

IN THE SUPREME COURT OF IOWA

No. 20 - 0187
Grievance Commission No. 888

DAVID EBONG AKPAN,
Respondent-Appellant,

vs.

IOWA SUPREME COURT
ATTORNEY DISCIPLINARY BOARD,
Complainant-Appellee.

APPEAL FROM THE GRIEVANCE COMMISSION

RESPONDENT-APPELLANT'S REPLY BRIEF

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STATEMENT OF THE ISSUES

I. DID THE GRIEVANCE COMMISSION ERR IN FINDING DAVID AKPAN VIOLATED THE TEXAS RULES OF PROFESSIONAL CONDUCT?

In re Ruffalo, 390 U.S. 544 (1968)

Iowa Ct. R. 36.17

In the Matter of Preparation for Coronavirus/COVID-19 Impact on the Boards and Commissions Overseen by the Office of Professional Regulation (March 27, 2020)

ARGUMENT

I. THE GRIEVANCE COMMISSION'S RECOMMENDATION SHOULD BE REVERSED.

A. The Iowa Supreme Court recently reaffirmed attorneys are entitled to live in-person hearings before the Commission.

On March 27, 2020, the Iowa Supreme Court entered an order related to Grievance Commission hearings under Chapter 36. Due to the COVID-19 pandemic some hearings in Iowa were permitted to proceed remotely via telephone or videoconferencing. Because of the due process rights of respondents, Chapter 36 grievance commission hearings **cannot** be conducted remotely over the respondent's objection. Allowing the complainant, Rosa Villatoro, to testify via videoconference was in violation of Mr. Akpan's due process rights and the rules of the Grievance Commission. The March 27, 2020, Order stated:

The Court strives to protect the public and the due process rights of individuals over whom the boards and commissions have oversight.

. . .

Hearings set forth in Chapters 31, 34, 35, 26, 42, 46, and 47, shall be held telephonically or via video conference. This includes hearings that are currently scheduled. However, **upon request of the respondent**, Chapter 36 hearings shall be postponed until such time as they can be held in person.¹ (emphasis added).

¹ In the Matter of Preparation for Coronavirus/COVID-19 Impact on the Boards and Commissions Overseen by the Office of Professional Regulation (March 27, 2020)
<https://www.iowacourts.gov/collections/479/files/1058/embedDocument/>

Mr. Akpan, the respondent in this case, made numerous objections to alert the panel to the due process issues. The order is consistent with overwhelming precedent and the Grievance Commission Rules of Procedure as discussed in Mr. Akpan's brief. *In re Ruffalo*, 390 U.S. 544 (1968); Iowa Ct. R. 36.17(5) ("The respondent may defend and has the right to participate in the hearing in person and by counsel to cross-examine, to be confronted by witnesses, and to present evidence."). Permitting Ms. Villatoro to testify via videoconference was a clear violation of Mr. Akpan's due process rights and the Grievance Commission Rules of Procedure. The Iowa Supreme Court's recent order reaffirms such testimony was in error.

B. The Board does not cite controlling authority in support of a suspension.

Mr. Akpan did not violate the Rules of Professional Conduct. In addition, the Board's failure to cite any controlling authority in support of a 61-day suspension is a concession that the issue regarding appropriate sanction is **waived**. See Iowa R. App. P. 6.904(4) ("Failure to cite authority in support of an issue may be deemed waiver of that issue."). There is **no** controlling authority that would support a suspension in this matter.

The Board cites the *Annotated Standards for Imposing Lawyer Sanctions* published by the American Bar Association. While the ABA standards have been suggested to the Court, they have **not** been adopted. See *Iowa S. Ct. Atty. Disc. Bd.*

v. Bieber, 824 N.W.2d 514, 532 (Iowa 2012) (Wiggins, J., dissenting); *Iowa S. Ct. Atty. Disc. Bd. v. Morse*, 887 N.W.2d 131, 149-50 (Iowa 2016) (Wiggins, J., dissenting) (citing Allison A. Schmidt, *The Old Man and Rule 8.4(c): A Proposal for the Adoption of Maryland's Misappropriation Rule in Iowa*, 101 Iowa L. Rev. 465, 491–92 (2015)).

Iowa law reviews each case on its own merits. The Iowa approach also values consistency by evaluating precedent in determining a sanction. *Iowa S. Ct. Atty. Disc. Bd. v. Noel*, 933 N.W.2d 190, 205 (Iowa 2019). There is **no** Iowa supporting a suspension for Mr. Akpan. Accordingly, neither the Commission nor the Board has cited any authority in support of a suspension. It is clear that a suspension of any kind is **not** appropriate given the finding of a single violation.

CONCLUSION

There is **no** evidence supporting the allegations made in the Board's Amended Complaint. There is **no** basis to sanction Mr. Akpan. The case should accordingly be **dismissed**.

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
LIMITATION, TYPEFACE
REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS**

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:

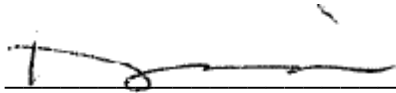
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DAVID L. BROWN

5/05/2020

DATE