

IN THE SUPREME COURT OF IOWA

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NO. 23-0099  
GRIEVANCE COMMISSION NO. 935

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IOWA SUPREME COURT ATTORNEY DISCIPLINARY BOARD,  
Complainant-Appellee,

vs.

DAVID L. LEITNER,  
Respondent-Appellant.

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APPEAL FROM THE GRIEVANCE COMMISSION  
OF THE SUPREME COURT OF IOWA

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APPELLANT'S BRIEF

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DAVID L. BROWN  
Hansen, McClintock & Riley  
Fifth Floor, U.S. Bank Building  
520 Walnut St.  
Des Moines, Iowa 50309  
Telephone: (515) 244-2141  
Facsimile: (515) 244-2931  
E-mail: [dlbrown@hmrlawfirm.com](mailto:dlbrown@hmrlawfirm.com)

ATTORNEYS FOR RESPONDENT-APPELLANT,  
DAVID LEITNER

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## **STATEMENT OF THE ISSUES**

### **I. Was the appropriate sanction imposed against David Leitner?**

*Iowa Supreme Ct. Att’y Disc. Bd. v. Heggan*, No. 22-0376 (Nov. 10, 2022).

*Iowa Supreme Ct. Att’y Disc. Bd. v. Morse*, 887 N.W.2d 131, 144 (Iowa 2016).

*Iowa Supreme Ct Att’y. Disc. Bd. v. Smith*, 904 N.W.2d 154 (Iowa 2017).

**ROUTING STATEMENT**

As this is a matter regarding attorney discipline, it must be retained by the Iowa Supreme Court. Iowa Ct. R. 35.10.

## **STATEMENT OF THE CASE**

This is an attorney ethics case involving the Respondent, David Leitner. The Iowa Supreme Court Attorney Disciplinary Board brought a complaint against David Leitner on March 9, 2022. (App. p. 4) After denial of a motion to dismiss by Leitner, the hearing was limited to the issue of sanction against Leitner. Mr. Leitner categorically denied the charges that were alleged against him and believed he had an agreement with the Ethics Board, for a sanction of a 60-day suspension. (App. p. 122). Had Mr. Leitner been given the opportunity, Mr. Leitner would have put on evidence to refute every allegation that has been deemed admitted. (App. p. 112)

A hearing was held before the 920th Division of the Grievance Commission on October 5, 2022. The Commission issued its Findings of Fact, Conclusions of Law, and Recommendation on January 19, 2023. (App. p. 49) The Findings found David Leitner violated the rules of professional conduct and recommended Leitner's license to practice law be revoked. David Leitner timely filed an appeal of the Commission's findings. (App. p. 57)

## **STATEMENT OF FACTS**

David Leitner is 67 years old. (App. p. 78) He graduated from the University of Iowa Law School in 1979 and was admitted to practice in the same year. (App. pp. 79-80)

At no point did Mr. Leitner attempt to avoid service of process from the Board and, Mr. Leitner was fully co-operative with the Board's investigation. Mr. Leitner fully understood and appreciated the importance of the Board's investigation. (App. pp. 99-100)

Prior to opening his own practice in 1988, Mr. Leitner practiced Child Support Recovery, working for Grinnell Mutual Reinsurance Company, and Allied Insurance. (App. p. 61). Once opening his own practice, Mr. Leitner specialized in criminal defense, personal injury, divorces, general civil litigation, estate planning, and business and tax advice. (App. p. 61).

Mr. Leitner has an extensive pro bono work history, with multiple examples of providing exceptional legal work knowing his clients will not be able to pay for his services. Leitner has consistently provided legal representation to an underserved part of the community. (App. pp. 94-97)

Mr. Leitner's wife died five years ago, and he has two grown children. His daughter and seven-year-old granddaughter live with him. (App. p. 89)



Additionally, Mr. Leitner has two prescriptions for antidepressants. (App. p. 89)

## **ARGUMENT**

### **II. THE FACTS OF THE CASE DO NOT SUPPORT REVOCATION**

Error Preservation: This matter is fully preserved in the Stipulation, Board's Exhibits, Grievance Commission hearing transcript, and the Commission's Findings of Fact, Conclusions of Law and Ruling.

Scope and Standard of Appellate Review: The Court reviews attorney disciplinary proceedings de novo. *Iowa Supreme Court Atty. Disc. Bd. v. Parrish*, 801 N.W.2d 580, 583 (Iowa 2011). The board has the burden of proving an attorney's ethical misconduct by a convincing preponderance of the evidence. *Iowa Supreme Court Atty. Disc. Bd. v. Gailey*, 790 N.W.2d 801, 803 (Iowa 2010). The appropriate discipline in a particular case turns on the nature of the alleged violations, the need for deterrence, protection of the public, maintenance of the reputation of the profession as a whole, and the Respondent's fitness to continue in the practice of law. *Iowa Supreme Court Board of Prof'l Ethics & Conduct v. Freeman*, 603 N.W.2d 600, 603 (Iowa 1999). The commission's findings and recommendations are given respectful

consideration, but [the Court] are not bound by them. *Iowa Supreme Court Atty. Disc. Bd. v. Isaacson*, 750 N.W.2d 104, 106 (Iowa 2008).

There is no standard discipline for a particular type of attorney misconduct. *Iowa Supreme Court Board of Prof'l Ethics & Conduct v. Hohenadel*, 634 N.W.2d 652, 655 (Iowa 2001). The form and extent of any sanction must be tailored to the specific facts and circumstances of each individual case. *Iowa Supreme Court Atty. Disc. Bd. v. Marks*, 759 N.W.2d 328, 332 (Iowa 2009). Heavily considering the particular circumstances of each case. *Iowa Supreme Ct. Att'y Disc. Bd. v. Lynch*, 901 N.W.2d 501, 509 (Iowa 2017) (quoting *Iowa Supreme Ct. Att'y Disc. Bd. v. Willey*, 889 N.W.2d 647, 657 (Iowa 2017)). The Court is, however, concerned with maintaining some degree of consistency throughout disciplinary cases. *Iowa Supreme Court Atty. Disc. Bd. v. Clauss*, 711 N.W.2d 1, 4 (Iowa 2006).

## ARGUMENT

### **A. There is no reasonable basis or support for the most severe sanction.**

The hearing in front of the Grievance Commission was limited to the issue of sanction against David Leitner. The Disciplinary Board did not present any evidence, contrary to the affirmative evidence put on by Leitner. Mr. Leitner categorically denied the charges that were alleged against him and believed he had an agreement with the Ethics Board, for a sanction of a 60-

day suspension. (App. p. 122) Had Mr. Leitner been given the opportunity, he would have put on evidence to refute every allegation that had been deemed admitted. (App. p. 114)

Leitner timely filed a resistance to the exhibits used by the Board. (App. p. 42) The Board objected to Leitner's exhibits producing the email conversation between him and Larry Dempsey. (App. p. 64) These exhibits were taken under advisement by the Panel, before being admitted. (App. p. 49) The probative value of the conversation between Leitner and Dempsey substantially outweighs any undue prejudice and delay or waste of time. Iowa Rule of Evidence 5.408. This is an issue of first impression regarding an ethics case where the ethics prosecutors are trying to prevent the respondent from putting on evidence to defend themselves from losing their license, in support of their position as to what the appropriate sanction should be. (App. p. 72)

The Board must prove each alleged ethical violation by a convincing preponderance of the evidence. *Iowa Sup. Ct. Att'y Disciplinary Bd. v. Rhinehart*, 953 N.W.2d 156, 162 (Iowa 2021). "A convincing preponderance of the evidence lies between the preponderance-of-the-evidence standard in a civil case and the 3 reasonable-doubt standard in a criminal case." *Iowa Sup. Ct. Att'y Disciplinary Bd. v. Noyes*, 936 N.W.2d 440, 442 (Iowa 2019).

In this matter, the sanction to be imposed is simple - a 60-day suspension of Mr. Leitner's license with automatic reinstatement. Larry Dempsey, Assistant Ethics Counsel with the Attorney Disciplinary Board, offered Mr. Leitner this exact suspension. (App. p. 64) Once this offer was proposed, Mr. Leitner timely accepted this sanction. (App. p. 103) This acceptance was made by Mr. Leitner on a phone call between him and Mr. Dempsey. (App. p. 103) Acceptance was never memorialized due to the conduct of Mr. Dempsey. Leitner took the initiative on this phone call to tell Dempsey to send him the paperwork. (App. p. 103) Dempsey never sent Leitner this paperwork. Dempsey never interacted with Leitner in person. Leitner must not be penalized additionally.

Mr. Leitner was fully cooperative with the investigation. Full cooperation with the Board's investigation is a mitigating factor. *Iowa Supreme Ct. Att'y Disc. Bd. v. Heggan*, No. 22-0376 (Nov. 10, 2022). Mr. Leitner was open and offered great assistance during the investigation conducted by Mr. Dempsey, "I was being as honest and open as I could be. I know it's foolish to try and make stuff up or hide things because then you just dig yourself a hole." (App. p. 100) Despite his candor, Mr. Leitner was not afforded the same respect during the investigation, "[Mr. Leitner] had a little difficulty communicating with [Mr. Dempsey] because [Mr. Dempsey] kept

calling [Mr. Leitner] a LIAR... It's difficult to talk to somebody who is going to call you names for no apparent reason." (App. pp. 109-110) This conduct is precluded by the ethics rules, "Iowa Courts strongly disfavor accusations of attorney unethical conduct." *State v. Ernst*, 909 N.W.2d 442 (Iowa 2017) (quoting *State v. Webb*, 244 N.W.2d 332, 333 (Iowa 1976) (particularly when one lawyer undertakes to accuse another of unethical conduct)).

Additionally, Mr. Leitner was a co-operative witness. He respects the authority of the Ethics Board and the severity of their investigation, "I understand the importance of this Board and its function, and there's no reason to avoid them or to dismiss them in any way." (App. p. 111) When testifying to working with the Ethics Board during their investigation Mr. Leitner says he, "[W]as always as cooperative as I could be and as respectful as possible." Co-operation with the Ethics Board is a mitigating factor. *Iowa Supreme Ct. Att'y Disc. Bd. v. Morse*, 887 N.W.2d 131, 144 (Iowa 2016).

Furthermore, Mr. Leitner has already been punished via a fine for violation of the trust account rules, he must not be punished twice for the same violation.

## **B. MITIGATING FACTORS**

Mr. Leitner has an extensive pro bono work history, with multiple examples of providing exceptional legal work knowing his clients will not be

able to pay for his services. Providing legal representation to an underserved part of the community is a significant mitigating factor. *Iowa Supreme Court Atty. Disc. Bd. v. Sobel*, 779 N.W.2d 782 (Iowa 2010); *Iowa Supreme Ct. Att’y Disc. Bd. v. Taylor*, 814 N.W.2d 259, 268 (Iowa 2012). Mr. Leitner also has a lengthy and distinguished record of service to the bar, substantial service to the profession is a mitigating factor. *Iowa Supreme Ct. Att’y Disc. Bd. v. Iversen*, 723 N.W.2d 806, 811 (Iowa 2006).

Mr. Leitner’s health is unenviable, he has had 23 surgeries in the past 25 years. Additionally, Mr. Leitner has two prescriptions for antidepressants. Physical and mental health limitations are considered mitigating factors when determining attorney sanctions. *Iowa Supreme Ct. Atty Disc. Bd. v. Cannon*, 821 N.W.2d 873, 881 (Iowa 2012).

At no point did Mr. Leitner attempt to avoid service of process from the Board and, Mr. Leitner was fully co-operative with the Board’s investigation. Full cooperation with the commission is considered by the Court to be a significant mitigating factor, “Additionally, significant mitigating factors are present here... [Smith cooperated fully with the auditor, the commission, and the Board.” *Iowa Supreme Court Atty. Disc. Bd. v. Smith*, 904 N.W.2d 154 (Iowa 2017). Mr. Leitner fully understood and appreciated the importance of the Board’s investigation.

## **CONCLUSION**

To uphold the public's trust in the Attorney Discipline Board it is essential that they be held to the agreements they make. David Leitner should receive at most, the 60-day suspension with automatic reinstatement as offered by the Board and accepted by him.

## **APPELLANT'S STATEMENT OF DESIRE TO BE HEARD IN ORAL ARGUMENT**

Appellant hereby states his desire to be heard in oral argument pursuant to Iowa Rule of Appellate Procedure 6.21(1).

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME  
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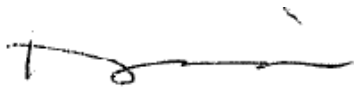
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