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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

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Edward E. May

v.

Alabama State Bar

Appeal from the Disciplinary Board of the Alabama State Bar
(ASB-18-903)

MITCHELL, Justice.

Edward E. May appeals from a decision of the Disciplinary Board of the Alabama State Bar ("the Board") disbarring him. We affirm.

Facts and Procedural History

May was admitted to the Alabama State Bar ("the Bar") on September 26, 1980. On August 14, 2014, he entered a guilty plea with the Bar for failure to employ proper trust-accounting procedures in violation of the Alabama Rules of Professional Conduct, and he was suspended from the practice of law. That suspension was put in abeyance for a probationary period (initially two years, but extended to four following two interim violations) scheduled to end on August 13, 2018. On April 4, 2018, after he violated the terms of the probationary period for a third time, the Board revoked May's probation and suspended him from the practice of law for 91 days. May did not request reinstatement after the suspension expired on July 4, 2018, and thus remained suspended from practicing law.

While he was suspended, May represented parties in two separate legal matters between May and August 2018. Although May did not request compensation for his work in either matter, he also did not disclose to the parties he represented or to opposing parties that he had been suspended from the practice of law.

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First, May represented his personal doctor before the Alabama State Board of Medical Examiners with respect to a medical-licensing issue. As part of that representation, May identified himself as the attorney of record, submitted documents falsely stating he was authorized to represent his doctor, appeared at more than one proceeding, entered into binding stipulations, and ultimately agreed to a binding legal agreement on behalf of his doctor.

Second, May attended the sworn examination of a suspect being questioned under oath by an insurance company about an alleged arson. The suspect was represented at the time by May's son, who was also an attorney. May objected on behalf of his son's client throughout the proceeding, and his son's client testified during the examination that May had represented him in a criminal matter on a previous date while May was suspended.

On January 3, 2019, the Bar filed charges against May for violating Rule 5.5 (Unauthorized Practice of Law) and Rules 8.4(d) and (g) (Misconduct) of the Alabama Rules of Professional Conduct. On April 10, 2019, May appeared pro se at a hearing before the Board. At the hearing, May admitted

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that he had falsely represented that he was an authorized attorney, though he also stated his belief that neither individual he represented while suspended thought he was their legal counsel. Based on his admissions and the evidence presented by the Bar, the Board found May guilty of violating Rules 5.5, 8.4(d), and 8.4(g).

The Bar then asked the Board to disbar May in accordance with the guidelines in Standards 6.11 and 8.1 of the Alabama Standards for Imposing Lawyer Discipline. In imposing the appropriate discipline for May, the Board considered aggravating and mitigating factors, as required by Standard 3.0(d). The Board found five of the aggravating factors listed in Standard 9.22: (a) prior disciplinary history; (b) dishonest or selfish motive; (c) a pattern of misconduct; (d) multiple offenses; and (i) substantial experience in the practice of law. The Board also found two of the mitigating factors listed in Standard 9.32: (b) an absence of a dishonest or selfish motive and (1) remorse. Based on the disciplinary guidelines and the findings of aggravating and mitigating factors, the Board issued a Report and Order on April 11, 2019, disbarring May. May appealed.

Standard of Review

In reviewing a disciplinary order of the Board, this Court "will presume that the Board's decision on the facts is correct; and the disciplinary order will be affirmed unless the decision on the facts is unsupported by clear and convincing evidence, or the order misapplies the law to the facts." Hunt v. Disciplinary Bd. of the Alabama State Bar, 381 So. 2d 52, 54 (Ala. 1980). All legal conclusions by the Board, however, are reviewed de novo. Tipler v. Alabama State Bar, 866 So. 2d 1126, 1137 (Ala. 2003).

Analysis

May contends that the Board erred in disbaring him because, he says, his violations of the suspension order did not cause an injury to a client and because, he says, the Board should have considered additional mitigating factors. We reject those arguments.

In disbaring May, the Board relied on the guidelines provided in Standards 6.11 and 8.1(a) of the Alabama Standards for Imposing Lawyer Discipline. We need not discuss the Board's reliance on Standard 6.11 because we hold that the

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Board's disbarment order was supported by Standard 8.1(a), which states:

"Disbarment is generally appropriate when a lawyer:

"(a) Intentionally or knowingly violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession"

May does not dispute that his actions violated the order of suspension. Instead, he argues that he is not subject to disbarment because, he says, his actions did not cause injury to his clients. Under Standard 8.1(a), the Board was required to find that May's violations caused an injury or a potential injury to disbar him. The first sentence of the definition of "injury" in the Alabama Standards for Imposing Lawyer Discipline tracks the language of Standard 8.1(a), defining "injury" as "harm to a client, the public, the legal system, or the profession that results from a lawyer's misconduct." The second sentence of the definition discusses the level of injury and states that "a reference to 'injury' alone indicates any level of injury greater than 'little or no' injury." Standards, § II, Definitions. Although the Bar did not attempt to prove that May's violations directly caused an

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injury to a client, it argued that May's violations injured the public and the legal system, to which he owed ethical duties under the Alabama Standards for Imposing Lawyer Discipline. Those ethical duties require every lawyer to "exhibit the highest standards of honesty and integrity" and "to not engage in conduct involving dishonesty, fraud or interference with the administration of justice." Standards, § I, Ethical Duties. A lawyer also owes an ethical duty to the legal system to "operat[e] within the bounds of the law." Id. We agree with the Bar. By participating in more than one legal matter while he was suspended, May knowingly breached those ethical duties to the detriment of the public and the legal system, making him subject to disbarment under Standard 8.1(a).

We now evaluate whether the Board, in ordering May's disbarment, properly considered and weighed the aggravating and mitigating factors set forth in Standard 9.0 of the Alabama Standards for Imposing Lawyer Discipline, as required by Standard 3.0(d). The Board considered those factors to determine whether a discipline other than disbarment was justified. The Board found five aggravating factors as set

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forth in Standard 9.22(a)-(d) and (i). First, the Board found that May failed to comply with a variety of disciplinary measures imposed by the Board over a period of four years. Second, the Board found that May acted dishonestly by submitting false documents to the Alabama Board of Medical Examiners and by acting as legal counsel for two individuals while he was suspended. Third, the Board found that after practicing for 39 years, including four years while on probation, May had sufficient experience to know that he was violating his suspension order. Fourth, the Board found that May violated his suspension order multiple times during his 91-day suspension but never applied for reinstatement even as he continued to represent parties. Finally, the Board found that May's actions presented a pattern of misconduct that continued even after an order of suspension was issued. These aggravating factors are supported by the record and indicate that maintaining May's suspended status or administering a public reprimand was unlikely to be rehabilitative.

The Board found two mitigating factors set forth in Standard 9.32 to be applicable: (b) absence of a dishonest or selfish motive and (1) remorse. The record indicates that May

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also asked the Board to consider his desire to retire after 40 years of practice "not in disgrace," his plan not to be active in legal practice going forward, and his belief that he had never "made a mistake where a client suffered" as compelling reasons to allow him to maintain his law license. Although May now argues that the Board should have considered additional mitigating factors under Standard 9.32 of the Alabama Standards for Imposing Lawyer Discipline, he did not present those additional factors to the Board during the penalty phase of the proceeding; therefore, he has waived those arguments on appeal. Clements v. Alabama State Bar, 100 So. 3d. 505, 512 (Ala. 2012). The Board properly found the existence of mitigating factors and also properly concluded that those factors were outweighed by the applicable aggravating factors, thus supporting the Board's decision to disbar May under Standard 8.1(a).

Conclusion

Based upon relevant provisions in the Alabama Standards for Imposing Lawyer Discipline, the evidence presented, and the aggravating factors and the mitigating factors found by

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the Board, the Board's order disbarring May is appropriate.

We affirm.

AFFIRMED.

Parker, C.J., and Bolin, Shaw, Wise, Bryan, Sellers,
Mendheim, and Stewart, JJ., concur.