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[Filed 14-Dec-2006 & 17-Oct-2007]

State of Vermont

Professional Responsibility Board

In re: Mary Grady, Esq.

PRB File No. 2006.253

Order on Motions and

Decision No. 96

Respondent is charged with failure to cooperate with Disciplinary Counsel in violation of Rule 8.4(d) of the Vermont Rules of Professional Conduct. The Hearing Panel finds that Respondent violated this rule and is suspended from the practice of law for a period of 45 days. Upon return to practice she shall be on probation for a period of one year on the terms set forth below.

Procedural History

Disciplinary Counsel filed the petition of misconduct on June 2, 2006. Respondent accepted service on the petition on June 21, 2006, and her answer to

the petition was due July 11, 2006. No answer was filed, and on July 24, 2006, Disciplinary Counsel moved to deem the charges admitted pursuant to Administrative Order 9, Rule 11(D)(3). The Charges were deemed admitted by order of the Hearing Panel Chair on July 31, 2006.

The matter was scheduled for a sanctions hearing on September 15, 2006. Both Respondent and Disciplinary Counsel were present. After receipt of the evidence, it appeared that the matter might be more appropriately handled by an Assistance Panel of the Professional Responsibility Program or the Lawyer Assistance Program administered by the Vermont Bar Association. The Hearing Panel stayed the matter for a period of six months on condition that Respondent consult with either an Assistance Panel or the Legal Assistance Program for mentoring and guidance in dealing with:

1. practice managements issues for a solo practitioner without office help,
2. ways to obtain mentoring to provide safeguards for clients,
3. ways to deal with the isolation of the solo practice, and
4. ways to accommodate the constraints of her health issues in the management of the law practice.

Respondent was ordered to obtain progress reports from the consultant addressing her progress in the foregoing areas and any others identified by the consultant. Such reports were to be filed with the Chair of the Hearing Panel and Disciplinary Counsel thirty, ninety and one hundred fifty days from the date of the order.

The order further provided that the matter would be reheard in six months or such earlier date as the Hearing Panel or Disciplinary Counsel should deem appropriate.

The first such report would have been due on October 28, 2006. No reports were filed, and on October 30, 2006, Disciplinary Counsel filed a Petition to Lift the Stay and schedule a Sanctions Hearing. On November 8, 2006 a sanctions hearing was then scheduled for December 1, 2006.

On November 22, 2006, Respondent wrote to the Board requesting "an opportunity to address the petition to lift the 'Stay' and schedule a sanctions hearing." Disciplinary Counsel responded to Respondent's request for additional time, and on November 30, 2006, Respondent filed a memo in support of her motion for additional time for response to the petition to lift the stay and schedule a sanctions hearing.

By email to the parties, the Chair of the Hearing Panel notified the parties that they should appear at the hearing on December 1, 2006, prepared to go forward on the merits, and that argument on the motion would be heard before proceeding on the issue of sanctions.

At the hearing at 9:30 a.m. on December 1, 2006, Disciplinary Counsel was present. Respondent had been subpoenaed to attend the hearing but emailed all parties at 8:19a.m. that she would not be able to attend the hearing due to car trouble. On request of Disciplinary Counsel and after deliberation, the Hearing Panel decided to go forward with the hearing in the absence of Respondent.

Order on Motions

In response to the Motion to lift stay Respondent argued that she should be entitled under V.R.C.P. 60(b) to be heard before the motion was granted. Respondent does not, however, raise any issue showing excusable neglect nor has she given any indication that the order of September 28, 2006, has been complied with. By its terms, the order provided that if no reports were received by the Hearing Panel, the Panel itself could schedule a sanctions hearing. Therefore, it is not necessary to reach the issue of whether Respondent was entitled to be heard on the motion since the Panel had reserved the right to schedule a hearing at any time.

Disciplinary Counsel's Motion to lift stay is hereby granted and Respondent's motion for enlargement of time is denied.

Decision

Facts

On March 6, 2006, L.L. filed an ethics complaint against Respondent. By letter dated March 24, 2006, Disciplinary Counsel requested that Respondent file a written response to the complaint by April 14, 2006. Respondent did not do so, and on April 18, 2006, Disciplinary Counsel's administrative assistant, Cathy Janvier, wrote to Respondent informing her that she had missed the deadline and that she would be charged with failure to cooperate with a disciplinary investigation if she did not file a response to the complaint by April 25, 2006. Respondent did not file a response by the deadline and on May 3, 2006, Ms. Janvier called Respondent and asked her to respond or to contact Disciplinary Counsel.

On May 8, 2006, Respondent left a message on Ms. Janvier's voice-mail apologizing for failing to file a response and stating that she did not "mean any disrespect" but that she had been "having some issues with anxiety" related to the preparation of response. Respondent indicated that she would complete the response that day. As of May 31, 2006, she had not filed a response to the complaint, and on that date Disciplinary Counsel filed the Petition of Misconduct alleging that Respondent had violated Rule 8.4(d) of the Vermont Rules of Professional Conduct by failing to file an answer to the complaint filed by L.L.

On September 5, 2006, Respondent spoke by phone with Disciplinary Counsel and provided a verbal response to the L.L. complaint. On September 11, 2006, Respondent provided Disciplinary Counsel with a letter from Dr. Lorri Szostak indicating that she was treating Respondent for depression and anxiety; that Respondent was taking Ambien, Cymbalta, Wellbutrin and Klonopin, and that Dr. Szostak was seeing her on a monthly basis for medication management.

At the September 15, 2006, hearing Respondent testified that her depression and anxiety prevented her from being able to provide Disciplinary Counsel with a response to the L.L. complaint. Respondent also testified about the difficulties that she faces as a sole practitioner. At the time of the September hearing, Respondent testified that with the exception of one real estate case, her practice was limited to social security cases. She works alone without a secretary. She has approached other attorneys for mentoring assistance, but it has not been helpful since no one else in Rutland handles Social Security cases.

Respondent was admitted to the Vermont Bar in 1997. Her first bar admission was in Ohio in 1993. She has one previous admonition.

Conclusion of Law

Rule 8.4(d) of the Vermont Rules of Professional Conduct provides that "[i]t is professional misconduct for a lawyer to . . . engage in conduct that is prejudicial to the administration of justice." In addition, Rule 6(D) of Administrative Order 9 provides that a lawyer may be disciplined "for failure to furnish information to or respond to a request from disciplinary counsel." Respondent failed to respond to numerous requests from disciplinary counsel for information relating to the L.L. complaint. Vermont ethics decisions make it clear that failure to cooperate with disciplinary counsel is prejudicial to the administration of justice and a violation of Rule 8.4(d). *In re Heald*, PRB Decision No. 19 (June 5, 2001), *In re PRB File no. 2000.019*, Decision No. 15 (Oct. 23, 2000); *In re Blais*, PCB No. 118, (1997). Respondent's complete failure to respond to the complaint violates this rule.

Sanctions

At the end of the September hearing, it was the Panel's belief, supported by Disciplinary Counsel, that Respondent's failure to cooperate with disciplinary counsel stemmed from her medical problems, not from a cavalier attitude toward the disciplinary process. It appeared that a better approach would be to stay the proceedings to enable Respondent to deal with her medical problems in such a way that would assure the Panel and Disciplinary Counsel that clients were not at risk.

Now, almost three months from that hearing, the Panel is even more concerned that Respondent's complete failure to comply with the order of September 15 may be an indication that she may also be unable to handle the demands of her practice.

In determining the appropriate sanction in this case we are still convinced that Respondent's medical problems play a large role in her failure to cooperate with the disciplinary system. We are, however, faced with a record in which the charges of misconduct have been deemed admitted by Respondent's failure to answer them. She has also failed to avail herself of the opportunity offered in the September order to participate in a process that would have provided assistance to her, protected her clients and mitigated the need for discipline.

It is well established that it is appropriate to seek guidance from the ABA Standards for Imposing Lawyer Discipline in determining the appropriate sanction in a disciplinary matter. Rule 7.2 provides that "[s]uspension is generally appropriate 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 a client, the public, or the legal system." Respondent's conduct fits within this rule. By her own testimony, she knew that she was not responding to disciplinary counsel and this failure to respond has carried over to a failure to follow the terms of the of September 15, 2006, order and a failure to promptly file a timely response to Disciplinary Counsel's motion to lift the stay. While no client has apparently been harmed by Respondent's inaction, there is harm to the judicial system. In a self regulating profession, any refusal to cooperate with the process undermines the system, the public's confidence in the system and consumes the limited resources of the Professional Responsibility Program.

The schema of the ABA Standards for Imposing Lawyer Discipline requires a consideration of aggravating and mitigating factors after arriving at a presumptive sanction. In this case some of these factors are straight forward. Others are not. In mitigation, she had no selfish or dishonest motive, *ABA Standards §9.32(b)* , and expressed remorse at the September hearing. *ABA Standards §9.32(l)*. The other mitigating factor that is clearly present is physical or mental disability or impairment. *ABA Standards §9.32(h)*. In aggravation, Respondent has one prior admonition. *ABA Standards §9.22(a)*. Disciplinary Counsel argues that we should also include the aggravating factors of a pattern of misconduct, *ABA Standards §9.22(c)*, multiple offenses *ABA Standards §9.22(d)*, and a bad faith obstruction of the disciplinary process by failing to comply with the rules or orders of the Panel. *ABA Standards §9.22(e).* We believe that the behaviors identified in these last three aggravating factors stem primarily from her impairment, which we have found to be a mitigating factor, and we are thus reluctant to deem them aggravating in these circumstances. In addition, the failure to cooperate with the disciplinary process is the basis of the complaint itself and should not be used to increase the presumptive sanction.

Disciplinary Counsel acknowledges that, but for the unusual circumstance of this case, he would not be recommending a suspension for a single instance of failure to cooperate with the disciplinary process not coupled with other charges, nor would we consider it if we felt that there was another viable alternative. Disciplinary sanctions are not intended to punish lawyers. *In re Hunter*, 167 Vt. 219, 226 (1997). Rather, they are intended to protect the public from harm and to maintain confidence in our legal institutions by deterring future misconduct." *Id*.

It appears to the Panel that our main concern at this point must be to protect the public, and to do it in a way that is not punitive to Respondent, enables her to have only a short break from practice, and on her return, to be supported by systems that will assist her in dealing with her medical issues and the demands of a solo practice.

An essential part of this plan is for Respondent to be supervised by a probation monitor who will give her needed support when she returns to practice, and ensure protection of her clients. The terms of probation shall be as follows:

1. Respondent shall be placed on probation as provided in Administrative Order No. 9, Rule 8A(6). The probation shall commence upon the termination of the suspension and shall be for a period of one year.

2. Prior to the expiration of her suspension, Respondent shall engage a probation monitor acceptable to Disciplinary Counsel, and Respondent shall forward to the probation monitor a copy of this decision no later than seven (7) days prior to the commencement of probation.

3. Respondent shall meet with her probation monitor at least two weeks prior to the date on which her license is reinstated, in order to review Respondent's case load and medical status and to determine what systems should be implemented to assist Respondent in her practice.

4. Respondent and her probation monitor shall implement office management and case management procedures and safeguards to ensure the proper handling of all client matters.

5. Upon return to practice Respondent shall meet with her probation monitor at least monthly to discuss issues relating to Respondent's caseload, office practices suitable for a sole practitioner without office help, ways to deal with

the isolation of solo practice and ways to accommodate the constraints of her health issues into the management of her practice.

6. Respondent shall implement all reasonable suggestions of the probation monitor.

7. If she misses a scheduled meeting without notifying her probation monitor in advance, or if she goes more than eight weeks without meeting with her probation monitor, the probation monitor shall report this fact to Disciplinary Counsel.

8. Respondent shall permit and authorize her probation monitor to respond to Disciplinary Counsel's requests for information relating to Respondent's compliance with the mentoring arrangement and her probation.

9. Respondent shall secure from her probation monitor a brief report summarizing each meeting, including any recommendations made pursuant to paragraph 6 hereof, and Respondent shall file a copy of the report with Disciplinary Counsel within three weeks of the meeting with her probation monitor.

10. Respondent shall bear the costs and expenses related to her compliance with the probation.

11. In the event that the agreed upon probation monitor is unable to continue to serve, Respondent shall immediately notify Disciplinary Counsel and, as soon as possible, find a replacement. Respondent's choice of a replacement must be approved by Disciplinary Counsel. If Respondent is not able to secure a new probation monitor within eight weeks of the departure of her probation monitor, Respondent shall be considered in violation of her probation.

12. Respondent's probation shall be renewed or terminated after one year as provided in A.O. 9, Rule 8(A)(6).

13. Should Respondent fail to comply with the terms of probation, Disciplinary Counsel may move for an immediate interim suspension under Rule 18 of Administrative Order 9.

Order

Mary Grady is hereby SUSPENDED from the practice of law for a period of forty-five days, for violation of Rule 8.4(d) of the Vermont Rules of Professional Conduct. The suspension shall commence 10 days from the date this order becomes final.

Upon return to practice following the suspension, Respondent shall be on probation for a period of one year in accordance with the terms set forth above. Probation may be terminated in accordance with A.O.9 Rule 8(A)(6).

Respondent shall promptly comply with the provisions of A.O.9 Rule 23.

Dated: **December 14, 2006** Hearing Panel No.2

FILED: December 14, 2006 /s/

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Jesse M. Corum IV, Esq.

/s/

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Theodore C. Kramer, Esq.

/s/

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Christopher G. Chapman