In re Disciplinary Proceeding Against Sanai (*Fredric*)

No. 200,578-1

CHAMBERS, J. (dissenting) — As then-Judge Benjamin N. Cardozo observed:

> "Membership in the bar is a privilege burdened with conditions." The appellant was received into that ancient fellowship for something more than private gain. He became an officer of the court, and, like the court itself, an instrument or agency to advance the ends of justice. His co-operation with the court was due whenever justice would be imperilled if co-operation was withheld.

People ex rel. Karlin v. Culkin, 248 N.Y. 465, 470-71, 162 N.E. 487 (1928) (quoting *In re Rouss,* 221 N.Y. 81, 84, 116 N.E. 782 (1917)). Fredric Sanai has egregiously failed to act as an officer of the court. Despite repeated sanctions, he has not improved his conduct. He does not deny this; he has not even attempted to challenge the hearing examiner's extensive findings of fact or conclusions of law on his misdeeds, making them verities on appeal. *See In re Disciplinary Proceeding Against Carmick*, 146 Wn.2d 582, 594, 48 P.3d 311 (2002) (citing *In re Disciplinary Proceeding Against Curran*, 115 Wn.2d 747, 759, 801 P.2d 962 (1990)). Instead, he attempts to undercut the legitimacy of the process itself. Because he has not shown that the hearing examiner abused his discretion by denying yet another continuance, by denying admission of Fredric's brother and

confederate pro hac vice, by declining to allow judges to be subpoenaed, and by refusing to order the Washington State Bar Association to admit that judges who ruled against him were corrupt, I respectfully dissent.

Viewed in isolation, I would have sympathy for Fredric's plea that his health prevented his appearance at his disciplinary proceeding and that he should be given another chance. Viewed in context, the hearing officer was fully justified in denying another frivolous motion brought only for the purpose of delay. This was Fredric's third request for a continuance on a hearing that had already been delayed two years. Fredric's attempt to delay was not limited to his own discipline case; the record (which the hearing examiner was well aware of when he denied the motion for a continuance) establishes a long standing pattern of delay through myriad tactics, including the filing of frivolous motions for reconsideration and appeal, failing to properly serve documents, refusing to appear for depositions, refusing to produce documents pursuant to orders, and numerous other excuses for his or his client's failure to comply with rules and orders of the courts. These excuses have included automobile collisions, office moves, press of existing motions, a sick mother, and the birth of a child.

Any one of these excuses might deserve judicial sympathy. But Fredric has an unprecedented record of engaging in abusive and vexatious practices by filing baseless lawsuits and endless motions and appeals (often in direct violation of court orders) in courts up and down the West Coast. As summed up by Judge Thomas S. Zilly of the United States District Court for the Western District of Washington at

Seattle:

> Plaintiffs' conduct in this litigation has been an indescribable abuse of legal process, unlike anything this Judge has experienced in more than 17 years on the bench and 26 years in private practice: outrageous, disrespectful, and in bad faith. Plaintiffs have employed the most abusive and obstructive litigation tactics this Court has ever encountered, all of which are directed at events and persons surrounding the divorce of Sassan and Viveca Sanai, including parties, lawyers, and even judges. Plaintiffs have filed scores of frivolous pleadings, forcing baseless and expensive litigation. The docket in this case approaches 700 filings, a testament to the Plaintiffs' dogged pursuit of a divorce long past.

Ex. 252, at 2 (footnotes omitted); Findings of Fact (FOF) 141. Judge Zilly's comments are echoed by Los Angeles County Superior Court Judge Elizabeth A. Grimes:

> "Plaintiff has proliferated needless, baseless pleadings that now occupy about 15 volumes of Superior Court files, not to mention the numerous briefs submitted in the course of the forays into the Court of Appeals and attempts to get before the Supreme Court, and not one pleading appears to have had substantial merit. The genesis of this lawsuit, and the unwarranted grief and expense it has spawned, are an outrage."

Id. at 2 n.1 (quoting *Sanai v. U.D. Registry, Inc.,* No. BC235671, 2005 WL 361327, at *15 n.36 (L.A. County Super. Ct. Feb. 16, 2005)). This extraordinarily sad abuse of our judicial system, unprecedented in the annals of the Washington State Bar Association, appears to be precipitated by Fredric's misguided attempt to assist this mother, Viveca Sanai, against his father, Sassan Sanai.

Fredric obtained his license to practice law in Washington so that he could represent his mother. His brother, Cyrus Sanai, is also a lawyer and has also

represented Viveca. While only Fredric's conduct is before us, Fredric and Cyrus have often worked together even when instructed not to do so. As Judge Joseph A. Thibodeau of the Snohomish County Superior Court observed, "although Cyrus and Fred[]ric have never been permitted to be part of this particular case, and that ruling has been upheld in a number of appellate courts, that they're, in essence, acting in concert with each other." Ex. 62, at 16; FOF 70. In an unchallenged finding of fact, the hearing examiner noted that Judge Thibodeau found that Fredric and his brother Cyrus were acting in bad faith.

Fredric argues that he was denied counsel because the hearing examiner would not allow his brother Cyrus to appear pro hac vice. A motion for pro hac vice admission should be granted only upon "(1) reasonable assurance that the attorney is competent and will conduct himself in an ethical and respectful manner in the trial of the case, and (2) reasonable assurance that local rules of practice and procedure will be followed." *Hahn v. Boeing Co*., 95 Wn.2d 28, 34, 621 P.2d 1263 (1980). The record amply justifies the hearing examiner's conclusion that neither concern was satisfied.

While it is not before us, as he has not challenged the hearing examiner's findings and conclusions, the record amply supports disbarment. Much of Fredric's misconduct appears to arise from his efforts to frustrate the distribution and sale of property pursuant to his parents' divorce. He has attempted to frustrate postdissolution proceedings by intentionally and willfully violating rules and court orders resulting in an astounding number of sanctions. In an attempt to prevent the

sale of a lot formerly owned by his parents, Fredric repeatedly filed baseless lis pendens in successive lawsuits in different counties. On June 13, 2001, Judge Thibodeau found that Viveca's conduct was intended to delay and frustrate the court's ruling. He imposed a $10,000 sanction against Viveca for attorney fees. He then imposed $1,000 in terms against Viveca for Fredric having brought a frivolous protective order and sanctions motion. On August 11, 2003, Judge Thibodeau held Viveca in contempt and imposed $5,000 in sanctions for continuing to obstruct the vacant lot sale and for forum shopping by filing an identical lawsuit in King County Superior Court. Although the contempt order was against Viveca, it was Fredric who signed and filed the King County case. On October 1, 2003, Judge Zilly imposed a $3,400 attorney fee sanction against Fredric and Viveca, as well as $2,500 in sanctions to be paid to the court for violating that court's order regarding the filing of lis pendens. This is in addition to $2,500 in fees Judge Thibodeau had assessed against Viveca for pleadings filed by Fredric the previous year.

There was also litigation over the family home once owned by Sassan and Viveca. On December 16, 2003, Snohomish County Superior Court Judge Thomas J. Wynne sanctioned Fredric and Viveca jointly and severally $13,071.22 in attorney fees and $2,500 to the court for forum shopping.

In the meantime, Fredric proceeded to represent Viveca in appeal of the main dissolution. The Court of Appeals stating, "Viveca brought numerous motions before this court that were inappropriate, untimely, and unduly repetitive," sanctioned Viveca $10,000. *Sanai v. Sanai*, noted at 119 Wn. App. 1053, 2003 WL

22995693, at *7. Fredric, on behalf of Viveca, continued to file numerous frivolous motions on appeal from the dissolution in the state supreme court resulting in this court imposing $1,000 in sanctions against Fredric and Viveca jointly and severally on September 5, 2003, and again, on November 5, 2004, sanctioned Viveca $4,000 for Fredric's frivolous filings and delays.

On behalf of Viveca and others, Fredric and Cyrus filed multiple complaints alleging wiretap violations by Sassan in state and federal courts in Washington and California. All of these claims were dismissed as baseless. In the wiretap claims they sought over $9 million in damages and, based upon that claim for damages, attempted to get prejudgment injunctive relief to enjoin the sale of the very same property upon which they had been filing baseless lis pendens. Judge Zilly, among other things, observed that "Fredric Sanai's failure to properly serve the subpoena was willful and in bad faith" and noted that the plaintiffs had, amongst them, already been sanctioned around $130,000 in both federal and state courts. Ex. 252 at 5, 14. Judge Zilly stated, "[h]owever, Plaintiffs persist in their misconduct. Plaintiffs' conduct shows that they will not respond to sanctions. Clearly no other sanction the Court might impose, except dismissal itself, would be effective in remedying this misconduct." Ex. 252, at 14. On November 4, 2005, the case was dismissed and Viveca and Fredric were sanctioned a total of $273,437.

In another unchallenged finding of fact, the discipline board found that Fredric and Cyrus (among others) sued their father in federal and state courts for allegedly wiretapping their calls. Initially, they asked for $1 million in damages;

that ballooned to $16 million after the case had been dismissed or transferred multiple times. Fredric and Cyrus used that suit as a basis to file lis pendens on their father's property, even after being told in no uncertain terms by Judge Zilly that they were not to do so. FOF 103 ("'Each of the plaintiffs herein shall cease and desist from taking any further action whatsoever to delay or obstruct the sale of the aforesaid real property.'" (quoting Ex. 207)). Merely five days later, Fredric filed another lis pendens. In ordering contempt sanctions, Judge Zilly wrote that Fredric and Cyrus "'have made a mockery and are making a mockery of the legal system.'" FOF 109 (quoting Ex. 218, at 16).

Finally, in a federal Employee Retirement Income Act of 1974 (ERISA), 29 U.S.C. §§ 1001-1461, claim in federal court, Fredric, among others, on March 21, 2007, was sanctioned $14,041.50 in attorney fees payable to Ms. Mary McCullough. Judge Zilly explained, "[p]laintiffs' purpose in bringing the ERISA claims in this Court was to prolong the state court divorce proceedings in a different forum, and to punish and harass Ms. McCullough for her assistance of Defendant Sassan Sanai. Plaintiffs brought the ERISA claims in bad faith, without any reasonable basis in law or fact." Ex. 272A at 6.

Not only was Fredric's behavior properly sanctionable, it was a violation of RPC 3.1 (frivolous filings), RPC 3.2 (delaying litigation), RPC 4.4 (embarrassing or burdening another), RPC 8.4(a) (using another to violate the RPCs), and RPC 8.4(d) (conduct prejudicial to the administration of justice) among other canons of professional conduct. "Disbarment is generally appropriate when a lawyer

knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and cause[s] serious or potentially serious injury to a client, the public, or the legal system." ABA, Standards for Imposing Lawyer Sanctions std. 7.1 (1991 & Supp. 1992). Beyond a doubt, Fredric acted knowingly. There are many aggravating factors and no mitigating ones. Disbarment is appropriate.

The hearing officer was well within his discretion to refuse the continuance and to refuse to allow Fredric's brother pro hac vice status. Nor does Fredric have any cognizable right to subpoena judges to explain their reasoning or to demand that the Washington State Bar Association admit that judges are corrupt. I would disbar.

AUTHOR:
Justice Tom Chambers

WE CONCUR:

Justice Charles W. Johnson

Justice Mary E. Fairhurst

Justice James M. Johnson