

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF A §
MEMBER OF THE BAR OF THE §
STATE OF DELAWARE: § No. 178, 2000
§
K. KAY SHEARIN § Board Case No. 10, 1998

Submitted: March 2, 2001

Decided: May 9, 2001

Before **WALSH, HOLLAND** and **BERGER**, Justices.

Disciplinary Proceeding Upon Final Report of the Board on Professional Responsibility of the Supreme Court. Respondent Suspended.

Joseph M. Bernstein, Esquire, Wilmington, Delaware, for Respondent.

Mary S. Much, Esquire, of Office of Disciplinary Counsel, Wilmington, Delaware.

PER CURIAM

This opinion involves the sanction phase of our appellate review in a disciplinary proceeding regarding the Respondent, K. Kay Shearin. In our initial disposition, we affirmed the Board on Professional Responsibility's judgment that the alleged ethical violations had been established by clear and convincing evidence.¹ Before determining the appropriate sanction, however, this Court "concluded that it would be helpful, in deciding upon an appropriate sanction, to have a professional assessment of Shearin's mental state."² That offer was respectfully declined by the Respondent.

APPROPRIATE SANCTION

In this opinion, we will begin our analysis by recounting the standards and contentions that are already extant in this proceeding.³ The exclusive authority to impose sanctions for attorney misconduct is vested in this Court.⁴ The guidelines for the imposition of sanctions are well-established. They are not designed to be either

¹ *Matter of Shearin*, Del. Supr., 765 A.2d 930 (2000), (per curiam), *cert. denied*, 2001 WL 185220 (2001) (Shearin II).

² *Shearin II*, 765 A.2d at 939.

³ *Id.* at 939-40.

⁴ *Shearin I*, 721 A.2d at 165.

punitive or penal.⁵ The relevant factors to consider in determining an appropriate sanction are: (1) the nature of the duty violated; (2) the lawyer's mental state; (3) the actual/potential injury caused by the misconduct; and (4) the existence of aggravating and mitigating circumstances.⁶

Shearin's attorney points out that "although the Petition alleged violations of separate provisions of the DLRPC, all of the allegations which the Board found to have established arose from a common nucleus of facts – the substantive content of the Shearin Lawsuit that was filed in U.S. District Court for the District of Columbia, which was ultimately dismissed." He argues that a public reprimand is the most appropriate sanction because Shearin did not knowingly violate the Delaware Lawyers Rules of Professional Responsibility. The Office of Disciplinary Counsel argues that a three-year suspension is the appropriate sanction because Shearin's "statements to the Board clearly reflect that she does not recognize the wrongfulness of her conduct."

⁵ *Id.* at 166.

⁶ *In re Mekler*, Del. Supr., 669 A.2d 655, 668 (1995). The Court has also looked for guidance to the *ABA Standards for Imposing Lawyer Sanctions*. *Shearin I*, 721 A.2d at 165-166.

The Board on Professional Responsibility recommends that the Respondent be suspended for three years from the date of its report, April 19, 2000.⁷ The Respondent was previously suspended for one year beginning on January 1, 1999.⁸ Since the Respondent has not petitioned for reinstatement, she remains suspended from the practice of law. Consequently, the Respondent has been suspended for almost two and one-half years.

SUSPENSION IMPOSED

We have concluded that a period of suspension for three years is appropriate. As in *Shearin I*, the record in *Shearin II* reflects a pattern of unethical conduct, and demonstrates a complete disregard for her responsibilities as an officer of this Court.⁹ In our view, however, given the interrelationship between the present and the prior ethical violations, the periods of Shearin's present and prior suspensions should run concurrently.

⁷ The Board's Report recommending sanctions is attached to this opinion as an appendix.

⁸ *Shearin II*, 765 A.2d at 933.

⁹ *Shearin I*, 721 A.2d at 166.

Therefore, we hold that for the ethical violations set forth in *Shearin II*, K. Kay Shearin shall be prohibited and suspended from engaging in the practice of law for a period of three years. That period of suspension will commence on January 1, 1999 and end upon her reinstatement, for which application may be made after January 1, 2002. This period of suspension shall be subject to the same terms and conditions originally set forth in *Shearin I*. This opinion shall be disseminated by the Office of Disciplinary Counsel in accordance with the Rules of the Board on Professional Responsibility.