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[5-Jul-2000]

PROFESSIONAL RESPONSIBILITY BOARD

In Re: Sheldon Keitel, Esq.

PCB File No. 1999.121

DECISION NO. 10

FINDINGS, CONCLUSIONS AND ORDER

On May 4, 2000, the above-captioned cause came before the undersigned members of the Hearing Panel assigned in this cause. The May 4 hearing was a continuation of a hearing originally scheduled for March 6, 2000 which was commenced for the purpose of conducting a hearing on sanctions. At that time, Attorney Michael Kennedy, Disciplinary Counsel for the Professional Responsibility Board was in attendance. Mr. Sheldon Keitel was not in attendance; however, Mr. Keitel did provide the Hearing Panel with a letter dated March 6, 2000, hand-delivered at the time of the hearing which will be referred to further in this order. At the hearing held on May 4, 2000, Mr. Kennedy was again present on behalf of the Professional Responsibility Board and Mr. Keitel was neither present nor

represented.

After consideration of the records and files in this cause, together with the representations of Disciplinary Counsel, the Board hereby makes the following Findings, Conclusions and Order:

I. Procedural History

On October 23, 1999, the Office of Disciplinary Counsel filed a Petition of Misconduct charging the Respondent, Mr. Keitel with the violation of D.R. 7-102(A)(1) and D.R. 7-106(C)(6) of the Code of Professional Responsibility. Mr. Keitel did not answer those charges in person or in writing. Therefore, on November 18, 1999, the Office of Disciplinary Counsel moved to have the charges deemed admitted. This motion was granted and the matter was set for a hearing on the issue of the appropriate sanction to be imposed.

II. Findings

1. Sheldon Keitel was admitted to practice in the state of Vermont on September 7, 1973.

2. On July 2, 1998, Mr. Keitel's license to practice was placed on suspended status due to the failure to pay licensing fees.

3. In 1997, Mr. Keitel and his ex-wife were involved in a divorce, a case which was filed and pending in the Washington Family Court styled Keitel v. Keitel, Docket No. 368-9-97 Wndm.

4. The Respondent was not represented by legal counsel in his divorce, but rather appeared pro se.

5. On March 9, 1999, an eight-page ruling was issued by the Honorable Thomas J. Devine on pending motions in the divorce action. That ruling was not favorable to the Respondent.

6. By correspondence dated March 11, 1999, the Respondent, Mr. Keitel, notified the Clerk of the Washington Family Court that he wished to take an appeal from the Magistrates decision. In his correspondence, Mr. Keitel enclosed his Notice of Appeal form and further stated, "Please assist Mr. Devine from removing his head from his ass before he tries to operate any machinery."

7. On October 5, 1999, following a Complaint submitted through the Office of Disciplinary Counsel, a hearing panel found probable cause to believe that the respondent had violated D.R. 7-102(A)(1) and D.R. 7-106(C)(6) of the Code of Professional Responsibility.

8. On October 27, 1999, the Respondent signed a receipt

acknowledging receipt of the Petition for Misconduct which was filed against him by the Office of Disciplinary Counsel on October 23, 1999.

9. The Respondent did not file a timely answer to the allegations in the Petition; nor did the respondent request an extension of time in which to file an answer.

10. On December 9, 1999, pursuant to A.O. No. 9 Rule 2(A), the undersigned members were appointed to serve as the Hearing Panel of the Professional Responsibility program in connection with the above-captioned matter. Subsequently, Disciplinary Counsel Kennedy and the Respondent, Mr. Keitel, were provided with notice that the Petition for Misconduct filed on October 23, 1999 had been deemed "admitted" and further advised the parties of the Hearing Panel assignment.

11. As previously stated, a hearing was scheduled before the Hearing Panel on March 6, 2000 to consider the issue of sanctions. Mr. Kennedy appeared for the Office of Disciplinary Counsel; however, Mr. Keitel did not appear in person.

12. As the Hearing Panel was about to make findings and record concerning the lack of appearance by Mr. Keitel, a signed letter dated March 6, 2000 was hand-delivered to the Hearing Panel by the request of Mr. Keitel. A copy of that correspondence is attached hereto, made a part hereof and marked as Exhibit A.

13. In substance, the correspondence of Mr. Keitel questioned the authority of the Hearing Panel to consider the Petition for Misconduct and, with respect to the specific allegations relating to his comments concerning the Magistrate, Mr. Keitel stated, "The particular Magistrate who was the subject of the alleged misconduct in the instant proceeding desperately needed to be made aware that he had his head in an anatomically unlikely location. So far up it was starting to look like a hemorrhoid. If he has re-thought his role in the lives of the people who appear before him, I cannot regret for a moment that I said it. If not, it doesn't matter, but I will not silence myself. This is the stuff revolutions are made of. "Please publish this letter as my 'response' to your 'petition'. I dare you."

14. Upon receiving and reviewing the correspondence of Mr. Keitel, the Hearing Panel adjourned and continued its March 6th Hearing until May 4, 2000.

15. At the hearing held on May 4, the Office of Disciplinary Counsel was once again represented by Mr. Michael Kennedy. The Respondent, Mr. Keitel, did not appear nor this time did he forward any written communication to the Hearing Panel concerning any issue raised by the Petition or his earlier correspondence.

CONCLUSIONS OF LAW AND SANCTIONS

1. Based upon the above-referenced findings, the Hearing Panel concludes that the Respondent, Sheldon Keitel, violated Administrative Order No. 9, Rule 11(D)(3) by failing to respond to the original petition. As previously noted, the charges of misconduct are deemed admitted.

2. The Hearing Panel specifically concludes that Respondent is subject to the jurisdiction of the Professional Responsibility Board based upon Administrative Order 9, Rule 1 as well as the Vermont Constitution which specifically provides that the Supreme Court "shall have...disciplinary authority concerning all judicial officers and attorneys in the state." Vt. Const., Ch. II, Section 30.

The fact that the Respondent is on inactive status inasmuch as he has failed to pay the appropriate registration fees does not deprive the Board or this Hearing Panel of the jurisdictional grant over attorneys admitted in the state of Vermont. See, In re Taylor, P.C.B. File Nos. 98.05 & 99.200, at 4 (Dec. 20, 1999). In essence, regardless of whether Attorney Keitel is active or inactive, as a member of the Bar, he is and continues to be subject to the jurisdiction of the Professional Responsibility Board and the decisions of this Hearing Panel.

3. In his correspondence, presented at the March 6th hearing, Respondent Keitel raised various issues, including constitutional questions concerning the jurisdiction of the Professional Responsibility Board and

the Hearing Panel. Those issues were not properly presented in the context of the original Petition and, therefore, are not appropriate to be considered or ruled upon by this Hearing Panel. Therefore, the Hearing Panel makes no specific findings with respect to the substantive arguments set forth therein. The Board does consider the remarks set forth in Mr. Keitel's March 6 correspondence to the Hearing Panel, however, as relevant and appropriate for consideration on the issue of sanctions and on the issues of mitigation/aggravation.

4. It is the specific finding and conclusion of this Hearing Panel that Attorney Keitel did not make his remarks concerning Magistrate Devine in the "heat of battle" such as comments made by an attorney present in a courtroom making vigorous arguments in person before a judicial officer. The original letter of Mr. Keitel dated March 11, 1999 was received and filed by the Washington County Family Court on March 12, 1999. Thus, it is clear to the panel that Mr. Keitel clearly had the opportunity to engage in careful reflection and consideration prior to authoring his letter of appeal.

Moreover, the correspondence of March 6, 2000, hand-delivered to the Hearing Panel "by courier", was clearly drafted months after the issuance of the original Petition for Misconduct and, a fair reading of the document, indicates clearly that much reflection and thought went into its content prior to actual authorship. The Hearing Panel specifically concludes that the correspondence of Mr. Keitel dated March 6, 2000

evidences a lack of any attempt to mitigate the original offense for which he was cited and, in fact, constitutes an aggravating circumstance to be appropriately considered by the panel.

Therefore, based upon the foregoing, it is the conclusion of this panel that Sheldon Keitel be publicly reprimanded for the conduct set forth above. Inasmuch as Mr. Keitel has not paid his registration fees and is not actively engaged in the representation of actual clients, this Hearing Panel believes that the sanction of a public reprimand is sufficient to protect the public interest and the integrity of the legal profession in the State of Vermont. At the same time, however, the Hearing Panel wishes to make clear that based upon the aggravating circumstances, had Mr. Keitel been an active member of the Bar, duly registered, and having paid the licensing fees, serious concerns about his ability to represent clients before the Courts of the State of Vermont would clearly exist and warrant further investigation.

Dated this 30th day of June, 2000.

/s/

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Robert F. O'Neill, Esq., Chair

/s/ July 3, 2000

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Ruth Stokes, Esq.,

Hearing Panel Member

/s/ June 30, 2000

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S. Stacy Chapman, III, Esq.,

Hearing Panel Member

FILED JULY 5, 2001

In re Keitel, Esq. (2000-290)

[Filed 02-Mar-2001]

ENTRY ORDER

SUPREME COURT DOCKET NO. 00-290

JANUARY TERM, 2001

In re Sheldon Keitel, Esq. } Original Jurisdiction

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} Professional Responsibility Board

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} DOCKET NO. 1999-121

In the above-entitled cause, the Clerk will enter:

This case concerns a hearing panel decision of the Professional Responsibility Board ("the Board") imposing a public reprimand on respondent Sheldon Keitel, after finding that he had violated the Code of Professional Responsibility for inappropriate comments made in written correspondence to the Washington Family Court and to the Board. Pursuant to Rule 11E of Administrative Order 9, this Court, on its own motion, ordered a review of the hearing panel's decision and invited the parties to file briefs. The Office of Disciplinary Counsel urges this Court to find that: (1) lawyers on inactive status remain subject to the ethics rules; (2) respondent violated DR 7-102(A)(1) and DR 7-106(C)(6) of the Code of Professional Responsibility; and (3) a public reprimand is appropriate. Respondent asserts that neither the Court nor the Board of Professional Responsibility retain jurisdiction over attorneys on inactive status because it effectively infringes upon his First Amendment right to

freedom of association.

While we agree that this Court and the Board retain jurisdiction over attorneys on inactive status, we decline to adopt the hearing panel's legal conclusion that respondent violated DR 7-102(A)(1) and DR 7-106(C)(6). (FN1) We further decline to adopt the hearing panel's sanction, but in doing so determine that the conduct which gave rise to the sanction may be considered in the event that respondent seeks to reactivate the status of his license to practice law in Vermont. (FN2)

In October 1999, the Office of Disciplinary Counsel filed a formal petition, charging respondent with violating DR 7-102(A)(1) and DR 7-106(C)(6) for comments made in a cover letter accompanying his notice of intent to appeal a decision of the Washington Family Court to which he was a party. Respondent's cover letter, addressed to the clerk of the court, included an inappropriate

personal attack on the family court magistrate. Respondent was representing himself pro se in divorce proceedings before the court, and although an attorney admitted to practice law in Vermont, he was on inactive status.

In March 2000, the Board convened a sanctions hearing. Respondent did

not appear, but delivered a letter to the hearing panel which included additional inappropriate comments directed at the same magistrate. The hearing panel reconvened in June, and issued its findings of fact, conclusions of law and sanction. Respondent did not appeal, but filed an open letter with this Court.

The Vermont Constitution states that the Supreme Court "shall have . . . disciplinary authority concerning all judicial officers and attorneys at law in the State." Vt. Const. ch. II, § 30. Pursuant to this authority, the Court promulgated rules for attorney discipline, and created the Professional Responsibility Board. See Administrative Order 9, Permanent Rules Governing Establishment and Operation of the Professional Responsibility Program. The Board holds jurisdiction over:

> [a]ny lawyer admitted in the state, including any formerly admitted lawyer with respect to acts committed prior to resignation, suspension, disbarment, or transfer to inactive status, or with respect to acts committed subsequent thereto which amount to the practice of law or constitute a violation of these rules or of the Code of Professional Responsibility or any rules or code subsequently adopted by the Court in lieu thereof.

A.O. 9, Rule 5(A)(1). The rule unequivocally vests the Board with jurisdiction over lawyers who violate the rules of ethics prior, and subsequent, to their transfer to inactive status. See also In re Taylor,

PCB Decision No. 148, 12/20/99 (". . . whether Respondent is active or inactive, he is still a member of the bar.")

The Office of Disciplinary Counsel contends that the record in this case conclusively establishes that respondent acted in violation of DR 7-102(A)(1) and DR 7-106(C)(6) of the Code of Professional Responsibility in his correspondence with the family court magistrate and the Board, and that a public reprimand is the appropriate sanction for his actions.

This Court makes its own decisions as to attorney discipline, according deference to the Board's findings. See In re Hunter, 167 Vt. 219, 227, 704 A.2d 1154, 1158 (1997). Generally speaking, "[t]he purpose of sanctions is not punishment. Rather they are intended to protect the public from persons unfit to serve as attorneys and to maintain public confidence in the bar." In re Berk, 157 Vt. 524, 532, 602 A.2d 946, 950 (1991); but see also The Florida Bar v. Feinberg, 760 So. 2d 933, 939 (Fla. 2000) (attorney discipline serves several purposes, including protecting public from unethical conduct, punishing violations of canons of ethics, and deterring future misconduct); Lawyer Disciplinary Bd. v. Veneri, 524 S.E.2d 900, 905-906 (W.Va. 1999) (in determining proper sanction, court may consider what steps would appropriately punish respondent attorney, as well as what would serve as effective deterrent).

We reject the hearing panel's recommended sanction. Although we do not condone respondent's behavior, which exhibited a marked disrespect for

the court and the administration of justice, we note that he was representing himself in a divorce case, has no prior disciplinary history,

and is not currently engaged in the practice of law. Accordingly, we conclude that in this matter, the purposes underlying the imposition of sanctions will be adequately served by full consideration of respondent's conduct by the Character and Fitness Committee (FN3) at such time as he seeks to reactivate the status of his license to practice law in Vermont. See Berk, at 527-8, 602 A.2d at 948 ("This Court retains inherent power . . . to dispose of individual cases of lawyer discipline.") (internal quotations omitted); see also In re O'Dea, 159 Vt. 590, 606, 622 A.2d 507, 517 (1993) ("Our powers in fashioning an appropriate sanction are broad.")

We decline to adopt the hearing panel's legal conclusion that the respondent violated DR 7-102(A)(1) and DR 7-106(C)(6). At such time respondent seeks to resume active status as a practicing attorney, the conduct which gave rise to the charges shall be considered by the Character and Fitness Committee in determining whether respondent may resume active status.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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John A. Dooley, Associate Justice

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James L. Morse, Associate Justice

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Matthew I. Katz, Superior Judge

Specially Assigned

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Frederic W. Allen, Chief Justice (Ret.)

Specially Assigned

Footnotes

FN1. DR 7-102(A)(1) prohibits a lawyer from taking any action "on behalf of

his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another." DR 7-106 (C)(6) prohibits a lawyer "appearing in his professional capacity before a tribunal" from engaging in "undignified or discourteous conduct which is degrading to a tribunal."

FN2. In light of our disposition of this matter, we do not reach respondent's constitutional claim.

FN3. See Rules of Admission to the Bar §11(a), (b) (requiring applicant to possess "good moral character," and to "consent to an investigation by the Character and Fitness Committee" in order to exclude "those persons possessing character traits that are likely to result . . . in a violation of the Code of Professional Responsibility").