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Professional Responsibility

Michael Couick

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PROFESSIONAL RESPONSIBILITY

I. DISCIPLINE FOR ATTORNEY MISCONDUCT

In three recent disciplinary proceedings, *In re Belser*,¹ *In re Holman*,² and *In re Treacy*,³ the South Carolina Supreme Court reaffirmed its intolerance of attorney misconduct and reasserted its authority to mete out sanctions against attorneys unrestricted by the recommendations of the Hearing Panel and Executive Committee of the Board of Commissioners on Grievances and Discipline.⁴ *Holman* involved charges of misconduct stemming from the attorney's conviction for contempt of court.⁵ *Belser* and *Treacy* involved inadequate preparation and case neglect. Specifically, *Belser* was charged with violations of Disciplinary Rule (DR) 6-101(A)(2) and (3), and *Treacy* was charged with violations of DR 6-101(A)(3).⁶

The action against *Holman*, grounded in sections 5B, 5C and 6 of the Rule on Disciplinary Procedure,⁷ arose from his conviction for contempt of court for communicating with a venireman. The supreme court found that *Holman's* communication with a prospective juror fell within the "definition of a

1. 277 S.C. 250, 287 S.E.2d 139 (1982).

2. 277 S.C. 293, 286 S.E.2d 148 (1982).

3. 277 S.C. 514, 290 S.E.2d 240 (1982).

4. The leading case on this issue is *Burns v. Clayton*, 237 S.C. 316, 117 S.E.2d 300 (1960), where the supreme court held that its review of reports of the Board of Commissioners on Grievances and Discipline is not a criminal proceeding nor an appeal from the judgment of an inferior court. The court found that the Board's report is advisory only and that it was not bound to accept the Board's findings of fact nor concur in its recommended sanction. 237 S.C. at 331, 339, 117 S.E.2d at 307, 311-12.

5. Brief for Complainant at 2.

6. South Carolina adopted the MODEL CODE OF PROFESSIONAL RESPONSIBILITY effective January 1, 1970. S.C. SUP. CT. R. 32, DR 6-101(A)(Supp. 1981). DR 6-101(A) provides:

(A) A Lawyer shall not:

(1) Handle a legal matter which he knows or should know that he is not competent to handle, without associating with him a lawyer who is competent to handle it.

(2) Handle a legal matter without preparation adequate in the circumstances.

(3) Neglect a legal matter entrusted to him.

7. S.C. SUP. CT. R. Disc. P., §§ 5B, 5C, 6 (Supp. 1981).

'serious crime' " as contained in paragraph 2(N) of the Rule on Disciplinary Procedure,⁸ and held that disbarment was the appropriate sanction. In so holding, the court refused to adopt the unanimous recommendation of the Hearing Panel and Executive Committee⁹ for an indefinite suspension of the respondent's right to practice.¹⁰

Holman emphasizes the court's aggressive stance in cases involving misconduct during the judicial process. As the court noted in *Burns v. Clayton*,¹¹ subornation of perjury, tampering with witnesses or any other means of deceiving a court through fraudulent devices are instances of gross misconduct which result in the obstruction of justice and therefore warrant disbarment.¹² The court's rejection, without dissent, of the Panel and Committee's recommendation demonstrates that when an attorney's misconduct is so egregious as to obstruct the judicial process, the court will impose only the severest punishment.

The action against Belser arose out of a foreclosure action in which the respondent represented one of the defendants. A continuance in the action was granted because Belser erroneously believed that he had to appear before the supreme court on the original date set for the hearing, but Belser failed to ap-

8. 277 S.C. at 294, 286 S.E.2d at 149.

9. The Board of Commissioners on Grievances and Discipline is appointed by the South Carolina Supreme Court and consists of members of the bar from each judicial circuit, equal to the number of circuit judges in each respective circuit. S.C. Sup. Ct. R. Disc. P. § 3(a)(Supp. 1981). The court then designates one member to serve as Chairman of the Board. *Id.* at § 3(b). Of the remaining members, the Chairman recommends and the supreme court appoints four members who with the Chairman comprise the Executive Committee. *Id.* at § 4(A). The Hearing Panel consists of three non-Executive Committee members of the Board, chosen by the Chairman to hear complaints. *Id.* at § 2(G).

10. 277 S.C. at 294, 286 S.E.2d at 149.

11. 237 S.C. 316, 117 S.E.2d 300 (1960).

12. *Id.*, at 334 S.E.2d at 309. Although the court in *Burns* made a finding of "serious misconduct," it refused to disbar respondent, citing the recent enactment of the Rules on Disciplinary Procedure. The court in subsequent cases has used disbarment in similar situations. *See In re Caskey*, 276 S.C. 410, 279 S.E.2d 129 (1981); *In re Rish*, 273 S.C. 365, 256 S.E.2d 540 (1979); *In re Van Winter*, 273 S.C. 156, 255 S.E.2d 347 (1979). Similar measures have also been used in other jurisdictions. *See People v. Petrie*, 642 P.2d 519 (Colo. 1982)(Colorado attorney's conviction for felony theft warranted suspension for one year); *Attorney Grievance Commission of Maryland v. Spector*, 443 A.2d 965 (Md. 1982)(conviction for bribery resulted in disbarment); *In re Scacchetti*, 449 N.Y.S.2d 106 (1982)(disbarment for conviction of interference with commerce by extortion); *In re Fortun*, 97 Wash. 2d 240, 643 P.2d 447 (1982)(growing and processing of large quantity of marijuana was sufficient for disbarment).

pear at the subsequent hearing. Belser then made false statements in his exceptions to the Master's findings and failed to serve those exceptions on opposing counsel. Belser abandoned these exceptions after opposing counsel informed him of their falsity.¹³

The Panel found that Belser had not knowingly made false statements in his exceptions, that he did not intentionally fail to serve opposing counsel with the exceptions, and that he had abandoned his exceptions in a timely manner during his appearance before the circuit court.¹⁴ The Committee unanimously adopted the Panel's recommendation that the complaint be dismissed and a letter of caution be issued requiring Belser to familiarize himself with the Rules of Practice of the Circuit Courts of South Carolina.¹⁵

The supreme court, Justices Harwell and Gregory dissenting, rejected the recommendation of the Panel and Committee and held that Belser should be publicly reprimanded. The court found that the attorney's lack of knowledge of the rules of practice in South Carolina courts warranted such censure.¹⁶ In disapproving the Committee's suggestion that a letter of caution be issued, the court noted that there were only four permissible sanctions: disbarment, indefinite suspension, public reprimand, and private reprimand.¹⁷

The action against Treacy arose from his negligent handling of a foreclosure action. Treacy was paid a fee of \$500.00 to recover excessive sums paid by his client to the mortgagor. The respondent did not take any action to recover the money nor did he return any of the fee paid to him by his client.¹⁸

In rejecting the Panel and Committee's recommendation that a public reprimand be issued, the supreme court emphasized Treacy's refusal to cooperate with the Board of Commissioners on Grievances and Discipline in the investigation of the complaint. Specifically, Treacy did not respond to four separate attempts by the Board to investigate the incident.¹⁹ He eventu-

13. 277 S.C. at 251, 287 S.E.2d at 139.

14. Brief for Complainant at 1.

15. *Id.* at 12.

16. 277 S.C. at 251, 287 S.E.2d at 139.

17. *Id.*, 287 S.E.2d at 139.

18. *Id.* at 514-15, 290 S.E.2d at 240-41.

19. *Id.* at 516-17, 290 S.E.2d at 240-41.

ally supplied information to the Board, but it was wholly inadequate. When additional documentation was requested he failed to provide it.²⁰ The respondent also failed to appear before the supreme court at the designated time and place and filed an excuse with the clerk of court after the hearing had been held. The supreme court, Justice Harwell dissenting, indefinitely suspended Treacy from the practice of law.²¹

Belser and *Treacy* are important to practicing attorneys in South Carolina for several reasons.²² First, the court in *Belser* refused to recognize the use of a letter of caution. Second, *Treacy* alerts practitioners to the court's continued intolerance of attorney conduct which is contrary to the fiduciary nature of the attorney-client relationship. Finally, the complainant's briefs for *Belser*, *Treacy*, and *Holman* emphasize the cooperative roles of the Panel, Committee, and Attorney General's office. Of note is the aggressive role the Attorney General has taken to bolster respect for the disciplinary system. Relying upon the supreme court's ability to deliver sanctions which are independent of the Committee's recommendation, the Attorney General, as complainant, has vigorously prosecuted violators of the procedural as well as the substantive content of the rules.

For its part, the South Carolina Supreme Court in *Belser*, *Holman*, and *Treacy* has demonstrated a marked intolerance of attorney misconduct. These decisions clearly indicate that the court will not be bound by the recommendations of the Hearing Panel and Executive Committee, but will impose such sanctions as it deems appropriate.

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20. Brief for Complainant at 5.

21. 277 S.C. at 518, 290 S.E.2d at 242.

22. For other jurisdictions' treatment of similar charges, see *Walker v. Supreme Court of Arkansas Committee on Professional Conduct*, 628 S.W.2d 552 (Ark. 1982) (neglectful conduct regarding interests of client warranted letter of caution); *Attorney Grievance Commission of Maryland v. Heinze*, 442 A.2d 570 (Md. 1982) (public censure issued for failure to adequately pursue client's claim); *In re Loew*, 642 P.2d 1171 (Or. 1981) (neglect of entrusted legal matter and misrepresentation to client concerning status of case resulted in 30-day suspension).