

IN THE SUPREME COURT OF IOWA

NO. 23-0099
GRIEVANCE COMMISSION NO. 935

IOWA SUPREME COURT ATTORNEY DISCIPLINARY BOARD,
Complainant-Appellee,

vs.

DAVID L. LEITNER,
Respondent-Appellant.

APPEAL FROM THE GRIEVANCE COMMISSION
OF THE SUPREME COURT OF IOWA

APPELLANT'S REPLY BRIEF

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

ATTORNEYS FOR RESPONDENT-APPELLANT,
DAVID LEITNER

TABLE OF CONTENTS

Contents

TABLE OF AUTHORITIES 3

STATEMENT OF THE ISSUES 4

ARGUMENT 5

I. THE FACTS OF THE CASE DO NOT SUPPORT REVOCATION
.....5

CONCLUSION 7

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION,
TYPEFACE 8

REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS 8

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Iowa Supreme Court Att’y Disc. Bd. v. Nelson</i> , 807 N.W.2d 259 (Iowa 2011).....	5
<i>Iowa Supreme Court Att’y Disc. Bd. v. Engelmann</i> , 840 N.W.2d 156 (Iowa 2013).....	6
<i>Iowa Supreme Ct. Att’y Disc. Bd. v. Heggan</i> , 981 N.W.2d 701 (Iowa 2022).....	6
<i>Iowa Supreme Ct. Att’y Disc. Bd. v. Morse</i> , 887 N.W.2d 131 (Iowa 2016).....	6

STATEMENT OF THE ISSUE

I. Was the appropriate sanction imposed against David Leitner?

Iowa Supreme Ct. Att’y Disc. Bd. v. Heggan, 981 N.W.2d 701 (Iowa 2022).

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

ARGUMENT

I. THE FACTS OF THE CASE DO NOT SUPPORT REVOCATION

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. (App. p. 76)

Again, 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. Had Mr. Leitner been given the opportunity, he would have put on evidence to refute every allegation that had been deemed admitted.

The sanction to be imposed is simple – a 60-day suspension of Mr. Leitner’s license with automatic reinstatement. As was offered to Mr. Leitner by Larry Dempsey, Assistant Ethics Counsel with the Attorney Disciplinary Board.

The Board has misstated the sanction negotiations between Leitner and Dempsey. Leitner orally accepted the offer and asked Dempsey to send the necessary paperwork. Dempsey never did so. Dempsey, on his own accord, simply decided to withdraw the offer after it had been accepted.

The Board cites *Iowa Supreme Court Att’y Disc. Bd. v. Nelson*, as similar precedent. 807 N.W.2d 259 (Iowa 2011) (Appellee’s Proof Brief p. 37). Claiming that Leitner had a clear intent to stop the federal government from collecting thousands of dollars. However, Marvin Mitchell does not owe money to the federal

government. There was no scheme, no effort to avoid creditors. There was absolutely no effort to hide funds from anyone, let alone the federal government.

Furthermore, the Board additionally relies on *Iowa Supreme Court Att’y Disc. Bd. v. Engelmann*, 840 N.W.2d 156 (Iowa 2013) (Appellee’s Proof Brief p. 38). In *Engelmann*, the Court revoked an attorney’s license because he assisted his client in defrauding a financial institution, which also resulted in the attorney being convicted of federal felonies. *Id.* The attorney in that case was convicted of aiding and abetting fraud. *See id.* However, Leitner has never been convicted of, or even charged with any felony in this case.

Additionally, the Board accuses Leitner of untruthful and evasive testimony in front of the Grievance Commission. (Appellee’s Proof Brief p. 42). That claim is outright false. Leitner answered all questions forthright and honestly. *Iowa Supreme Ct. Att’y Disc. Bd. v. Heggan*, 981 N.W.2d 701 (Iowa 2022) (Full co-operation with the Board’s investigation is a mitigating factor); *Iowa Supreme Ct. Att’y Disc. Bd. v. Morse*, 887 N.W.2d 131, 144 (Iowa 2016) (Co-operation with the Ethics Board is a mitigating factor).

A sanction of license revocation does not align with the facts of the case against Leitner.

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.

**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:

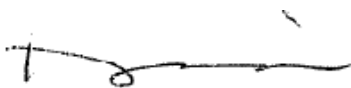
this brief contains [476] words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1) or

this brief uses a monospaced typeface and contains [state the number of] lines of text, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(2).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because:

this brief has been prepared in a proportionally spaced typeface using [Word 2007] in [Times New Roman 14], or

this brief has been prepared in a monospaced typeface using [state name and version of word processing program] with [state number of characters per inch and name of type style].



DAVID L. BROWN

4/5//23

DATE