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THE SUPREME COURT OF THE STATE OF ALASKA

In the Disciplinary Matter Involving JON E. WIEDERHOLT, Respondent. ABA Membership No. 8312172	Supreme Court No. S-5736 ABA File Nos. 1987D126, 1989D067, 1990D087, 1991D059, 1991D075, 1991D223, 1992D073 & 1992D074 O P I N I O N [No. 4102 - July 8, 1994]

Appeal from the Decision of the Board of Governors of the Alaska Bar Association.

Appearances: Mark Woelber, Assistant Bar Counsel, Stephen J. Van Goor, Bar Counsel, Anchorage, for Alaska Bar Association. Robert C. Erwin, Anchorage, for Respondent.

Before: Moore, Chief Justice, Rabinowitz, Matthews, Compton, Justices, and Bryner, Justice, pro tem.*

MATTHEWS, Justice.

I. INTRODUCTION

The Disciplinary Board has recommended that attorney Jon E. Wiederholt be disbarred because, in one case, he filed a

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* Sitting by assignment made pursuant to article IV, section 16 of the Alaska Constitution.

pleading and affidavit stating that his client's judgment had not been satisfied when he knew that the judgment had been satisfied, and, in another case, he forged his client's signature as an endorsement to a check. Having independently reviewed the evidence presented before the Hearing Committee, we agree with the factual findings of the Disciplinary Board, and accept the recommendation that Wiederholt be disbarred.

II. BACKGROUND

Presented to the Hearing Committee were eight grievances. We set them out in tabular form with a brief description of the charges, the recommendation of the Hearing Committee, and the recommendation of the Disciplinary Board.

Grievance	Description	Committee Recomm.	Board Recomm.
1. Cuellar	Improper sexual advances to a client Feb. - March 1987	Reprimand	Dismiss complaint
2. Metcalfe	Unauthorized signature on a check; threats to disclose client confidences, May - June 1987	24-month suspension would be appropriate if conduct were in isolation, but 36-month suspension is appropriate here because of aggravating factors and multiple grievances (reduced to a censure if other grievances warrant disbarment)	Disbarment
3. Satterberg	Profane, abusive and threatening language to opposing counsel, June 8 and 19, 1990	Reprimand	Reprimand

4. Maloney	Kicking opposing counsel, March 6, 1991	3-month suspension (reduced to a censure if other grievances warrant disbarment)	30-day suspension
5. M/V CONST.	Improper delay of discovery and disruptive tactics in defense of a case, July - October 1990 and March 1991	3-month suspension (reduced to a censure if other grievances warrant disbarment)	30-day suspension
6. Taylor	Direct contact by letter with an opposing party after receiving notice that party was represented by an attorney, Dec. 2, 1991	Censure	Censure
7. Johnson	Writing threatening letter to unrepresented claimant on behalf of a client, Nov. 7, 1991	Censure	Censure
8. Nesbett	Filing improper claim on behalf of a client to funds deposited in court and failure to disclose previous execution on judgment by client, July 1990	2-year suspension would be appropriate if conduct were in isolation, but disbarment is appropriate here because of aggravating factors and multiple grievances	Disbarment

This court reviews recommendations concerning attorney discipline made by the Disciplinary Board independently while giving deference to the findings of the Board. In re Frost, 863 P.2d 843, 844 (Alaska 1993); see also Alaska Bar R. 22(n), (r). On questions of law and questions concerning the appropriateness of sanctions, this court also exercises its independent judgment. Id. at 844.

III. DISCUSSION

A. Consolidation

The first contention made by Wiederholt is that the eight grievances presented to the Hearing Committee should not have been consolidated in a single hearing. He argues that his right to procedural due process was violated because consolidation prevented the Hearing Committee from evaluating each grievance separately on the merits. We reject these arguments.

Consolidation of grievances against an attorney is a routine practice in Alaska. See In re Clower, Supreme Court Case No. S-2463, Order of March 17, 1988; In re Triem, Supreme Court Case No. S-1066, Order of August 1, 1985; In re Simpson, 645 P.2d 1223 (Alaska 1982); In re McNabb, 395 P.2d 847 (Alaska 1964). Consolidation has also been routinely permitted in other states. Florida Bar v. Shapiro, 413 So. 2d 1184 (Fla. 1982); In re Crumpacker, 383 N.E.2d 36 (Ind. 1978); Board of Overseers of the Bar v. Murphy, 570 A.2d 1212 (Me. 1990); Office of Disciplinary Counsel v. Campbell, 345 A.2d 616 (Pa. 1975). Although there is some danger that multiple grievances will unduly affect a Hearing Committee's perception of a respondent's credibility, this danger is minimized by the de novo review of the record conducted by the Disciplinary Board and by this court. Consolidated hearings, on the other hand, are often more expeditious than separate hearings on separate grievances, and the total time spent in a consolidated hearing will usually be less than in separate hearings. The latter is a consideration of some importance given that the Hearing Committee and Disciplinary Board members are volunteers who are not compensated for their services.

B. The Nesbett Grievance

Wiederholt's second argument is that the Disciplinary Board's recommendation of disbarment in the Nesbett grievance (set out in Appendix A) is based on an error of law. Wiederholt argues that a judgment creditor who bids in the entire amount of his judgment at an execution sale and is issued a bill of sale still has an unsatisfied judgment "unless the party holding the judgment gets something of value." This position is legally wrong. To the extent that an offset bid is made and accepted at a foreclosure sale, it reduces the amount of the judgment by the amount of the bid. Fireman's Fund Mortg. Corp. v. Allstate Ins. Co., 838 P.2d 790, 796 (Alaska 1992); Hull v. Alaska Fed. Sav. & Loan Ass'n, 658 P.2d 122, 124 (Alaska 1983). Where the offset is of the entire judgment, the judgment amount is reduced to zero and is therefore satisfied. Fireman's Fund at 795 (citations omitted).

Wiederholt cites authority to the effect that an offset bid on an execution sale which is void is itself void, A.D.A. Mechanical Services, Inc. v. Goehring, 707 P.2d 1034, 1035 (Colo. App. 1985), and that satisfactions of judgment can under certain circumstances be set aside by motion of the judgment creditor. E.g., W.F. Connelly Constr. Co. v. L. Harvey Concrete Co., 785 P.2d

94, 97 (Ariz. App. 1989). Wiederholt does not demonstrate, however, how these rules apply to his conduct. He does not argue that the execution sale was void, only that his client received no value as a result of the sale. Further, he does not contend that he made a motion to set aside the satisfaction resulting from the execution sale.

The essence of the Disciplinary Board's recommendation concerning the Nesbett complaint is that Wiederholt intentionally sought to mislead the court and the other parties of the litigation into believing that no execution sale had ever occurred. This conclusion is valid factually and is not based on an erroneous legal premise.

C. <u>The Metcalfe Grievance</u>

Wiederholt's third argument is that the finding of the Disciplinary Board that Wiederholt "essentially forged" his client's, Metcalfe's, name to the check jointly made out to them was error. (This finding of the Disciplinary Board is set out in Appendix B.) Wiederholt contends that the term "forgery" is a term of art under criminal law which requires an intent to defraud which was neither charged nor proven. We conclude that fraud was both charged and proven.

Paragraph 34 of the Metcalfe grievance alleged after setting forth, among other things, the unauthorized endorsement by Wiederholt of Metcalfe's name, that Wiederholt had "by his conduct toward Ray Metcalfe as set out above . . . violated DR 1-102(A)(4), which provides that a lawyer shall not engage in conduct involving deceit, dishonesty, fraud, or misrepresentation." (Emphasis supplied.) With respect to proof of fraud, Wiederholt argues that the finding of the Disciplinary Board that he endorsed Metcalfe's name in an effort to gain an advantage over Metcalfe in their fee dispute "falls far short of a finding of fraud . . . ." We disagree. In terms of the crime of forgery, intent to defraud is an intent to engage in deceptive conduct for the purpose of gaining a material advantage over another person. See Morrison v. State, 469 P.2d 125, 125 (Alaska 1970); see also Alaska Criminal Pattern Jury Instruction 46.990(10). The Board's conclusion that Wiederholt was guilty of forgery is accurate.

D. Johnson and Taylor grievances

Wiederholt's fourth and fifth contentions relate to the Johnson and Taylor grievances respectively. Since we conclude that the remedy of disbarment is appropriate based on the Nesbett and Metcalfe grievances, considered together and in connection with the Maloney and M/V CONSTRUCTOR grievances,[1] these contentions are moot.

E. Sanctions

Wiederholt's final contention is that disbarment is inappropriate in this case in light of other cases having certain similarities. The cases are In re West, 805 P.2d 351, 360 (Alaska 1991) (attorney counselled client to sign her deceased husband's name on release and notarized the release knowing the signature was

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[1] Wiederholt has not disputed the Board's action in the Maloney and M/V CONSTRUCTOR matters.

false -- 90-day suspension); In re Schuler, 818 P.2d 138 (Alaska 1991) (two-year suspension where lawyer shoplifted a number of cassette tapes); In re Buckalew, 731 P.2d 48 (Alaska 1986) (lawyer who embezzled $67,000 from trust accounts to cover up prior malpractice disbarred); In re Walton, 676 P.2d 1078 (Alaska 1983) (eighteen-month suspension where attorney fabricated a document which he attached to a complaint); In re Stump, 621 P.2d 263 (Alaska 1980) (five-year suspension where attorney falsified evidence and lied about it under oath). Wiederholt argues that his conduct "does not reach the type of deliberate dishonesty found in Buckalew, Walton or Stump," and therefore, disbarment is an inappropriate remedy.

We do not accept this argument for a number of reasons. First, comparison with Buckalew is not useful, as Buckalew was disbarred. Second, neither Walton nor Stump involved multiple serious grievances as this case does. Third, sanctions in other cases can be no more than indicators of appropriate sanctions in a given case because of inevitable factual differences concerning not only the offense but the offender. In re Minor, 658 P.2d 781, 784 (Alaska 1983); Buckalew, 731 P.2d at 57, nn.10 & 11 (setting out factors to be considered by a court imposing sanctions). Fourth, Walton and Stump were both decided before we instituted our present practice of using the American Bar Association Standards for Discipline as guidelines in determining appropriate sanctions.

The Disciplinary Board adopted in part and modified in part the Hearing Committee's findings and recommendations on sanctions concerning the Metcalfe complaint and the Nesbett complaint. We find that the Disciplinary Board's findings and recommendations are appropriate and we adopt them as reflective of our decision in this case. They are set out in Appendix C with an explanatory note.

IV. CONCLUSION

For these reasons, the respondent is ordered disbarred.