

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 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

ATTORNEY FOR RESPONDENT-APPELLANT,
SEAN BARRY

TABLE OF CONTENTS

TABLE OF AUTHORITIES 3
STATEMENT OF THE ISSUES 4
ARGUMENT 5
CONCLUSION..... 9
CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
LIMITATION, TYPEFACE 10
REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS 10

TABLE OF AUTHORITIES

Cases

<i>Comm. on Prof'l Ethics & Conduct of the Iowa State Bar Ass'n v. Wenger</i> , 469 N.W.2d 678 (Iowa 1991).....	6
<i>In re Rickabaugh</i> , 661 N.W.2d 130 (Iowa 2003).....	5, 7
<i>Iowa Supreme Court Attorney Disciplinary Bd. v. Liles</i> , 808 N.W.2d 203 (Iowa 2012)	8
<i>Iowa Supreme Court Attorney Disciplinary Bd. v. Newman</i> , 748 N.W.2d 786 (Iowa 2008)	8
<i>Iowa Supreme Court Attorney Disciplinary Bd. v. Thompson</i> , 732 N.W.2d 865 (Iowa 2007)	5, 6
<i>Iowa Supreme Court Attorney Disciplinary Bd. v. Van Ginkel</i> , 809 N.W.2d 96, 110 (Iowa 2012)	6
<i>Iowa Supreme Court Bd. of Prof'l Ethics & Conduct v. Rylaarsdam</i> , 636 N.W.2d 90 (Iowa 2001).....	8
<i>State ex rel. Counsel for Discipline of Nebraska Supreme Court v.</i> <i>Rickabaugh</i> , 647 N.W.2d 641 (2002)	7

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)

ARGUMENT

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

The Commission's recommendation of an eighteen-month suspension is an excessive sanction for the Sean's conduct. It is highly inconsistent with prior disciplinary cases before this Court. *See Iowa Supreme Court Attorney Disciplinary Bd. v. Clauss*, 711 N.W.2d 1, 4 (Iowa 2006) ("We are, of course, concerned with the maintenance of some degree of consistency in our disciplinary cases as far as sanctions are concerned.") A thirty-day suspension is accordingly more appropriate and consistent with prior Iowa Supreme Court disciplinary cases.

The Commission erroneously placed significant emphasis on two authorities in support of their contention that a suspension of eighteen months is warranted. *Iowa Supreme Court Attorney Disciplinary Bd. v. Thompson*, 732 N.W.2d 865 (Iowa 2007); *In re Rickabaugh*, 661 N.W.2d 130 (Iowa 2003). (Findings, p. 9). The emphasis on these two cases is misguided. These cases contain conduct that is more egregious than Sean's. Further, there are numerous distinguishing factors –beyond the ethical misconduct– in *Rickabaugh* that make the case not instructive for this matter.

In *Thompson*, the attorney forged a district court judge's signature on a juvenile delinquency petition, motion for waiver of juvenile court jurisdiction,

and order for hearing on the motion. This was done without the judge's "knowledge or authorization". *Thompson*, 732 N.W.2d at 866.

The *Thompson* case contains conduct that is more egregious than Sean's. First, Thompson filed the forged documents with the clerk of court. *Comm. on Prof'l Ethics & Conduct of the Iowa State Bar Ass'n v. Wenger*, 469 N.W.2d 678, 679 (Iowa 1991) ("Disbarment may be the appropriate sanction when false testimony or false instruments are offered to the committee, the commission, or the court if combined with other serious ethical violations."). Mr. Thompson also arranged to have the documents served on the parties. *Thompson*, 732 N.W.2d at 866. Further, Thompson had a significant history of ethical violations. Before the ethical misconduct involving his forgery, Thompson had received an admonishment, a public reprimand, and a suspension for previous ethical misconduct. *Id.*

Sean never filed his flawed divorce decree with the court. Further, while Sean has previously received a private admonition, he does not have nearly the extensive disciplinary history as Thompson. *Iowa Supreme Court Attorney Disciplinary Bd. v. Van Ginkel*, 809 N.W.2d 96, 110 (Iowa 2012) ("Private reprimands are not discipline.") Thompson's excessive history of ethical violations was considered as an aggravating factor in his case. *Thompson*, 732 N.W.2d at 868. Even with conduct that was more egregious than Sean's

conduct, Thompson received a suspension of nine-months for his conduct. The Commission's recommendation of an eighteen-month suspension - double the length of the suspension found in Thompson- is raucously inconsistent with prior Iowa Supreme Court rulings in disciplinary cases.

The glaring dissimilarities in the *Rickabaugh* matter make the case wholly uninformative as it relates to the Sean's case. *Rickabaugh* concerned a Nebraska attorney that was before the Iowa Supreme Court for reciprocal attorney discipline. *Rickabaugh*, 661 N.W.2d at 130. In fact, Mr. Rickabaugh had been disbarred for his conduct in Nebraska! *State ex rel. Counsel for Discipline of Nebraska Supreme Court v. Rickabaugh*, 647 N.W.2d 641 (2002). Sean Barry's matter does not involve any reciprocal discipline from another state. Sean certainly has never had his license to practice law revoked in any jurisdiction. The procedural and substantive differences alone make the case uninformative for the present matter.

The case also contains conduct that is more egregious. The Iowa Supreme Court noted, "Rickabaugh's disciplinary violations are serious indeed". *Rickabaugh*, 661 N.W.2d at 133. Mr. Rickabaugh undertook a collective bargaining matter he was not competent to handle. The attorney also forged a judge's signature in an effort to convince his client that he had obtained a judgment. Finally, the Iowa Supreme Court did not find any significant

mitigating factors in *Rickabaugh*. There are far too many distinguishing factors between *Rickabaugh* and the present case. The dissimilarities in conduct, procedure, and substantive rulings, make the case uninstructional for the present matter. The Commission's reliance on the case is accordingly misplaced.

As noted in Sean's Appellant Brief, there are many Iowa Supreme Court cases that are instructive for this matter. *Iowa Supreme Court Attorney Disciplinary Bd. v. Newman*, 748 N.W.2d 786 (Iowa 2008) (public reprimand where attorney signed judge's name without prior authorization); *Iowa Supreme Court Attorney Disciplinary Bd. v. Liles*, 808 N.W.2d 203 (Iowa 2012) (sixty-day suspension for attorney who forged witness' signatures, had prior public reprimand) *Iowa Supreme Court Bd. of Prof'l Ethics & Conduct v. Rylaarsdam*, 636 N.W.2d 90 (Iowa 2001) (six-month suspension for attorney who failed to open an estate, forged administrators signatures, forged clerk's seal). All of these cases are more instructive than the cases emphasized by the Commission. In order to maintain consistency across disciplinary matters, this Court should analyze the instructive cases as outlined above.

CONCLUSION

The Commission's recommendation of an eighteen-month suspension is clearly excessive. Further, the Commission's recommendation is founded on their reliance of uninformative cases. 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, suggests a sanction of a thirty-day suspension is appropriate.

**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 [881] 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

11 / 20 / 017

DATE