

IN THE SUPREME COURT OF IOWA

NO. 17-1415
GRIEVANCE COMMISSION NO. 836

IOWA SUPREME COURT ATTORNEY DISCIPLINARY BOARD,
Complainant-Appellee,

vs.

SEAN BARRY,
Respondent-Appellant.

APPEAL FROM THE GRIEVANCE COMMISSION
OF THE SUPREME COURT OF IOWA

APPELLANT'S BRIEF

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STATEMENT OF THE ISSUES

**I. WHAT IS THE APPROPRIATE SANCTION FOR A
VIOLATION OF IOWA RULES OF PROFESSIONAL
CONDUCT?**

Iowa Supreme Court Attorney Disciplinary Bd. v. Liles, 808 N.W.2d 203

(Iowa 2012)

Iowa Supreme Court Attorney Disciplinary Bd. v. Newman, 748 N.W.2d 786

(Iowa 2008)

Iowa Supreme Court Bd. of Prof'l Ethics & Conduct v. Rylaarsdam, 636

N.W.2d 90 (Iowa 2001)

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

The entirety of the record for the above-captioned matter is contained in the parties' joint Stipulation Pursuant to Iowa Court Rule 36.16 and the parties' exhibits submitted before the Commission. The stipulation was accepted by the Grievance Commission panel. Sean Barry ("Sean") self-reported ethical misconduct to the Attorney Discipline Board ("Board") in August 2015. (App. p. 38). The Board filed a complaint for the ethical violations on February 7, 2016 (App. p. 7) and a subsequent substituted and amended complaint on June 5, 2017 (App. p. 17). The parties entered into a Stipulation pursuant to Iowa Ct. R. 36.16. The stipulation contained a Statement of Relevant Facts, Stipulation as to all Exhibits, Statement of Conclusions of Law as to Stipulated Violations, and Statement of Aggravating and Mitigating Circumstances. The parties also waived a formal hearing for this matter. (App. p. 39)

The Grievance Commission entered their Findings of Fact, Conclusions of Law, and Ruling on September 5, 2017 (App. p. 43). Sean appeals the Commission's recommended sanction of an eighteen-month suspension. (App. p. 58) Sean timely files this Appeal Brief.

STATEMENT OF FACTS

The factual record for this matter is contained in the parties' Stipulation and exhibits pursuant to Iowa Court Rule 36.16 filed with the Grievance Commission on June 30, 2017. Sean Barry has been licensed as an attorney in Iowa since April 2008. (App. p. 29) Sean most recently practiced law at Montgomery, Barry, Bovee & Barry in Spencer, Iowa. (App. p. 29)

The allegations of ethical misconduct relate to Sean's representation of Richard Miller and his dissolution of marriage from June Miller. (App. p. 30) Sean prepared a Petition and Stipulation for Dissolution of Marriage which was signed by Richard Miller in May 2014. (App. p. 30) Sean did not file the Petition with the Court. Over the course of a year Sean represented to his client that he had filed the Petition despite failing to do so.

In July 2015, Sean prepared a flawed decree dissolving the marriage of Richard and June Miller. The decree included Judge Patrick Carr's signature, which was copied from another order without Judge Carr's knowledge or authorization. Sean also copied an 'E-Filed' date stamp from another matter on to the dissolution decree. The decree was presented as an authentic document to Richard Miller. (App. p. 33)

On August 7, 2015, Sean self-reported his ethical violations for neglecting a client matter and engaging in conduct involving dishonesty. (App. p. 38) Sean has sought counseling for personal and professional issues related to his depression. (App. p. 60) Sean has also volunteered and worked at an orphanage in Haiti. (App. p. 39)

ARGUMENT

I. AN EIGHTEEN MONTH SUSPENSION IS AN EXCESSIVE SANCTION FOR SEAN'S VIOLATION

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 Attorney Disciplinary Board v. Parrish*, 801 N.W.2d 580, 583 (Iowa 2011). 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).

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 Attorney Disciplinary Board v. Marks*, 759 N.W.2d 328, 332 (Iowa 2009). The Court is, however, concerned with maintaining some degree of consistency throughout disciplinary cases. *Iowa*

Supreme Court Attorney Disciplinary Board v. Clauss, 711 N.W.2d 1, 4 (Iowa 2006).

ARGUMENT

A. An eighteen-month suspension is inconsistent with other attorney discipline opinions issued by the Court.

Sean self-reported his misconduct in neglecting a client matter and flawed a divorce decree in August 2015. He has accepted full responsibility for his actions and makes no excuses for his misconduct. Further, there are several mitigating circumstances in this case, including Sean's self-report of misconduct, continued treatment of his depression, and decision to place his license on inactive status. Under these circumstances an eighteen-month suspension is an excessive sanction and the Court should not be adopted.

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 Bd. of Prof'l Ethics & Conduct v. Freeman*, 603 N.W.2d 600, 603 (Iowa 1999).

There is no standard discipline for a particular type of attorney misconduct. *Iowa Supreme Court Bd. 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. Disciplinary Bd. v. Marks*, 759 N.W.2d 328, 332 (Iowa 2009). The Court is, however, concerned with maintaining some degree of consistency throughout disciplinary cases. *Iowa Supreme Court Attorney Disciplinary Bd. v. Clauss*, 711 N.W.2d 1, 4 (Iowa 2006).

A. Iowa Legal Authority

Prior legal authority issued by the Iowa Supreme Court is instructive regarding sanctions for the present case. While sanctions must be tailored to the specific circumstances of each individual case, prior cases related to neglect of client matters and flawed documents indicate a suspension of thirty days is appropriate. See *Marks*, 759 N.W.2d 328, 332. The following survey of disciplinary cases are informative for determining the appropriate sanction.

Cases involving the forging of court documents have garnered sanctions ranging from a public reprimand to lengthy suspensions. *Iowa Supreme Court Attorney Disciplinary Bd. v. Thompson*, 732 N.W.2d 865, 867–68 (Iowa 2007); *Iowa Supreme Court Attorney Disciplinary Bd. v. Newman*, 748 N.W.2d 786 (Iowa 2008). Additionally, in cases involving

neglect of a client matter, sanctions have ranged from a public reprimand to a six-month suspension. *Iowa Supreme Court Attorney Disciplinary Bd. v. Lickiss*, 786 N.W.2d 860, 868 (Iowa 2010).

In *Newman*, the attorney received a public reprimand for his ethical misconduct. *Newman*, 748 N.W.2d at 789. *Newman* had a wrongful death settlement approved by a judge, but the judge failed to sign the settlement. *Id.* *Newman* returned to his office and noticed the judge had failed to sign the settlement approval. *Id.* *Newman* then forged the judge's signature and filed the documents with the court. The judge noticed that his signature had been forged and reported, along with *Newman*, the ethical misconduct to the Board. *Id.* The Court noted that *Newman* had presented the document to a judge and lacked prior disciplinary history in determining a public reprimand was appropriate.

In *Iowa Supreme Court Attorney Disciplinary Bd. v. Liles*, 808 N.W.2d 203 (Iowa 2012), the attorney received a sixty day suspension from the practice of law. *Liles* forged the signature of a witness in the attestation clause of a will. He then filed the invalid legal document with the court. *Id.* at 206. *Liles'* misconduct was reported to the Board by the witness whose signature had been forged. *Id.* at 205. The Court noted *Liles* had previously received a public reprimand as prior discipline and an aggravating circumstance.

Finally, in *Iowa Supreme Court Bd. of Prof'l Ethics & Conduct v. Rylaarsdam*, 636 N.W.2d 90 (Iowa 2001), the attorney was sanctioned with a six-month suspension for his ethical misconduct. Rylaarsdam prepared a petition to sell the assets of an estate on behalf of the administrators of said estate. *Id.* 91. Rylaarsdam forged the signatures of the administrators. *Id.* Further, Rylaarsdam had failed to close the estate and made several misrepresentations to the administrators that he had done so. *Id.*

In a separate matter, Rylaarsdam was hired to probate an estate. Rylaarsdam entirely failed to open the estate and made several misrepresentations that he had performed work on behalf of the estate. *Id.* in support of his deceitful conduct, Rylaarsdam took a blank letter-of-appointment from the clerk's office and forged the clerk's seal on it. Rylaarsdam did not self-report his misconduct.

While the above cases do contain similarities to the circumstances in Sean's case, they all contain instances where the conduct was more egregious than Sean's conduct. Sean failed to file a petition for dissolution of marriage and made misrepresentations to his client that he had filed the petition. Sean subsequently created a flawed decree of dissolution which contained the forged signature of a judge. See *Rylaarsdam*, 636 N.W.2d at 91; Newman,

748 N.W.2d at 789. However, unlike any of the above cases, Sean took responsibility for his actions and self-reported his own misconduct.

Further, Sean did not file the flawed decree with court. See *Newman*, 748 N.W.2d at 789; *Liles*, 808 N.W.2d at 206. Finally, while Sean has a prior private admonition for ethical misconduct, he has not previously been formerly disciplined by way of public reprimand or suspension. See *Liles*, 808 N.W.2d at 207; *Iowa Supreme Court Attorney Disciplinary Bd. v. Van Ginkel*, 809 N.W.2d 96, 110 (Iowa 2012) (“Private reprimands are not discipline.”).

The appropriate sanction for an attorney is determined by the specific circumstances in each case. While the aforementioned cases provide guidance on the appropriate sanction, they all contain some conduct more egregious than Sean’s. A survey of these cases indicates a thirty-day suspension is the appropriate sanction in the present matter.

B. Mitigating Factors

The Supreme Court will consider mitigating factors when determining the appropriate disciplinary sanction. *Newman*, 748 N.W.2d at 788. There are numerous mitigating factors in the present case. Sean has taken responsibility for his actions by self-reporting his ethical misconduct and cooperating with the Board. Further, Sean has sought treatment for his significant depression in

order to grow in his personal and professional life. Finally, Sean's community service record is a strong mitigating factor.

An attorney's remorse is considered a mitigating factor in determining a sanction. *Iowa Supreme Court Attorney Disciplinary Bd. v. Eslick*, 859 N.W.2d 198, 202 (Iowa 2015). Sean has taken full responsibility for his actions. This is primarily evidenced by his decision to self-report his ethical misconduct to the Board in August 2015. *Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Tofflemire*, 689 N.W.2d 83, 93 (Iowa 2004). His expressed remorse is demonstrated by his actions since the self-report. This should be considered a strong mitigating circumstance.

Sean's efforts in treating his significant depression are also a mitigating factor. *Iowa Supreme Court Bd. of Prof'l Ethics & Conduct v. Grotewold*, 642 N.W.2d 288, 295 (Iowa 2002). When personal problems affect the professional life of an attorney, efforts to correct such problems are considered a mitigating factor. *Id.* Sean has undergone persistent and continuous counseling with Rita Henry. As Sean's counselor, Ms. Henry has stated, "Sean has courageously demonstrated a willingness to face points of pain and struggle . . . Sean has made measurable progress on his journey." (App. p. 60). This was stated as a mitigating factory in the parties' stipulation. (App. p. 39).

Sean's efforts to prevent his personal struggles with depression effect his professional career are a mitigating factor.

Finally, volunteer community service is viewed as a "significant mitigating factor" in determining an appropriate sanction. *Iowa Supreme Court Attorney Disciplinary Board v. Boles*, 808 N.W.2d 431, 442 (Iowa 2012). Sean has spent time in Haiti, selflessly volunteering at orphanage. Sean's volunteer service is a mitigating factor as noted in the parties' stipulation. His charitable contributions are a strong mitigating factor when determining the appropriate sanction.

CONCLUSION

Sean has acknowledged his wrongdoing in handling the Miller dissolution. He has taken responsibility for his misconduct by self-reporting and taking ownership of the situation. Prior legal authority related to the circumstances in this matter, as well as the strong mitigating factors, require a sanction of a thirty-day suspension and the Commission's recommended sanction of an eighteen-month suspension is excessive.

**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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