an electronics store in Oregon in September, 2004. He was arrested and charged with theft, but ultimately, it appears, the criminal charge was reduced to a "violation" to which the respondent pleaded guilty and then paid a fine. The result was a "Fine and Money Award General Judgment" against him, which, the respondent represents and bar counsel does not disagree, is not considered a criminal conviction under Oregon law. In light of this fact, I considered the matter to be somewhat analogous to disciplinary proceedings against a lawyer in the Commonwealth based on the imposition of a continuance without a finding (of guilt) after the lawyer's admission to sufficient facts to prove a particular crime. My review of such cases indicates that they are generally resolved by either a public reprimand or a term of suspension that ranges from two to six months. See, e.g., Matter of Roche, No. BD-2007-049, 2007 WL 4284747 (admission to sufficient facts of possession of marijuana, continued without a finding; two month disciplinary suspension); Matter of Oliveira, 2003 WL 25466555 (admission to sufficient facts on assault and battery charge, continued without a finding; public reprimand); Matter of Enos, 2002 WL 3225842 (multiple convictions of misdemeanors; public reprimand). See also Matter of Lawson, 2008 WL 2312835 (conviction of OUI, second offense, and separate admission to sufficient facts on resisting arrest, continued without a finding; six month suspension). It is true that in this case, the stipulation indicates that the respondent knowingly misrepresented facts concerning his conduct at the electronics store to investigators, including bar discipline investigators. However, the record indicates that in Oregon, in a similar case involving shoplifting and misrepresentations about the incident, the discipline imposed was a six month suspension. See In re Kimmel, 332 Or. 480,489-491 (2001).

The other two matters for which the respondent was disciplined in Oregon - making false representations about the location of his principal law office in order to qualify for an exemption from the Oregon State Bar's professional liability insurance requirement, and practicing law during a time when he was administratively suspended for noncompliance with the State Bar's continuing legal education requirements² - are not matters that would themselves result in discipline in the Commonwealth. This is so because there is no requirement that attorneys licensed in the Commonwealth to practice law carry professional liability insurance, and also no requirement that attorneys complete any continuing legal education programs as a condition of continued licensure. Accordingly, on its face, these acts of misconduct by the respondent appear to fall directly under S.J.C. Rule 4:01, § 16 (3) (b). Bar counsel contends, however, that the matter relating to false representations about the respondent's law office location involves allegations of conduct involving dishonesty or misrepresentations, which would violate, inter alia, Mass. R. Prof. C. 8.4 (c), 426 Mass. 1429

(1998), and thus would be subject to discipline here. The point is well taken, but bar counsel does not argue or cite any Massachusetts disciplinary cases in which an attorney has been suspended for two years on facts that are comparable to the facts of this case.

In the circumstances, and pursuant to Rule 4:01, § 16 (3), I conclude that the respondent's conduct in Oregon does not warrant in the Commonwealth the two year period of suspension imposed in Oregon, and such a level of discipline would result in grave injustice. I further conclude that in light of the three matters at issue, a suspension of six months would be appropriate, effective on the date an order of suspension enters in this court.

ORDER

Bar counsel's petition for reciprocal discipline is allowed. An order suspending the respondent from the practice of law for a period of six months shall enter.

FOOTNOTES:

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

² The respondent represents, without challenge by bar counsel, that the suspension was due to his not filing the required paper work; he had in fact completed the necessary continuing education programs. The record also reflects that during the days that the respondent was practicing law while administratively suspended, he was unaware of that suspension; there is no indication that he knowingly practiced law while suspended.

³ It could also be said as a general matter that a lawyer who practices law while administratively suspended in Massachusetts is subject to discipline for that conduct. See, e.g., Matter of Graham, 2007 WL 4284745; Matter of Doerr, 2005 WL 5177233; Matter of Glusgol, 2003 WL 25466526. I note that in each of these cases, however, the lawyer had practiced law while knowing that he was administratively suspended, and for far more than a period of a few days. In addition, the cases involved a variety of other, serious acts of misconduct on the part of the respondent lawyers.

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