52 PRB

[7-Apr-2003]

STATE OF VERMONT

PROFESSIONAL RESPONSIBILITY BOARD

In re: Robert Andres, Esq.

PRB File Nos. 2002.043 & 2003.031

Decision No: 52

These two matters were consolidated by order of the Hearing Panel in October 2002. A hearing was held on February 7, 2003, before Hearing Panel 2 consisting of Douglas Richards, Esq., Lawrin Crispe, Esq. and Michael Filipiak. Michael Kennedy appeared as Disciplinary Counsel. Respondent appeared pro se.

Based upon the evidence and exhibits the Panel finds that Respondent violated Rule 8.4(h) of the Vermont Rules of Professional Conduct by engaging in conduct that adversely reflects on his fitness to practice law as a result of his conviction for simple assault and his violation of terms of probation. Upon consideration of the aggravating factors present and Respondent's own testimony, the Panel suspends Respondent from the practice

of law for a period of three years.

Facts

Respondent was admitted to practice law in the State of Vermont in 1983. For a period of 6 years he served as Deputy State's Attorney in Chittenden County. Since leaving that office he has been engaged in solo practice. He testified that approximately seventy-five per cent of his practice is criminal defense. Respondent is familiar with restraining orders that are available from Family Court.

On August 22, 1988, Respondent was convicted of Simple Assault and fined $400. The conviction resulted from an altercation on the street, and Respondent testified at some length about this incident. At the time Respondent had custody of his young son, and the person whom he assaulted had been harassing him. Respondent believed that the legal system could not protect him and his son from this individual, and he assaulted him. Respondent stated that it was the wrong thing to do, but that he felt that it was the only decision he could make at the time.

On April 18, 1995, Respondent was convicted of Disorderly Conduct and fined $450. The conviction resulted from a confrontation between Respondent and a snowplow operator who had caused Respondent's car to be towed.

On March 23, 1999, Respondent was convicted of Simple Assault by

Mutual Consent and fined $500. The conviction stemmed from an incident in which Respondent got into a fight outside a bar. Following this last conviction, the Professional Conduct Board concluded that Respondent's conduct adversely reflected on his fitness to practice law and recommended that the Supreme Court publicly reprimand him. The Court adopted the recommendation and publicly reprimanded Respondent. In Re Andres, 170 Vt. 599 (2000).

In an order dated September 18, 2002, a Hearing Panel of the Professional Responsibility Board concluded that Respondent had violated Rules 1.2(a), 1.3 and 8.4(h) of the Vermont Rules of Professional Conduct, and suspended his license for two months. Respondent appealed the Panel's decision and the matter is now pending before the Supreme Court.

PRB File No. 2002.043

On August 12, 2001, Respondent entered the Alley Cats Pub in Burlington. Warren Brooks was in the bar with his girlfriend when Respondent entered. At the time, Respondent was dating Mr. Brooks' ex-wife. Shortly after Respondent arrived, Mr. Brooks and his girlfriend left the bar. Respondent noticed a man in a wheelchair leaving the bar and asked someone if the person leaving in the wheelchair was Warren Brooks. Respondent was told that the person in the wheelchair was, in fact, Warren Brooks.

Respondent left the bar and confronted Mr. Brooks outside as Mr. Brooks attempted to get into his van from his wheelchair. Respondent believed that Mr. Brooks had been harassing Respondent and his girlfriend.

Respondent did not turn to the legal system or to the police to resolve his problems with Mr. Brooks. Respondent testified that he believed that there was nothing that the police would do about Warren Brook's harassment, and that he would not have qualified for a restraining order had he applied for one.

As a result this confrontation, the State charged that "[r]espondent recklessly caused bodily injury to Warren Brooks by striking him in the side of the face with his fist." On April 19, 2002, Respondent was convicted of Simple Assault,

On June 10, 2002, Judge Katz sentenced Respondent to serve 3 to 12 months, with all but three months suspended. He issued a probation order staying the incarcerative portion of Respondent's sentence, and placing him on probation subject to several conditions. Shortly thereafter, the District Court issued a corrected probation order which Respondent signed on June 20, 2002. The corrected order indicated that the execution of Respondent's sentence had been partially suspended but that Respondent was on probation and subject to several conditions. The order prohibited

Respondent from entering establishments whose the primary purpose is the serving of alcohol and prohibited Respondent from purchasing, drinking, and/or possessing alcoholic beverages. The State moved for execution of sentence, and the motion was heard on July 22, 2002, before Judge Katz. The Judge denied the motion, but on the record stated that "[i]f Bob Andres is seen in bars around Burlington or elsewhere, but around Burlington is where he is likely to be seen, I'll expect to grant the State's motion."

Just six days later, on July 28, 2002, Respondent entered Esox, a bar in Burlington. The State immediately renewed its motion for execution of sentence, alleging that a Burlington Police Officer had observed Respondent in Esox with a beer in his hand in violation of the probation order. The motion was heard before Judge Katz on August 20, 2002. Harley Brown, Esq., Respondent's attorney, admitted the conduct and Judge Katz struck the stay and ordered Respondent to begin serving his sentence.

Interim Suspension

On August 23, 2002, Disciplinary Counsel filed a Petition for Interim Suspension and on September 2, 2002, the Supreme Court issued an order immediately suspending Respondent's right to practice law pending final disposition of all disciplinary matters.

Respondent's Testimony

In his testimony before the Hearing Panel Respondent declined to respond to questions concerning factual details of his conviction for the assault on Warren Brooks. He asserted his fifth amendment rights, informing the Panel that an appeal of the conviction was pending before the Supreme Court and that a Motion for New Trial was pending in the District Court. Since neither party had provided the Panel with current information on the status of the criminal case, the Panel gave the parties until February 11, 2003, to file additional information. Disciplinary Counsel filed copies of orders dismissing Respondent's two Motions for New Trial. The first motion for a new trial was filed December 20, 2002. The entry denying the second motion for new trial is undated but stamped received by the Addison County State's Attorney on February 3, 2003. Disciplinary Counsel also filed a certified copy of the Order of the Supreme Court dismissing Respondent's Supreme Court appeal on January 27, 2003, for failure to file his brief.

Respondent filed a memorandum and a copy of his Supreme Court Motion to Reopen and Motion for Extension of Time dated February 4, 2003. Thus, it appears from the record before the Panel that there is a final decision in Respondent's criminal matter which is subject to being reopened should Respondent be successful in the Supreme Court.

Conclusions of Law

The petition for misconduct in PRB File No. 2002.043 is based upon

Respondent's conviction of assault on Warren Brooks. Rule 17(E) of A.O. (9) provides that "[a] certificate of conviction of an attorney for any crime shall be conclusive evidence in a disciplinary proceeding instituted against the lawyer based upon the conviction." Since Respondent's appeal has been dismissed, there is a final judgment in the criminal case and the Panel does not have to reach the issue of whether the conviction in the District Court alone, while the appeal was pending, met the provisions of this rule. Thus, for purposes of this proceeding, Respondent's assault on Warren Brooks has been proven.

Rule 8.4(h) of the Vermont Rules of Professional Conduct prohibits attorneys from engaging in conduct that adversely reflects on their fitness to practice law.

It is well established that "[a]n attorney is subject to misconduct even for actions committed outside the professional capacity." In re Berk, 157 Vt. 524, 530 (1991). As in the Berk case, it is often criminal behavior that is found to adversely reflect on an attorney's fitness. This is not to say that all crimes are potential violations of the Vermont Rules of Professional Conduct. The Commentary to Rule 8 suggest that

> [a]lthough a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving

violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

Respondent himself is responsible for our Supreme Court's statements regarding misdemeanor assaults as conduct adversely reflecting on ability to practice law. In the disciplinary matter following his third conviction, the Board found that Respondent had violated the predecessor to Rule 8.4(h) and stated that "[w]hile street fighting is not the sort of criminal conduct envisioned by that rule, Respondent's criminal conduct here demonstrates a lack of judgment, control, maturity, and good sense which adversely reflects on his reputation as a member of the bar. This sort of criminal conduct calls into question Respondent's character and his ability to abide by the law. We find that this conduct constitutes a violation of DR 1-102(A)(7) (a lawyer shall not engage in conduct that adversely reflects on his fitness to practice law)." The Board's opinion was approved by the Supreme Court. In re Andres, 170 Vt. 599(2000).

The Panel agrees with the Board in Respondent's previous disciplinary case, that misdemeanor assault is not generally the type of behavior sanctioned under this rule. Though it is a crime of violence, it is a misdemeanor, and the severity of the violence does not compare to other

cases in which an attorney has been subject to substantial discipline for a single act of violence such as domestic assault. What concerns the Panel is the context in which this assault arose, taking into account Respondent's behavior both prior to and subsequent to the assault itself. In the thirteen years since 1988 Respondent has been convicted of four separate crimes involving assaultive behavior. He was also warned personally that the Supreme Court considered misdemeanor assaults to violate the predecessor to Rule 8.4(h).

This is compounded by Respondent's failure to abide by the terms of his probation after his last conviction. Here again Respondent received a personal warning about prohibited behavior. Yet, a mere six days after he was warned by Judge Katz that if he was found in a bar he would be incarcerated, Respondent did just that and, as Judge Katz had warned, he was required to begin serving his jail sentence. Respondent is an experienced criminal defense attorney and would know the consequences of failure to abide by conditions of probation and failure to follow the explicit orders of a Judge.

The Panel finds that Respondent's assault on Warren Brooks and his failure to abide by terms of probation indicate substantial disregard for both the criminal law in general as well as explicit judicial orders directed at him personally. This conduct violates Rule 8.4(h) of the Vermont Rules of Professional Conduct.

Sanction

In arriving at the imposition of a three year suspension the Panel has considered a number of factors, principally the ABA Standards for Imposing Lawyer Sanctions and case law as well as the details of Respondent's prior criminal and disciplinary matters which we consider to be substantial aggravating factors.

ABA Standards for Imposing Lawyer Sanctions

The ABA Standards for Imposing Lawyer Sanctions suggest that in assessing a lawyer's conduct four things should be considered, the duty violated, the lawyer's mental state, whether there was injury and any aggravating or mitigating factors.

As an attorney Respondent owes a duty to both the public and to the legal profession. In discussing duties owed to the public the commentary to Section 5 of the ABA Standards for Imposing Lawyer Sanctions states that

> The most fundamental duty which a lawyer owes the public is the duty to maintain the standards of personal integrity upon which the community relies. The public expects the lawyer to be honest and to abide by the law; public confidence in the integrity of officers of the court is undermined when lawyers engage in illegal conduct.

The Supreme Court expressed the same sentiment in the Berk case where the court stated that an attorney has the duty to refrain from conduct that may "reflect negatively on his professional judgment and detract from public confidence in the bar." In re Berk, 157 Vt. 524, 531 (1991). The essence of the legal system is the fact that it is based upon the assumption that attorneys and judges will abide by both the general laws such as the criminal law and that they will, as officers of the court, follow the rules of procedure. When an attorney fails in this duty as Respondent has, there is injury to the integrity of our system. Respondent violated the criminal law in his assault of Warren Brooks, and he violated a direct order of the court in his failure to abide by his terms of probation. He also decided to confront Brooks directly for his harassment rather than utilize the legal procedures in place for such problems. We agree with the Supreme Judicial Court in Massachusetts which stated, "[t]he essence of the conduct of a lawyer is to facilitate the resolution of conflicts without recourse to violence, for law is the alternative to violence." In re Grella, 777 N.E. 2d 167, 171 (Ma. 2002).

An attorney's duty to the legal profession is similar. As an officer of the court the attorney has the duty to abide by the law and to use established legal process to resolve disputes. Respondent's conducted violated his duty to both the public and to the profession.

It is clear that Respondent's conduct was intentional. He has

practiced as a criminal lawyer for his entire legal career. He knows the criminal law and he knows the importance of strict adherence to terms of probation. His assault on Warren Brooks and his decision to enter a bar in direct contravention to Judge Katz' order are intentional acts by someone well aware of their consequences.

Respondent admitted to the Panel that his criminal case had generated substantial publicity. Respondent's actions damage the public perception of the bar and cause injury to the profession and to the legal system. As the court state in Matter of Haith, 742 N.E. 2d 940 (In. 1999) "a lawyer's multiple convictions for OWI or similar offenses may indicate a willingness to ignore the law and may damage the public's perception of the legal system."

In determining the appropriate sanctions for criminal behavior the ABA Standards for Imposing Lawyer Sanctions suggest that disbarment is appropriate for serious criminal conduct which bears directly on the lawyer's "honesty, trustworthiness or fitness as a lawyer," ABA Standards for Imposing Lawyer Sanctions, §5.1. Suspension is appropriate when the lawyer engages in criminal conduct which does not contain the elements outlined in Section 5.1, ABA Standards for Imposing Lawyer Sanctions, §5.12.

In general courts have not imposed substantial suspension for lawyers convicted of assault. A two month suspension was imposed in Grella, a case

of serious domestic violence. Grella had no prior criminal or disciplinary record, but the court suggested that a recommendation by the board of a longer suspension would have been warranted. The Iowa Supreme Court imposed an indefinite suspension with no reinstatement before six months for conviction of a third offense of operating while intoxicated and domestic abuse assault. In re Ruth, 636 N.W.2d 68 (Iowa 2001). In this case there were a number of mitigating factors considered by the court. Three separate instances of domestic assault resulted in a suspension of one year and a day in In re Musick, 960 P.2d 89 (Col. 1998). A three year suspension was imposed in In re Van Buskirk, 981 P.2d 607 (Col. 1999), for felony burglary and misdemeanor assault.

Looked at solely in terms of the nature of the crime or the extent of the violence, Respondent's conduct does not approach the level of violence present in Grella or Musik nor was he convicted of a felony as was Van Buskirk. Nonetheless, we believe that these cases, read together with the guidelines of the ABA Standards for Imposing Lawyer Sanctions argue strongly for the imposition of suspension.

The Panel believes that though these cases are instructive in suggesting that suspension is the appropriate sanction, the aggravating factors present persuade us that we should go beyond the suspensions imposed in these cases.

Respondent's behavior evidences two separate patterns which raise

serious questions about his long term prospects for fitness to practice and suggest that a lengthy suspension is necessary. The first pattern is Respondent's history of criminal assaults. Courts have said that a single instance of a minor crime not related to the practice is not necessarily cause for discipline, and were we faced with merely the one misdemeanor assault we might agree. There is, however, a strong pattern of assaultive behavior spanning much of his time as a lawyer which can only lead us to conclude that Respondent has difficulty conforming his conduct to that required of the ordinary citizen, let alone a member of the bar.

The other pattern is that of Respondent's prior disciplinary record. Respondent was first disciplined for the 1999 criminal conviction, his third. The disciplinary case also included two complaints of neglect and respondent received a public reprimand. PCB Decision No. 140, Dec. 3, 1999. In 2002 a Hearing Panel imposed a two month suspension for violation of Rules 1.2(a), 1.3 and 8.4(d) of the Vermont Rules of Professional Conduct. This matter is currently on appeal to the Vermont Supreme Court. PRB Decision No. 42, Sept. 18, 2002.

Another troubling factor is Respondent's testimony at the hearing. He led the Panel to believe that the appeal in his criminal matter was still pending as well as his motion for a new trial. Based upon Disciplinary Counsel's later filings we now know that the appeal was dismissed and the motion denied. "[S]ubmission of false evidence, false statements or other deceptive practices during the disciplinary process" can be considered as

an aggravating factor in the imposition of discipline. ABA Standards for Imposing Lawyer Sanctions, §9.22(f). Putting the best light on Respondent's testimony, it was deceptive and calculated to lead the Panel to believe that neither the Supreme Court nor the District court had ruled on his case. We consider this to be a substantial aggravating factor. Other aggravating factors include Respondent's substantial experience as a criminal lawyer, the vulnerability of his victim and the fact that this behavior is part of a pattern of misconduct. ABA Standards for Imposing Lawyer Sanctions, §9.22 (c), (h), and (i).

The Panel is aware that Respondent has suffered other substantial penalties as a result of his behavior which can be considered in mitigation. He has been convicted of a crime, served time in jail, been subjected to substantial adverse publicity and his license to practice has been suspended since September 2, 2002. ABA Standards for Imposing Lawyer Sanctions, §9.32(k).

In In re Magid, 655 A.2d 916, 917 (N.J. 1995), a case of an attorney convicted of domestic assault the court rephrased the area of inquiry on sanctions stating that "[i]n determining appropriate discipline, we consider the interests of the public, the bar, and the respondent." We have weighed the interests of Respondent and the penalties already imposed upon him against the interest of the bar and the public which expect lawyers to not only obey the law but uphold it. Considering these in the light of the forgoing we believe that a lengthy suspension is needed to

protect the interests of all concerned.

Order

Respondent is SUSPENDED from the practice of law for a period of three years, commencing April 28, 2003. It is further ordered that Respondent comply with the provisions of A.O.9, Rule 23 concerning the duties of a lawyer whose license to practice law has been suspended.

Dated: 4/7/03 FILED

HEARING PANEL NO. 2

/s/

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Douglas Richards, Esq., Chair

/s/

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Lawrin P. Crispe, Esq.

/s/

_____

Michael H. Filipiak

In re PRB Docket Nos. 2002.043 & 2003.031 (2003-171)

[Filed 29-Sep-2004]

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-171

SEPTEMBER TERM, 2004

In re PRB Docket Nos. 2002.043 & 2003.031	}	Original Jurisdiction
	}	APPEALED FROM:
	}	
	}	Professional Responsibility Board
	}	
	}	DOCKET NO. 2002.043 & 2003.031

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

Robert Andres appeals pro se from the Professional Responsibility Board's decision suspending his license to practice law for three years after finding that he violated Rule 8.4(h) of the Vermont Rules of Professional Conduct. He argues that: (1) a three year suspension is inappropriate; (2) the Board should not have focused on the amount of media coverage that the underlying assault charge generated in determining an appropriate sanction ; (3) the merits hearing should not have been held prior to the final disposition of his underlying criminal case; and (4) he should be credited for the interim suspension of his license prior to the Board's final decision. We reject these arguments and adopt the hearing panel's recommended sanction.

Robert Andres is an attorney who was licensed to practice in the State of Vermont. In April 2002, he was convicted of simple assault after punching a man in a wheelchair. In May 2002, Disciplinary Counsel filed a petition of misconduct against Andres, and a hearing was set for September 2002. In June 2002, Andres was sentenced to serve three to twelve months in prison, all suspended but three months. The district court stayed the incarceration portion of his sentence, but placed Andres on probation. In July 2002, Andres violated his probation by entering a bar and consuming alcohol, and he was ordered to serve the incarceration portion of his sentence. Additional disciplinary charges followed, and in September 2002,

Andres' license was suspended on an interim basis pending final resolution of the disciplinary charges.

After a hearing in February 2003, the Board issued an opinion suspending Andres' license for three years. The Board concluded that Andres' assault on a man in a wheelchair and his failure to abide by the terms of his probation adversely reflected on his fitness to practice law and, as such, violated Rule 8.4(h) of the Vermont Rules of Professional Conduct. The Board explained that over a thirteen year period, Andres had been convicted of four separate crimes involving assaultive behavior. He had also been warned that misdemeanor assaults would constitute a disciplinary violation. The Board found that Andres' assaultive behavior was compounded by his failure to abide by the terms of his probation after his last conviction, despite a specific warning from the trial judge that he would be incarcerated if he was found in a bar. The Board found that Andres' behavior indicated a substantial disregard for both the criminal law in general as well as explicit judicial orders directed at him personally.

In determining an appropriate sanction, the Board relied on the ABA Standards for Imposing Lawyer Sanctions (ABA Standards), as well as Andres' prior criminal and disciplinary history, which it considered substantial aggravating factors. The Board found that Andres had violated a duty to the public and to the legal profession. His conduct was intentional, and as an experienced criminal attorney, he knew the consequences of his

actions. His actions damaged the public perception of the bar, and caused injury to the profession and to the legal system. The Board found suspension appropriate, and it acknowledged that, generally, courts had not imposed substantial suspension for lawyers convicted of assault. In this case, however, the Board found the presence of a number of aggravating factors that warranted a lengthy suspension. The Board explained that Andres' behavior evidenced two patterns that raised serious questions about his long term prospects for fitness to practice. The first was Andres' history of criminal assaults, which indicated that Andres had difficulty conforming his behavior to that required of the ordinary citizen, let alone a member of the bar. The other pattern, the Board explained, was Andres' prior disciplinary record. He was first disciplined for his 1999 criminal conviction, which was his third criminal conviction. The disciplinary case also included two complaints of neglect, and Andres received a public reprimand.

The panel was also troubled by Andres' testimony at the disciplinary hearing, where he had led the panel to believe that his appeal in the criminal matter and his motion for a new trial were still pending. They were not, and the panel considered his deception to be a substantial aggravating factor as well. In addition to the patterns of misconduct described above and Andres' deceptive conduct at the hearing, the Board considered Andres' substantial experience as a criminal lawyer and the vulnerability of his victim as aggravating factors. In terms of mitigating factors, the panel recognized that Andres had suffered other substantial

penalties as a result of his behavior, including his criminal conviction, incarceration, adverse publicity, and the interim suspension of his license. The panel weighed Andres' interests and the penalties that had been imposed against him against the interest of the bar and the public, and found that a lengthy suspension was required to protect the interests of all concerned. The panel thus suspended Andres' license to practice law for three years, effective April 28, 2003. Andres appealed.

Andres first argues that the sanction imposed by the Board is excessive. He asserts that no complaint was filed by an aggrieved individual or client, and his misdemeanor criminal conviction did not involve "moral turpitude," nor did it constitute a "serious crime." He argues that in no other Vermont case has an attorney been suspended for conduct not involving harm or potential harm to his clients.

We find these arguments unpersuasive. Rule 8.4(h) of the Vermont Rules of Professional Conduct prohibits attorneys from engaging in conduct that adversely reflects on their fitness to practice law. As explained in Standard 5.0 of the ABA Standards,

> [t]he most fundamental duty which a lawyer owes the public is the duty to maintain the standards of personal integrity upon which the community relies. The public expects the lawyer to be honest and to abide by the law; public confidence in the integrity of officers of the court is undermined when lawyers

engage in illegal conduct.

An attorney may be sanctioned for actions committed outside of his professional capacity, In re Berk, 157 Vt. 524, 530 (1991) (per curiam), and Rule 8.4(h) does not require a complaint by an aggrieved individual or client before sanctions may be imposed. Cf. ABA Standard 9.4(f) ("failure of an injured client to complain" is not considered a mitigating factor in determining disciplinary sanction). The comments to Rule 8.4(h) specify that offenses involving violence indicate a lack of those characteristics relevant to law practice. Indeed, we indicated in an earlier case involving Andres that his conviction for "street fighting" adversely reflected on his reputation as a member of the bar, and violated a disciplinary rule identical to the one at issue in this appeal. See In re Andres, 170 Vt. 599, 602 (2000) (mem.). The question of whether Andres' crime involved "moral turpitude" is irrelevant under Rule 8.4(h).

In determining the sanction to be imposed, the Board properly looked to the ABA Standards for guidance. See In re Warren, 167 Vt. 259, 261 (1997) (per curiam). The Standards provide four factors to consider in evaluating the appropriate sanction: the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct, and any aggravating or mitigating factors. ABA Standard 3.0. The Board made detailed findings as to each of these factors.

ABA Standard 5.1 provides that, absent aggravating or mitigating

circumstances, and upon application of the factors set out in Standard 3.0, sanctions are generally appropriate in cases involving the "commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation." Suspension, rather than disbarment, is appropriate when a lawyer knowingly engages in criminal conduct that does not constitute "serious criminal conduct," but that "seriously adversely reflects on the lawyer's fitness to practice." ABA Standard 5.12. Suspension is also appropriate under several other ABA Standards. For example, ABA Standard 7.2 provides that suspension is an appropriate sanction "when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to . . . the legal system." ABA Standard 8.2 provides that suspension "is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession."

In determining the length of the suspension, the Board considered both aggravating and mitigating factors. Standard 9.21 provides that aggravating circumstances are "any considerations, or factors that may justify an increase in the degree of discipline to be imposed." Aggravating factors present in this case included: the submission of false evidence and false statements or other deceptive practices during the disciplinary process, Andres' substantial experience in the practice of

law, the vulnerability of his victim, and his pattern of misconduct. See Standard 9.22 (listing aggravating factors). The Board considered Andres' criminal conviction, his incarceration, adverse publicity, and the interim suspension of his license as mitigating factors. See Standard 9.3 (listing mitigating factors). Weighing all of these considerations, the Board concluded that a lengthy suspension was warranted. We agree that a three-year suspension is appropriate. See In re Berk, 157 Vt. at 527-28 ("[T]his Court makes its own ultimate decisions on discipline," although Board's "recommendations on sanctions will be accorded deference.").

We reject Andres' assertion that the Board and Bar Counsel inappropriately focused on the media coverage generated by this case in determining a disciplinary violation and sanction. As discussed above, the record indicates that the Board properly relied on the rules, Andres' pattern of misconduct, and the ABA Standards in arriving at its conclusion. Given Andres' history of assaultive behavior, his intentional violation of probation, and the numerous aggravating factors found by the Board, a three-year suspension is appropriate. As the Board explained, Andres' behavior indicated not only a disregard for the criminal law generally, but also an intentional disregard of explicit judicial orders directed at him personally.

We are unpersuaded by Andres' assertion that the Board erred by holding a merits hearing before there was a final disposition in the criminal case. Contrary to Andres' assertion, the Board found that there

had been a final decision in Andres' criminal case. It explained that Andres' two motions for a new trial had been denied, and his appeal to this Court had been dismissed. Indeed, the Board found that Andres had misrepresented the status of the criminal proceedings, and it considered this a substantial aggravating factor in imposing sanctions. We find no error in the timing of the merits hearing.

Finally, Andres argues that he should receive credit for the interim suspension of his license. He asserts that if attorney discipline is intended to be remedial, rather than punitive, then the determination of the remedial period of suspension necessary to achieve the appropriate effect should include the period of interim suspension. We reject this argument. The Board considered the interim suspension as a mitigating factor in determining the sanction to be imposed. The rules do not require that any sanction be retroactive to the date of an interim suspension, and Andres identifies no persuasive support for such an argument. We find no basis to disturb the Board's conclusion as to the commencement of the three-year suspension.

Robert K. Andres is hereby suspended from the practice of law for a period of three years commencing on April 28, 2003.

BY THE COURT:

/s/

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Denise R. Johnson, Associate Justice

/s/

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Marilyn S. Skoglund, Associate Justice

/s/

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Frederic W. Allen, Chief Justice (Ret.),

Specially Assigned