148.PCB

[14-Apr-2000]

STATE OF VERMONT
PROFESSIONAL CONDUCT BOARD

RE: Docket Nos. 98.005 and 99.200
Richard F. Taylor, Esq. - Respondent

NOTICE OF DECISION

Decision No. 148

The Board convened on April 14, 2000 and adopted as its own the panel's report, attached hereto at Appendix 1. The Board recommends that Respondent be suspended for 6 months.

Dated at Montpelier, Vermont this 14th day of April, 2000.

PROFESSIONAL CONDUCT BOARD

/s/	/s/
Charles Cummings, Esq.	Michael Filipiak
/s/	/s/
Barry E. Griffith, Esq.	Alan S. Rome, Esq.
/s/	/s/
Mark L. Sperry, Esq.	Ruth Stokes
/s/	/s/
Joan Wing, Esq.	Toby Young

STATE OF VERMONT
PROFESSIONAL CONDUCT BOARD

In Re: Richard F. Taylor, Esq.
PCB File Nos. 98.05 & 99.200

Hearing Panel Decision

A petition of misconduct was filed against Respondent on March 4, 1999, and a second one filed on June 28. With the consent of the parties, the two matters were consolidated and submitted to us on stipulated facts. We have adopted those facts as our own, incorporating them herein by reference. By Order dated September 26, 1999, the parties were given until October 13 to file recommended conclusions of law and recommended

sanctions, and the merits hearing was set for the morning of October 19, 1999.

The office of Disciplinary Counsel did file recommended Conclusions and Sanctions, with supporting authority, on October 13. Respondent filed by facsimile transmission "Respondent's Response to Petitioners Proposed Conclusions and Sanction Recomendation [sic] after the merits hearing, at 1:00 p.m. on October 19. Nonetheless, in light of the seriousness of this matter, and the issues raised and briefed by the parties, the Panel treats Respondent's filings as timely.

We have considered all of these pleadings and conclude that the Board does have jurisdiction over Respondent who is an inactive member of the Vermont bar. We also conclude that Respondent engaged in conduct prejudicial to the administration of justice in violation of DR 1-102(A)(5), that he engaged in conduct that adversely reflects on his fitness to practice law in violation of DR 1-102(A)(7), and that he intentionally disregarded court orders in violation of DR 7-106(A). We do not find that Respondent engaged in "serious criminal conduct" in violation of DR 1-102(A)(3) and recommend dismissal of that particular allegation in the petition of misconduct. In light of the pattern of misconduct, and the substantial nature of the charges, and in accordance with the ABA Standards, we recommend that he be suspended.

The salient facts are that Respondent was admitted to practice law in the State of Vermont on November 8, 1978. He became a resident of St. John, United States Virgin Islands in December of 1992. On July 16, 1993, Respondent placed his license to practice law in Vermont on inactive status. See Supreme Court Administrative Order, Licensing of Attorneys § 5. In this way he could remain a member of the Bar without having to pay annual licensing fees, and could also reactivate his license when he chose to do so.

The following year, in July of 1994, the Vermont Family Court for Addison County ordered him to pay spousal maintenance and child support to his former wife. When he failed to comply fully with this order, she moved to enforce it.

In September of 1996 the Court granted her motion to enforce and entered a judgment order requiring him to pay past-due maintenance in the amount of $13, 699.80 and to do so within 30 days. The Court also ordered Respondent to pay his former wife $500 in attorney's fees. Finally, the Court ordered Respondent to pay his wife $2,000 in attorney's fees for the costs of collection outside of Vermont, should the Respondent fail to comply with the 30 day deadline.

The Respondent did not pay the judgment within 30 days of the order. Again, his former spouse moved to enforce the order.

In March of 1997, the Family Court granted that motion. In its judgment order, the Court found that Respondent was in arrears on both child support and spousal maintenance. In addition to the previous $13, 700 in unpaid maintenance, the Court found that he now owed his ex-wife an additional $15,818.60 in past due maintenance and $7,800 in past due child support.

The Court ordered Respondent to pay these arrearage, to pay his

ex-wife $500 in attorney's fees, and to do so in 10 days. If he did not comply with the order within 10 days, the Court ordered that he would have to pay her $2,000 in attorney's fees for collection of the judgment. Finally, the Court stated that Respondent would be held in contempt of court and jailed for seven (7) days if he did not comply with the terms of the Court's order.

On that same date, the Addison Family Court held a hearing to permit the Respondent to show cause why he should not be in contempt for failing to pay amounts due in child support and spousal maintenance. Subsequently, in late April, it found Respondent in contempt of court and ordered him to be confined for seven (7) days if he failed to comply with previous orders requiring him to pay spousal maintenance and child support.

Respondent did not pay and in May of 1997, criminal charges alleging nonsupport were filed against him. He was arrested in the Virgin Islands in June of 1997. After trial by jury, he was convicted in March of 1998 of violating 15 V.S.A. § 202 , a misdemeanor. He was sentenced to imprisonment for a term of 6 months to 1 year, all suspended but 60 days. Respondent served his sentence and was released on probation.

Jurisdictional Arguments

In response to these misconduct petitions, Respondent seeks dismissal of the charges. His theory is that this Board, and by extension the Vermont Supreme Court, has no jurisdiction over his conduct because he is on inactive status. Respondent argues, in a series of pleadings, that the exercise of continued jurisdiction over members of the Bar on inactive status offends the U.S. constitutional guarantees of equal protection and due process. We disagree.

The Vermont Constitution gives to the Supreme Court the authority and responsibility to structure and administer the lawyer discipline system in this State. VT. Const. Ch II, § 30. Pursuant to that authority, A.O. 9, Rule 1 (now superceded) gave broad jurisdiction to the Professional Conduct Board. The present disciplinary system, now administered by the Professional Responsibility Board, continues the same plenary jurisdiction, providing in A.O. 9, Rule 5 § (A)(1) that

> the Board shall have jurisdiction over any lawyer admitted in the state, including any formerly admitted lawyer with respect to acts committed prior to resignation, suspension, disbarment or transfer to inactive status, or with respect to acts subsequent thereto . . . which constitute a violation of these rules or the code of Professional Responsibility . . . ."

Simply put, whether Respondent is active or inactive, he is still a member of the bar. This Board and the Supreme Court of Vermont clearly have licensing and disciplinary authority over him.

Nature of Alleged Misconduct

Respondent also argues that his alleged misconduct involved so called "personal behavior" as distinguished from actions directly related to the practice of law. As such, there should be no Supreme Court jurisdiction over him in the context of professional discipline. The law of Vermont is

quite clear, however, that an "attorney is subject to misconduct for actions committed outside the professional capacity." In Re Berk, 157 VT. 524, 530 (1991).

The stipulated facts demonstrate by clear and convincing evidence that by disregarding the court's orders, Respondent not only violated DR 7-106(A), he also violated DR 1-102 (A)(5) (engaging in conduct prejudicial to the administration of justice) by failing to comply with a court order. In re Robinson, 161 VT. 605, 607 (1994). Other jurisdictions have also concluded that a lawyer who fails to make court ordered child support and maintenance payments engages in conduct that is prejudicial to the administration of justice. In Re Green, 982 P.2d 838, 838-39 (Colo. 1999)(attorney suspended); In the Matter of Hall, 509 S.E. 2d 266, 268 (S.C. 1998)(attorney suspended); State v. Hanks, 967 P.2d 144, 145 (Colo. 1998)(attorney suspended).

It is true that a minority of the Supreme Court raised somewhat similar concerns after the enactment of 32 V.S.A. § 3113(b)(occupational license requires payment of all taxes due) and 15 V.S.A. § 795(b)(occupational license requires current child support payments). See Supreme Court Administrative Order, Licensing of Attorneys § 7, dissenting opinion by Justices Morse and Johnson. Nonetheless, Administrative Order, Licensing of Attorneys § 9, was promulgated and is clear on its face. Unless and until the law is changed, it is incumbent upon attorneys to abide by its terms or fail to do so at their peril. The licensing option available to members of the bar for their convenience if not actively practicing is not intended as a shield against regulation or discipline.

We also conclude that Respondent violated DR 1-102(A)(7) by engaging in conduct which adversely reflects upon his fitness to practice law. We have held in the past that disregard of an order to pay child support, particularly where the ordering court must resort to its contempt powers to enforce compliance, is conduct which adversely reflected on the lawyer's fitness to practice law. PCB Decision No. 42, 1. Vt.P.C.R. 74 (Dec. 6, 1992)(involved an arrearage of $840 in child support payments).

We are not persuaded, however, that this conduct constituted a serious crime in violation of DR 1-102(A)(3), which allegation forms the basis of P.C.B. File No. 99.200. The Code states:

> "a 'serious crime' is any felony, and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a 'serious crime'."

Code of Professional Responsibility, Definitions, § 5. The parties agree that Respondent was convicted, after jury trial, of a misdemeanor by violating 15 V.S.A. § 202. Absent some authority to the contrary, we decline to conclude that a misdemeanor conviction for intentionally failing to support children is within the Code definition of a serious crime. The criminal statute does require a finding, beyond a reasonable doubt, that the failure to provide support be a wilful failure. However, interference with the "administration of justice" is not an essential element of this

offense. On the record before us, it does not appear that the types of criminal offenses listed in D.R. 1-102(A)(3) can be comfortably stretched to included nonsupport. Accordingly, we would recommend dismissal of this count.

Sanctions - The A.B.A. Standards

The ABA Standards for Imposing Lawyer Discipline lead us to conclude that suspension is the appropriate remedy. See also the dissenting opinion in In re Robinson, supra, at 609 - 611.

Respondent violated several duties here: (1) the duty he owed to the public to maintain his personal integrity, Standard 5.1; (2) the duty he owed to legal system not to abuse the legal process, Standard 6.2; and (3) the duty he owed to the profession not to act to diminish the public's confidence in the bar, Standard 7.0. Respondent acted willfully and knowingly and caused actual, significant injury.

In reaching our recommendation, we rely upon Standard 6.2 which provides, in pertinent part:

> Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving failure to expedite litigation or bring a meritorious claim, or failure to obey any obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists:
>
> 6.1 Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.
>
> 6.22 Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.

In mitigation we find factors 9.32 (a). (e), and (k): i.e., absence of a prior disciplinary record, co-operative attitude toward proceedings, and imposition of other penalties. We are not unmindful of the fact that these circumstances have occurred in the aftermath of a divorce, although certainly the family court system provides an abundance of process, during which inappropriate orders may be challenged. More significantly, Respondent has actually been incarcerated, and may have suffered other penalties in the context of whatever relationship he may have with his offspring. See § 9.32(k).

In aggravation, we find the following factors in 9.2:

(b) dishonest or selfish motive
(c) a pattern of misconduct
(4) multiple offenses

(k) vulnerable victim, and
(l) substantial experience in practicing law.

We are particularly troubled by the repetitive nature of this misconduct. Respondent disregarded three separate rulings of the Addison Family Court, and the disregard lasted over a period of years. In July of 1994, he failed to abide by an order to make support payments. Over the next two years, he continued to flaunt the Court's authority, leading to a September 1996 order to enforce. In March of 1997, a third order issued which he ignored. He was found in contempt of court. Even then, before issuing sanctions, the family court issued a show cause order to give Respondent an opportunity to demonstrate an inability to abide by the previous orders. It was his failure to provide any credible excuse for his actions that lead ultimately to a criminal prosecution and conviction.

Nor can this be viewed as a victimless crime. Between April of 1993 and March of 1997, Respondent racked up a debt of $29,518.40 in spousal support and $7,800 in child support payments. Respondent's October 19, 1999 pleading addressing sanctions repeats his earlier jurisdictional arguments. On the subject of the arrearage, he asserts that the family court, per the orders of Hon. Matthew Katz, miscalculated the sums by including amounts actually due the month of the order and thus not technically overdue. Rather disingenuously, Respondent offers that if his arrearage were amortized over the nine years since his separation from his ex-wife, the calculation "represent less than a 10% overall default rate as against the sums actually paid." It is hard to characterize this attitude as "remorse."

In light of the above, we recommend the Respondent's license to practice be suspended for a period of six months.

Dated this 20th day of December, 1999.

/s/
Barry Griffith, Esq. - Chair
Hearing Panel

/s/
Steven A. Adler, Esq.

/s/
Ruth Stokes

In re Taylor (2000-178)

[Filed 29-Dec-2000]

ENTRY ORDER

SUPREME COURT DOCKET NO. 2000-178

DECEMBER TERM, 2000

In re Richard F. Taylor, Esq.	}	APPEALED FROM:
	}	
	}	
	}	Professional Conduct Board
	}	
	}	
	}	DOCKET NO. 98.005 & 99.200

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

The former Professional Conduct Board (now the Professional Responsibility Board) recommends that Respondent Richard F. Taylor be suspended from the practice of law for six months. Respondent argues that the Board and hearing panel were without jurisdiction to render recommendations on the two misconduct petitions and that the Board's determination that he was motivated by selfishness or dishonesty in his conduct is without support in the record. We adopt the Board's recommendation and impose a six month suspension.

The facts as stipulated to by respondent are as follows: Respondent was admitted to the practice of law in Vermont in 1978. In 1992, respondent moved to St. John, United States Virgin Islands and in 1993 placed his license on inactive status. In July 1994, the Addison Family Court entered an order requiring respondent to pay spousal maintenance and child support to his former wife. When respondent failed to make payments in accordance with the court's order, respondent's wife sought enforcement of the order. In September 1996, the court entered judgment against respondent in the amount of $13,699.80, along with attorney fees, and ordered respondent to pay that amount within thirty days

Respondent did not pay the judgment within thirty days and also continued to fail to comply with the family court's original order. This resulted in a second enforcement action by respondent's wife and a March 1997 judgment for an additional $23,518.60 and attorney fees, payable within ten days of the court's order. The court also ordered that respondent would be held in contempt for failing to comply within the ten-day period. Following a show cause hearing, the court found respondent to be in contempt of court and ordered him confined for a period of seven days. In May 1997, respondent was charged with misdemeanor non-support under 15 V.S.A. § 202. He was convicted following a jury trial and served sixty days in jail.

The Office of Bar Counsel brought two petitions of misconduct against respondent based on the above facts. The first, filed March 4, 1999, was based on his conduct before the family court, and the second, filed June 28, 1999, was based on his conviction of the crime of non-support. The cases were consolidated and were considered by a hearing panel. Following submissions by bar counsel and respondent, the Professional Conduct Board adopted the hearing panel's report and recommended suspension of respondent for a period of six months based on its determination that respondent's conduct before the family court violated DR 1-102(A)(5) (conduct prejudicial to the administration of justice), DR 1-102(A)(7) (conduct adversely reflecting on fitness to practice law) and DR 7-106(A)

(disregard of court orders). It dismissed, however, the count alleging a violation of DR 1-102(A)(3) (illegal conduct involving a serious crime) that was based on his conviction of criminal non-support. Respondent now appeals to this Court.

Prior to review by the hearing panel, respondent and bar counsel entered a stipulation that the disciplinary proceedings should be conducted pursuant to the newly-enacted rules establishing the Professional Responsibility Program. The hearing panel, however, rejected this stipulation, determining that the proceedings were instead governed by the rules as they existed prior to amendment. Respondent argues on appeal that this was error and that the new rules should govern. He reasons that, because appeals are directly from a hearing panel to this Court under the new rules, Administrative Order 9, Rule 11(E), and no appeal was taken to this Court from the hearing panel decision in this case within thirty days, the hearing panel decision is final. He further reasons that, because the new rules indicate that hearing panels should be appointed by the chair of the Professional Responsibility Board, Administrative Order 9, Rule 2(A), and the hearing panel which reviewed his case was instead appointed by the chair of the Professional Conduct Board, the panel was without jurisdiction or authority to preside in his case. Therefore, its judgment is void.

Respondent's argument is without merit. This Court's order amending the rules governing attorney discipline explicitly provided that any matter pending at the time the rules took effect on September 1, 1999, in which a formal hearing had been commenced would be governed by the old rules. Administrative Order 9, History. Formal proceedings are commenced by the filing of a petition of misconduct. Administrative Order 9, Rule 8(C) (amended March 11, 1999, effective September 1, 1999); see also Administrative Order 9, Rule 11(D) (current rule governing initiation of formal disciplinary proceedings). Both petitions of misconduct in this case were filed before September 1, 1999 and, therefore, formal proceedings were pending against respondent at the time the new rules took effect. Accordingly, the proceedings against respondent were properly conducted pursuant to the old rules.

Respondent also argues in the alternative that the Board's adoption of the panel's finding that his conduct was motivated by selfishness or dishonesty is not supported by the record and should be stricken from the Board's recommendation. More specifically, when determining the appropriate sanction, the panel found in aggravation the presence of a "dishonest or selfish motive." Given that bar counsel has taken no position on this specific finding and that this case is before us on the stipulated facts recounted above, we decline to adopt the finding as part of our decision. Nevertheless, we conclude that the recommended sanction of suspension for six months is merited

as respondent does not challenge the Board's determinations that his conduct before the family court violated DR 1-102(A)(5), DR 1-102(A)(7) and DR 7-106(A). Cf. In re Free, 159 Vt. 625, 625-26, 616 A.2d 1140, 1140-41 (1992) (mem.) (imposing six month suspension for illegal conduct involving moral turpitude, conduct prejudicial to the administration of justice and conduct adversely reflecting on the respondent's fitness to practice law where respondent had failed to pay his state taxes for a

number of years).

Respondent Richard F. Taylor is suspended from the practice of law for a period of six months.

BY THE COURT:

_____
Jeffrey L. Amestoy, Chief Justice

_____
John A. Dooley, Associate Justice

_____
James L. Morse, Associate Justice

_____
Denise R. Johnson, Associate Justice

_____
Marilyn S. Skoglund, Associate Justice