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[07-Jul-1995]

STATE OF VERMONT

PROFESSIONAL CONDUCT BOARD

IN RE: PCB File No. 94.41

VINCENT ILLUZZI - Respondent

DECISION NO. 98

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION OF PROFESSIONAL CONDUCT BOARD

I

INTRODUCTION

This matter came before the Board for consideration on May 5, 1995, pursuant to Administrative Order No. 9, Rule 8. Both Respondent's Counsel and Bar Counsel presented oral argument and submitted briefs, each of which the Board has considered in making its recommendation in this matter. The case was heard by a Hearing Panel which made its decision, recommending that Respondent be disbarred in its report dated March 23, 1995. For the reasons set forth below, the Board affirms the Hearing Panel s recommendation of disbarment.

II

FINDINGS OF FACT and CONCLUSIONS of LAW

A. SUBSTANTIVE VIOLATIONS

1. The Board adopts in full the Stipulation of Facts dated October 13, 1994 (13 pages; 28 pages of attachments) executed by Respondent and Bar Counsel. Said stipulation is set forth as Attachment 3 to the Hearing Panel report and is incorporated in full into this decision.

2. In the Proposed Conclusions of Law and Sanction, also executed by Bar Counsel and Respondent, Respondent admitted that he had violated DR 1-102(5) and (7) for filing ethical complaints against a sitting judge with no reasonable factual or legal basis with the intended result that the

judge would be discredited or improperly influenced thereby and that he had violated DR 8-101(A) by "using his public office in an improper manner and for improper reasons. [p. 2, para. 7, Proposed Conclusions of Law and Sanction].

3.The uncontested facts contained in the Stipulation of Facts demonstrate by clear and convincing evidence that Respondent has violated three provisions of the Code of Professional Responsibility: DR 8-101(A)(2); DR 1-102(A)(5) and DR 1-102(A)(7). Therefore, the Board affirms the Hearing Panel's determination that Respondent has violated DRs 1-102(A)(5) and (7), as well as DR 8-101(A)(2).

B. SANCTION

The Board adopts and reaffirms the findings of fact as to sanctions, based almost completely on the Stipulation of Facts, made by the Hearing Panel in its report. Those facts establish by clear and convincing evidence that disbarment is the appropriate sanction in this case.

Specifically, the Board finds as follows:

1) Respondent had never filed a judicial conduct complaint prior to the three he filed against Judge Suntag.

2) All of the Judicial Conduct Board complaints filed by Respondent against Judge Suntag were without probable cause.

Respondent's behavior was at a minimum reckless in failing to review each factual situation that formed the basis for his complaints.

3) Respondent had selfish motives in filing the groundless complaints against Judge Suntag.

4) Respondent was very angry at Judge Suntag's wife, Wendy Collins, in connection with her prosecution of PCB matter no. 89.47 wherein Ms. Collins recommended that Respondent be suspended, then later disbarred from the practice of law.

5) Respondent does not like Suntag. He feels that Judge Suntag is arrogant and autocratic.

6) Respondent's complaints were intended to adversely impact Judge Suntag for improper reasons. Respondent sought to discredit Judge Suntag because of Respondent's anger directed to his wife and his personal dislike of Judge Suntag. He also attempted to influence Judge Suntag improperly to conform his future judicial decisions more closely to Respondent s opinions and beliefs.

7) There is a clear pattern of misconduct. The three baseless complaints were filed within six months. Two of the three were filed within a week of the other (February 18 and February 24, 1993).

8) Respondent has committed multiple offenses.

9) Respondent has substantial experience in the practice of law.

10) Respondent has a substantial prior disciplinary record:

- public reprimand in No. 79.34
- private admonition in No. 80.40
- private admonition in No. 82.60
- private admonition in No. 87.22
- six month suspension in No. 89.47, for which Respondent sought reinstatement; the Board unanimously recommended against reinstatement. Respondent did not appeal this recommendation to the Supreme Court.

As defined by the ABA guidelines for imposing lawyer discipline, the foregoing set out a series of aggravating factors to be considered in determining the appropriate sanction. Respondent has raised three factors which he contends are mitigating factors: that he cooperated fully with these proceedings; that he acknowledged the wrongful nature of his conduct and that he is remorseful for his actions. The Hearing Panel's conclusion rejected Respondent s contention that he had established remorse by clear and convincing evidence. It did find that Respondent has cooperated fully with these proceedings and that Respondent acknowledges the wrongful nature of his conduct. As the following discussion will indicate, we agree with the Panel s conclusion rejecting remorse as a mitigating factor and accepting cooperation as a mitigating factor. However, the Board concludes

that the undisputed facts fail to support by clear and convincing evidence that Respondent has acknowledged the wrongful nature of his actions.

III

RECOMMENDATION

We have very carefully reviewed the undisputed facts of this case to determine whether to accept the 18 month suspension acceptable to Respondent and recommended by Bar Counsel or whether to adopt the Hearing Panel s recommendation that disbarment is the appropriate remedy in this case. For the reasons which follow, we adopt the Hearing Panel s recommendation.

We note at the outset that Respondent has violated duties owed to the public and to the legal profession. These duties are not merely abstract notions. These duties are real, and represent the very basis upon which the public bases its trust of the profession. The community expects lawyers to exhibit the highest standards of professional integrity and honesty. Lawyers should not engage in conduct involving interference with the administration of justice. Respondent has admitted that he has violated these duties and standards, and the undisputed facts so indicate.

Having never filed a complaint in his prior 13 years as a lawyer, Respondent filed three complaints with the Judicial Conduct Board against

Judge Suntag without making any effort to ascertain the veracity of the facts in his complaints. His motivation in filing these complaints was to punish Judge Suntag for Respondent s personal dislike of him and respondent s belief that Judge Suntag was arrogant and autocratic. He was also motivated to file the complaints because of his anger at Judge Suntag s wife because of her role in prosecuting a prior Professional Conduct Board matter against Respondent which resulted in Respondent s current suspension. Finally, his actions were driven by his desire to influence the Judge, improperly, in the Judge's decisions, so that the Judge's decisions would conform more closely to the opinions and beliefs held by Respondent. It is difficult to imagine a more serious violation of duties owed to the profession than a lawyer recklessly filing groundless Judicial Conduct Board complaints against a sitting judge based on vindictiveness and the desire to coerce a judge to change his views, reached independently in his best judgment, to the lawyer s own views. Using the ABA Standards for Imposing Lawyer Sanctions, such conduct clearly fits within Standard 7.1. When one adds the fact that Respondent is a Senator and an actual or potential member of the Senate Judiciary Committee which has the power to affect judicial reappointments, the conduct also fits within Standard 5.21.

ABA Standards 5.21 and 7.1 apply with respect to the violations committed by Respondent. Section 5.21 of the Standards calls for disbarment "when a lawyer in unofficial or governmental capacity knowingly misuses the position with the intent to obtain a significant benefit or advantage for himself . . . or with the intent to cause serious or potentially serious

injury . . . to the integrity of the legal process". Section 7.1 recommends disbarment "when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer . . . and causes serious or potentially serious injury to the legal system." The fundamental difference between the standards for disbarment and the standards for suspension relates to the degree of actual or potential injury. If the actual or potential injury is not serious, then suspension is the appropriate remedy (ABA Standards 5.22 and 7.2). If the actual or potential injury is serious, then disbarment is the appropriate remedy.

Although the language under 5.21 and 7.1 are somewhat different (Standard 5.21 requires that the action was taken with the intent to cause serious or potentially serious injury . . . to the integrity of the legal process whereas 7.1 requires that the violation of the duty causes serious or potentially serious injury to . . . the legal system.), the focus in both standards is the existence of actual or potential serious injury.

The Board believes each of Respondent s violations, at a minimum, had the potential for extremely serious injury to the integrity of the legal process and to the legal system. The heart of our legal system depends on the independence of our judges. Respondent s conduct here was intended to impair Judge Suntag s independence in decision-making. The complaints were filed on Senate letterhead. They were totally without merit. Not only did

the filing of these complaints set in motion a process that threatened Judge Suntag's future, the motivation for filing these complaints was improper and selfish, and was at least partially motivated by desires to retaliate against the judge's wife. Such an attack seeks to punish a member of the judicial system s disciplining process as revenge for her performance of her duties.

Such direct attacks against members of the judicial system, unsupported by facts and done with vengeful motives, is a direct attack on the legal process and the integrity of the legal system. Similarly, there is at least potential for serious injury to the integrity of the legal process when an official, who may be in a position to have significant impact on a judge s reappointment, recklessly files baseless charges against a judge for purposes of revenge and personal animosity and forcing the judge to change his view of the law. Therefore, the Board is fully convinced that such reckless actions warrant disbarment.

Even were we to believe that suspension, rather than disbarment, is the appropriate remedy under Standards 5.22 and 7.2, we would still recommend disbarment in view of all the factors present in this case. The undisputed facts present us with a long list of aggravating factors, which would result in our recommendation of disbarment. Indeed, seven of the ten aggravating factors listed under Standard 9.22 are present in this case. We believe that only one mitigating factor is present and feel that factor merits little weight in view of the overall facts in this case.

AGGRAVATING FACTORS

1) Prior disciplinary offenses: Respondent has a substantial prior disciplinary record:

- public reprimand in No. 79.34
- private admonition in No. 80.40
- private admonition in No. 82.60
- private admonition in No. 87.22
- six month suspension in No. 89.47, for which Respondent sought reinstatement; the Board unanimously recommended against reinstatement. Respondent did not appeal to the Supreme Court.

2) Dishonest or selfish motive: Respondent had more than a selfish motive in filing the groundless complaints against Judge Suntag. Worse, he was acting vindictively. Respondent disliked Judge Suntag and was very angry at Judge Suntag's wife, Wendy Collins, because of her actions in the prosecution of Respondent in PCB matter 89.47. Thus, Respondent sought to discredit Judge Suntag because of Respondent's anger directed to his wife and his personal dislike of Judge Suntag. He also attempted to influence Judge Suntag improperly to conform his future judicial decisions more closely to Respondent s opinions and beliefs. It is difficult to conceive

worse motives than Respondent s in this case.

3) There is a clear pattern of misconduct as these three baseless complaints were filed within a six month period. Two of the three were filed within a week of the other (February 18 and February 24, 1993). In each instance, Respondent recklessly failed to investigate the facts before accusing Judge Suntag of improper actions.

4) Respondent has committed multiple offenses (three) in this matter.

5) Respondent has substantial experience in the practice of law. He was admitted to the Bar in 1979.

6) Refusal to acknowledge the wrongful nature of his conduct: The stipulated facts manifest a profound acknowledgment of the extremely serious nature of Respondent s conduct. If that were all that was in the record, we would not consider this to be an aggravating factor. However, on at least two occasions, at the October 13, 1994 hearing before the Hearing Panel and the 8D hearing before the Board on May 5, 1995, although acknowledging that his conduct was wrong, Respondent sought to minimize the nature of his conduct and to deny the core facts in the stipulation he signed that indicate the true nature of his wrongful acts.

With reference to the Patten complaint, he described his actions as a mistake on my part and that s why I felt it was appropriate to acknowledge

that at this point. [Transcript, Hearing on October 13, 1994, p/9, ll 2-4]. With respect to the Data Master complaint, Respondent s acknowledgment of the wrongful nature of his conduct was in light of the major political controversy in that part of the state, I, I filed these complaints and, you know, I just should not have done so. You know, people were upset. [Transcript, Hearing on October 13, 1994, p. 9, line 22 - p.10, line 1]. With reference to the third complaint, Respondent stated:

> I just saw this as another example of my constituents being required to travel long distances. And so I filed a complaint. And there was no legal basis for doing so and I was just plain wrong and should not have done it.
>
> It was done, you know, at the time where, with the intent to get these cases back into the county. [Transcript, Hearing on October 13, 1994, p. 10, line 24 - p. 11, line 7].

Respondent later explained his conduct as an imprudent way to handle that matter. [Transcript, Hearing October 13, 1994, p. 13, ll. 7-13].

Respondent made substantially the same statements at the 8D Hearing. Each time in these proceedings that Respondent has personally addressed his conduct in public, he has consistently sought to justify and minimize

his actions rather than admit that he acted out of ill will for Judge Suntag and Wendy Collins, out of anger, as admitted in the Stipulation of Facts. Rather, Respondent has attempted to divorce himself from the admissions in the Stipulation:

> The complaints were motivated to impact adversely a sitting judge for improper reasons. [Stipulation of Facts, paragraph 33] [emphasis added].
>
> Respondent sought to discredit Judge Suntag because of anger at his [Judge Suntag s] wife or personal dislike . . . . [Stipulation of Facts, paragraph 34].

Therefore, although Respondent admits he was wrong, he consistently seeks to justify his violations as efforts to represent his constituents and omits any reference to the core facts as to his true motives for attacking Judge Suntag. Such conduct leads us to conclude that Respondent does not truly acknowledge the wrongful nature of his conduct, that he does not truly understand the impropriety of his conduct.

7) Vulnerability of the victim: As the Stipulation indicates: Judge Suntag s future as a judge is partially dependent upon the actions and decisions of the special retention committee of the legislature, a fact of which Judge Suntag is aware. [Stipulation, paragraph 2]. Because

Respondent has been a Senator for 14 years, has served on the Judiciary Committee and is a potential member of the special judicial retention committee, he has the potential power to adversely impact on Judge Suntag s future as a judge.

MITIGATING FACTORS

The Hearing Panel Report refers to three potential mitigating factors, rejects one and accepts two. We agree with the Hearing Panel regarding the rejection of one factor and the acceptance of one factor. We disagree that the second factor has been established by clear and convincing evidence.

1) Cooperation with the proceedings: We agree with the Hearing Panel s conclusion that Respondent cooperated with this disciplinary proceeding. When considering how much weight to attribute to this mitigating factor, we must consider it in the context of the overall record. A respondent s cooperation with a disciplinary proceeding is highly desirable because it facilitates a decision based on the fullest factual record and does so in an efficient way.

On the other hand, there comes a point in time when some mitigating factors carry relatively little weight. By the time a respondent has been sanctioned in multiple separate proceedings (this is Respondent s sixth violation), s/he should be keenly aware that failure to cooperate will

constitute an aggravating factor. Therefore, we do not believe that cooperation carries significant weight under the facts of this case. However, even if we were to give this factor its maximum weight, it would not change our recommendation of disbarment.

2) Remorse: We also agree with the Hearing Panel s conclusion that Respondent has not established remorse by clear and convincing evidence. Two undisputed aspects of this case undercut Respondent s contention that he has truly expressed remorse for his actions. First, Respondent s conduct and statements relating to his intent in engaging in the conduct which is the basis of the three charges demonstrates a lack of remorse for the conduct, and intention with which he acted, according to the stipulation. His continual attempts to characterize his actions as motivated by a desire to represent his constituents and the like, rather than to admit his intent to harm Judge Suntag and his wife, severely undermine Respondent s claim of remorse [See discussion under Aggravating factor 6]. Second, contrary to Respondent s representation at the October 13, 1994 Panel Hearing, Respondent had not, as of the 8D Hearing, sent a letter of apology to Judge Suntag. As part of the record at the October 13 Panel Hearing, Respondent submitted a draft of a letter to Judge Suntag, apologizing for Respondent s conduct. At the hearing, Respondent stated I m going to write this letter of apology to Judge Suntag. [Transcript, Panel Hearing, October 13, 1994, p.14, ll.22-24]. The letter was marked and admitted at the request of Respondent s counsel as part of Respondent s case regarding sanctions and his demonstration of remorse for his wrongful

conduct. In fact, Respondent failed to send the letter by the second hearing date, February 10, 1995. The only explanation for Respondent s failure to send the letter of apology to Judge Suntag was a statement by Respondent s counsel:

> And the fact that that [apology letter] has not gone out, if that in fact is the case, is certainly the result of oversight and it is not any intention to prolong this proceeding any longer. [Transcript, Hearing February 10, 1995, pp. 50-51].

Indeed, even after the Panel raised the issue that the letter had not been sent at the February 10 hearing, Respondent continuously failed to send Judge Suntag the letter of apology. Thus, at the 8D Hearing, Respondent and his counsel continued to take the position that the failure to send the letter was a mere oversight and did not reflect the fact that Respondent simply did not wish to apologize to Judge Suntag. At the 8D hearing, Respondent indicated that the original draft was lost. It was clear that Respondent failed to make a concrete effort to send the letter of apology. It is our belief that if Respondent truly was remorseful, he would have sent the letter at some time after the October hearing. The sincerity of Respondent s remorse is doubtful. Therefore, we agree with the Hearing Panel s conclusion that Respondent failed to prove by clear and convincing evidence that he is remorseful and decline to credit it as a mitigating

factor.

3) Acknowledgment of wrongful nature of conduct: Although this factor is not specifically listed as a mitigating factor under the ABA Standards, if proven by clear and convincing evidence, it certainly would be worthy of consideration as a mitigating factor. In this case, however, the record does not factually support any such conclusion.

As indicated above, throughout these proceedings, Respondent has sought to minimize what he has done rather than acknowledge the true nature of his conduct. He has sought to separate himself from the unequivocal provisions of the Stipulation of Facts. He has categorized his actions as being a mistake rather than as conduct motivated by anger and ill will. In public sessions in this proceeding, Respondent consistently has failed to admit that his assertions of misconduct on Judge Suntag s part were made in reckless disregard of the facts available to Respondent at the time . . . . [Stipulation, paragraph 8]; that as to other of the complaints, Respondent recklessly avoided familiarizing himself with obvious facts and basic legal principles . . . . [Stipulation, paragraph 33]; that The complaints were motivated to impact adversely a sitting judge for improper reasons. [Stipulation, paragraph 33]; that Respondent sought to discredit Judge Suntag because of anger at his wife or personal dislike for Judge Suntag. [Stipulation, paragraph 34]. Therefore, as a matter of fact, we do not believe Respondent has established, by clear and convincing evidence, that we should consider this as a mitigating factor.

CONCLUSION

Based on the above analysis, the Board recommends that Respondent be disbarred.

Dated at Montpelier, Vermont this 7th day of July, 1995.

PROFESSIONAL CONDUCT BOARD

/s/

_____

Deborah S. Banse, Chair

/s/

_____ _____

George Crosby Donald Marsh

(not present at Rule 8D) (not present at Rule 8D)

_____ _____

Joseph F. Cahill, Esq. Karen Miller, Esq.

/s/ (not present at Rule 8D)

_____ _____

Nancy Corsones, Esq. Mark Sperry, Esq.

/s/ (not present at Rule 8D)

_____ _____

Paul S. Ferber, Esq. Robert F. O'Neill, Esq.

(not present at Rule 8D) /s/

_____ _____

Nancy Foster Ruth Stokes

/s/ (not present at Rule 8D)

_____ _____

Rosalyn L. Hunneman Jane Woodruff, Esq.

/s/ (not present at Rule 8D)

_____ _____

Robert P. Keiner, Esq. Charles Cummings, Esq.

(not present at Rule 8D) /s/

_____ _____

J. Garvan Murtha, Esq. Edward Zuccaro, Esq.

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STATE OF VERMONT

PROFESSIONAL CONDUCT BOARD

In re: PCB File No. 94.41

Vincent Illuzzi--Respondent

STIPULATION OF FACTS

NOW COME Shelley A. Hill, Bar Counsel, and Vincent Illuzzi,

Respondent, and hereby stipulate to the following set of facts:

1. Respondent was admitted to practice law in the State of Vermont in 1979. He has been under suspension since September 1, 1993 and is eligible for reinstatement, subject to hearing. Respondent is a state senator, a position he has held for approximately fourteen years. He is a member of the Senate Judiciary Committee.

2. Judge Suntag's future as a judge is partially dependent upon the actions and decisions of the special retention committee of the legislature, a fact of which Judge Suntag is aware. Judge Suntag is and was aware that Respondent is a potential member of that committee, as its membership changes from time to time.

3. The purpose of the Judicial Conduct Board is to investigate complaints that a judge may have engaged in behavior that indicates he or she may not be or have been in compliance with the Code of Judicial Conduct, and to make recommendations to the Vermont Supreme Court.

4. From the date of his admission to the bar until February 18, 1993, Respondent had not filed a single complaint with the Judicial Conduct Board. He then filed three complaints within a five-month period against Judge David Suntag--February 18, 1993, February 24, 1993 and July 1, 1993. The only other judicial conduct complaint he has filed was

dated July 27, 1993, and was against a different judge, unrelated to any of the complaints he made against Judge Suntag.

JCB Docket No. K93-1

5. On February 18, 1993, Respondent filed a complaint against Judge David Suntag with the Chair of the Judicial Conduct Board (JCB) (Attachment A). This complaint was filed on state senate letterhead and was signed by Respondent in his capacity as state senator.

6. The complaint stated that a former client of Respondent's, David Patten, had told him he had appeared, pro se, before Judge Suntag on a violation of probation complaint. Respondent reported that Mr. Paten had stated that at the arraignment Judge Suntag had disregarded a legitimate defense conveyed to him by Mr. Patten and then accepted Mr. Patten's admission to the violation of probation. Respondent stated that Judge Suntag's acceptance of the admission "was tantamount to convicting an innocent person of a crime." Respondent also alleged that as the result of what Mr. Patten told him was a wrongful conviction, he spent twelve days in jail.

7. Respondent attached the following documents to his letter of complaint: A) Violation of probation complaint in Docket #603-6-90 Cacr, filed May 12, 1992; B) VOP Docket & Disposition Report (DDR) in Docket #603-6-90 Cacr, signed by

Judge David Suntag on July 6, 1992; C) Court docket sheet in Docket #603-6-90; D) Docket & Disposition Report in Docket #603-6-90 Cacr, signed by Judge Pineles on August 9, 1990; E) Mittimus in Docket #603-6-90 Cacr, signed by clerk Lucia Donaghy on August 9, 1990; F) Letter to Respondent from Fern M. Boucher, Transcribers, dated October 10, 1992, regarding his transcript request in State v. David Patten; G) Transcript Order Form 638 request of Vince Illuzzi for the transcript of the violation of probation hearing in Docket #603-6-90 Cacr.

8. Several statements made by Respondent in his letter of complaint are not true and are assertions made in reckless disregard of the facts available to Respondent at the time he sent his February 18, 1993 letter to the JCB:

A) Valid Defense Issue:

In the letter, Respondent wrote that "Mr. Patten [told] him that he attempted to explain to Judge Suntag that he had a very valid defense..." but that "...despite his explanation to the court as to what happened, Judge Suntag accepted Mr. Patten's admission of violation of probation." Respondent then opined that he, Respondent, believed that what Judge Suntag did was "tantamount to convicting an innocent person of a crime."

Mr. Patten had explained to Respondent his defense to

only one count of the two count VOP complaint. Respondent did not know what Mr. Patten's defense was to the count regarding his failure to pay the imposed fine, as Mr. Patten did not mention it. Had Respondent read the VOP complaint and the VOP Docket & Disposition Report, both of which were in his possession, he would have discerned that Mr. Patten had been charged with and found in violation of two conditions of his probation, #4 and #17. Respondent had no information regarding the circumstances of the violation of condition #17--nor did he make minimal inquiry.

B) Jail Issue

Respondent wrote in his letter of complaint, "[a]s a result of what Mr. Patten tells me was a wrongful conviction for this violation of probation, Mr. Patten spent 12 days in jail." Had Respondent reviewed the VOP Docket & Disposition Report, which he had in his possession, he would have discerned the untruthfulness of this statement. The document reveals that, as the result of the violation admission, Mr. Patten was merely discharged unsatisfactorily from probation. The original sentence, as revealed by the VOP DDR as well as the underlying case DDR (also in Respondent's possession), was 2-3 months, all suspended but 12 days to serve for Careless & Negligent Driving.

C) Sentencing Judge

Immediately after discussing the wrongful twelve days in jail, Respondent wrote: "The sentencing took place before a different district court judge. However, the sentencing was based on a conviction which was entered by Judge Suntag." Had Respondent read the documents that were in his possession he would have discerned the untruthfulness of these statements. The original conviction and sentencing were entered by a judge other than Judge Suntag. It was Judge Suntag who entered the violation of probation and imposed the unsatisfactory discharge from probation.

9. Respondent had no reasonable basis to accuse Judge Suntag of treating Mr. Patten unfairly (Attachment B). Respondent had in his possession documents which contradicted much of what he maintains Mr. Patten told him. Respondent, therefore, should have at least questioned the information he had received from Mr. Patten. Given the obvious inconsistencies between what Mr. Patten said and the information contained in the court documents, Respondent, especially since he was an attorney, should have taken additional steps to determine what occurred at the VOP hearing before filing a judicial conduct complaint with untrue allegations.

10. Respondent violated Rule 6(7) of the Rules of

Supreme Court for Disciplinary Control of Judges as to confidentiality by copying David Patten with his complaint to the Board.

JCB Docket No. K93-5

11. On February 24, 1993 Respondent filed a complaint with the JCB against Judge David Suntag regarding the scheduling of a consolidated hearing in DWI cases, the issue being the admissibility of the new Datamaster intoximeter (Attachment C). The hearing had been scheduled to be heard in the Orange County District Court, although it involved many cases from other counties. This complaint was sent on state senate letterhead and was signed by Respondent in his capacity as state senator and member of the Senate Judiciary Committee.

12. Respondent stated in his letter of complaint that it was not the legislative intent, in designing the judicial units, to have attorneys and litigants travel long distances to accommodate judges. He stated that he believed "the Court is without jurisdiction to hear these cases in Chelsea." Respondent wrote that Judge Suntag's actions approached "arrogance" and placed his "convenience over and above the legal and equitable rights of the defendants and their attorneys...." He further accused Judge Suntag of "abuse of power and discretion...."

13. Respondent's statement that the Orange County

District Court is without jurisdiction to hear his cases emanating from Orleans County is not true. Since at least 1989, all of the towns and villages constituting the counties of Caledonia, Essex, Lamoille, Orange, Orleans and Washington have been in the same judicial unit. As such, Orange County had and has jurisdiction to conduct the district court business of Orleans County. Respondent should have known this legal principle, or, at a minimum, researched the issue before filing this complaint with the JCB which contained a false legal premise.

14. Respondent is correct in his assertion that the attorneys and litigants from the Northeast Kingdom were to be inconvenienced by having to travel to Orange County to attend the consolidated hearing. Respondent could have informed himself that other counties having cases consolidated for that hearing in Orange County were Orange and Lamoille. Wherever the hearing was to be held, people were going to be inconvenienced by travel. Respondent had no reasonable basis to conclude that Judge Suntag was placing his convenience over that of the other participants in the legal process.

15. In his supplemental letter of complaint on this issue, dated March 23, 1993 (Attachment D), Respondent complained that Judge Suntag had ordered the clerk to send out notices for the hearing that "clearly stated that defendants and their attorneys were required to be personally present, or

they would be subject to arrest." Notice of hearing forms, used in all district court cases, are standardized documents, all containing the language that failure to appear may result in arrest. Respondent, as an attorney at the time, had no reasonable basis to state that the form that was sent to notify participants of the hearing was a document specially ordered by Judge Suntag--with the implication that he was being arrogant or abusing his position.

16. In his letter of March 23, 1993, Respondent complained that some attorneys had been excused from attendance at the hearing, with "no rational basis apparent for some being required to attend and others not." Respondent had no reasonable basis to complain that Judge Suntag was applying different standards for excusing attendance, and thus abusing his position. Respondent had made no minimal inquiry as to who had been excused, why or who had granted such requests. He had no reasonable basis to conclude that Judge Suntag was the one granting the requests not to attend--his own motion objecting to the location had been denied by a completely different judge. Given Respondent's experience in the district court, he should have known that a status conference in a consolidated hearing was not a complicated matter and did not require every attorney's physical presence. One telephone call to the clerk would have settled the issue. It is regrettable that some attorneys and litigants needlessly

attended the hearing, pursuant to the notice they received, but the sending of notices is the responsibility of the clerks, not the judges.

17. Respondent filed a motion in his cases, objecting that the hearing was to be held in Chelsea. This motion was denied by Judge Walter Morris. Thus, Judge Morris joined with Judge Suntag in maintaining the scheduling of the hearing in Orange County. There was no difference in the positions taken by Judge Suntag and Judge Morris. Yet, Respondent filed no judicial conduct complaint against Judge Morris.

JCB Docket No. K93-23

18. On July 1, 1993, Respondent filed a complaint with the Judicial Conduct Board against Judge David Suntag (Attachment D). Respondent accused Judge Suntag of violating a state law prohibiting the transfer of family court cases out of Essex County for hearing in other locations. He also complained that Judge Suntag was transferring other types of cases out of Essex County for his personal convenience and that he had convened a particular family case hearing in an improper jurisdiction without the presence of the Essex assistant judges whom he knew had been only briefly detained. This letter was sent in Respondent's capacity as senator, on his senate letterhead.

19. Respondent had been concerned about the availability of rural justice for family court cases in Essex County. He, therefore, was instrumental in the passage of Section 31(g) of Act No. 256 of the 1992 General Assembly:

> Sec. 31g. MAGISTRATE; ESSEX COUNTY COURT
> The administrative judge is hereby directed to provide a magistrate to sit a minimum of 12 hours per month at the Essex County Court House in Guildhall to hear and determine child support cases. No Essex Family Court cases shall be heard at any other location, except Guildhall.

20. On August 7, 1992 Respondent and his counterpart in the House of Respresentatives, Robert Emond, signed a statement attaching the written legislative intent behind Act No. 256 of the 1992 General Assembly, the Capital Construction Act of 1992. The statement says that the legislative intent document "was prepared by staff of the Legislative Council...." Nonetheless, the statement of intent as to Section 31(g) was written by Respondent. A legislator's individual opinion as to legislative meaning has no probative value.

21. Respondent interprets Section 31(g) that no family

court cases of any type, child support or otherwise, may be transferred for hearing outside of Essex County. The statutory language of Section 31(g) may, however, be interpreted differently than does Respondent.

22. Section 31(g) has not been interpreted in any court proceeding.

23. Judge Suntag had been assigned as presiding judge to Essex County and Orange County in March 1993. In May 1993 he was rotated to Washington County. In order to have the family court cases he had begun decided in a timely manner, he suggested to the parties involved that he could conclude their cases at a location other than in Essex County, for he would not be returning to the Essex rotation for quite awhile. He then concluded the hearing on these cases out of Essex County, with no objection from the parties. Respondent did not represent any of these parties.

24. At no time had anyone informed Judge Suntag of Respondent's interpretation of or intent in Section 31(g). Judge Suntag interpreted that language, within the statutory whole, to mean only that no child support issues, heard by magistrates, could be heard outside of Essex County.

25. Respondent spoke frequently with Essex County Assistant Judge Allen Hodgdon about his concerns about family court justice in Essex County and about Section 31(g) in particular. He did not speak with Judge Suntag on these

issues at all.

26. Respondent disagreed with Judge Suntag's interpretation of Section 31(g). Neither Respondent, with his interpretation, nor Judge Suntag, with his interpretation, could have been sure of the determinative interpretation of Section 31(g), in advance of the final interpretation of the statutory language by the Vermont Supreme Court. Although Respondent feels strongly about his interpretation of Section 31g, the language is not so precise as to lead to a reasonable conclusion that one interpreting the statute differently would be in violation of the law.

27. Respondent is aware of the requirement of the rotation of state judges. Respondent is aware that Judge Stephen Martin is responsible for the rotation and scheduling of judges. District Court judges preside at locations decided by Judge Martin. It is axiomatic that Judge Suntag could not conclude the Essex County cases within the county in which he had begun them if he was presiding elsewhere, by direction of Judge Martin. Yet, Respondent filed no judicial conduct complaint against Judge Martin for his role in necessitating that Essex County cases be transferred out of the county for timely hearing.

28. Judge Suntag did open a hearing without the initial presence of the two Essex County assistant judges, knowing that they would arrive momentarily. Nothing substantive was

done in their absence nor did he intend to doing anything substantive in the case until their arrival. Assistant Judge Allen Hodgdon discussed the issue directly with Judge Suntag and resolved any questions he had. Judge Hodgdon informed Respondent of his amicable discussion with Judge Suntag. Respondent had no reasonable basis to complain about Judge Suntag over this issue.

29. Judge Suntag and other judges were, from time to time, forced to schedule criminal cases outside of Essex County--out of fairness to incarcerated defendants to have their cases heard as quickly as possible. It was through no fault of Judge Suntag that lack of judicial resources made it impossible to hear cases in the home counties. Respondent had no reasonable basis to single out Judge Suntag for the lack of the ability of the judiciary as a whole to meet Respondent's legislative expectations.

30. None of the three complaints filed by Respondent against Judge Suntag has any reasonable basis or is based on probable cause. The first one is largely made up of obvious falsehoods, which Respondent had reason to know. The second one is partially an erroneous statement of basic jurisdictional law, which Respondent should have known. The balance of the second one is based on erroneous statements of law, facts and procedure, which Respondent should have known. The third one is partially based on an out-of-court dispute

over the interpretation of a statute. Respondent should have known that statutory interpretation is resolved by higher courts in cases and controversies, not by the Judicial Conduct Board.

31. Before the filing of these complaints, Judge Suntag's wife, Wendy Collins, was Bar Counsel for the Professional Conduct Board. She was actively pursuing him for violations of the Code of Professional Responsibility and was requesting that he be suspended, and then later, disbarred from the practice of law. Respondent was very angry at Attorney Collins' treatment of him.

32. Respondent does not personally like Judge Suntag. He believes Judge Suntag is arrogant and autocratic.

33. Respondent had never filed a judicial conduct complaint before he filed the three against Judge Suntag within a five-month period of time. Respondent recklessly avoided familiarizing himself with obvious facts and basic legal principles--which would have nullified the complaints--to enable him to file the complaints against Judge Suntag. The complaints were motivated to impact adversely a sitting judge for improper reasons.

34. Respondent sought to discredit Judge Suntag because of anger at his wife or personal dislike and to improperly influence Judge Suntag to conform his future judicial decisions more closely to those beliefs and opinions held by

Respondent.

Dated at Rutland, Vermont this 13th day of October 1994.

/s/

_____

Shelley A. Hill

Dated at Rutland, Vermont this 13th day of October 1994.

/s/

_____

Vincent Illuzzi

Respondent

Approved as to form:

/s/

_____

William A. Hunter

Attorney for Respondent

ATTACHMENTS NOT INCLUDED

ENTRY ORDER

SUPREME COURT DOCKET NO. 95-346

JUNE TERM, 1996

In re Vincent Illuzzi, Esq.	}	APPEALED FROM:
	}	
	}	
	}	Professional Conduct Board
	}	
	}	
	}	DOCKET NO. 94.41

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

Respondent Vincent Illuzzi appeals from a recommendation of the Professional Conduct Board that he be disbarred for filing three complaints against Judge David Suntag with the Judicial Conduct Board. He argues that (1) complainants to the Judicial Conduct Board are absolutely immune for filing a complaint, (2) he has an absolute privilege because he filed the complaints in his capacity as a state senator, (3) the Board denied him due process by failing to allow him to return to a pre-stipulation position

when it rejected the recommended sanction, (4) the Board erred by failing to recuse itself based on its close relationship with its general counsel who is married to Judge Suntag, and (5) the Board's recommended sanction cannot be supported by the parties' stipulation. We agree that the parties' stipulation does not support disbarment, and we impose the eighteen-month suspension agreed upon by the parties. Accordingly, we do not reach the other issues raised.

Respondent and bar counsel stipulated to the following facts and conclusions. Respondent was admitted to practice law in Vermont in 1979. He is a state senator and a member of the Senate Judiciary Committee. In 1993, respondent was the subject of professional conduct proceedings that resulted in his suspension from the practice of law. Respondent has been under suspension since September 1, 1993. Until February 1993, respondent had never filed a complaint with the Judicial Conduct Board. He then filed three complaints on Senate letterhead against Judge Suntag, during the professional conduct proceedings that resulted in the current suspension. Those proceedings were prosecuted by Judge Suntag's wife, Wendy Collins, who was bar counsel at that time. Respondent filed the three complaints with reckless disregard of obvious facts and basic legal principles because he was angry with Attorney Collins and dislikes Judge Suntag.

Based on the three complaints, respondent stipulated to violations of DR 8-101(A)(2) (lawyer who holds public office shall not use position to influence tribunal to act in favor of himself or client); DR 1-102(A)(5)

(lawyer shall not engage in conduct prejudicial to administration of justice); and DR 1-102(A)(7) (lawyer shall not engage in conduct that adversely reflects on fitness to practice law). The parties jointly recommended that respondent be suspended for a period of eighteen months, effective October 13, 1994. The Board accepted the stipulation to facts and ethical violations but rejected the recommended sanction. It recommends that respondent be disbarred.

To determine the appropriate sanction, we have relied on the American Bar Association Standards for Imposing Lawyer Sanctions (1991 & 1992 amendments) (ABA Standards), which lists four factors to consider: (1) the duty violated; (2) the lawyer's mental state; (3) the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of aggravating or mitigating factors. In re Karpin, 162 Vt. 163, 173, 647 A.2d 700, 706 (1993). ABA Standard 5.21 states that "[d]isbarment is generally appropriate when a lawyer in an official or governmental position knowingly misuses the position with the intent to obtain a significant benefit or advantage for himself or another, or with the intent to cause serious or potentially serious injury to a party or to the integrity of the legal process." The commentary to this section indicates that public officials subject to disbarment generally have engaged in fraud and are subject to criminal sanctions as well. The example provided is In re Rosenthal, 382 N.E.2d 257 (Ill. 1978), cert. denied, 440 U.S. 961 (1979), wherein two lawyers, one an assistant attorney general, were disbarred for participating in an extortion scheme to benefit their client.

Similarly, ABA standard 7.1 states that "[d]isbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and cause[s] serious or potentially serious injury to a client, the public, or the legal system." As an example the commentary indicates that disbarment is appropriate when the lawyer intentionally makes false material statements in his application for admission to the bar. Thus, disbarment is warranted where the misconduct is done knowingly, the injury is serious or potentially serious, and there is some benefit to the lawyer or another. Moreover, conduct resulting in disbarment is generally criminal as well.

Respondent's misconduct does not rise to this level, at least based on the record before us. We discern no serious injury, potential or actual, in the parties' stipulation, nor do we discern any direct benefit to respondent from filing the complaints. Further, there is no indication that respondent's misconduct could subject him to criminal sanctions. Aggravating factors include respondent's substantial experience in the practice of law, five prior disciplinary offenses, an improper motive in filing the complaints, and multiple offenses. Mitigating factors include that respondent has acknowledged the wrongful nature of his conduct, has cooperated in the disciplinary proceeding and is remorseful.

Upon considering these factors, we agree with the parties that an

eighteen-month suspension is the appropriate sanction. See Commentary to ABA Standard 5.22 (suspension is appropriate sanction when public official knowingly acts improperly but not for own benefit). Based on respondent's prior disciplinary record, however, we impose the sanction effective as of the date of this order. Respondent shall not be reinstated until he has demonstrated to the Professional Conduct Board by clear and convincing evidence that he has the moral qualifications, competency and learning required for admission to the practice of law in this state, that resumption of the practice of law will be neither detrimental to the integrity and standing of the bar or the administration of justice, nor subversive of the public interest, and that respondent has been rehabilitated.

Vincent Illuzzi is suspended from the practice of law for the period of eighteen months, beginning August 1, 1996.

BY THE COURT:

/s/

_____

Frederic W. Allen, Chief Justice

/s/

_____

Albert W. Barney, Chief Justice (Ret.)

Specially Assigned

/s/

_____

Louis P. Peck, Associate Justice (Ret.)

Specially Assigned

/s/

_____

Hilton H. Dier, Superior Judge (Ret.)

Specially Assigned

/s/

_____

Theodore S. Mandeville, District Judge (Ret.)

Specially Assigned