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Petition Allowed by the Illinois Supreme Court and Imposing Discipline on Consent

Allowed November 18, 2008

IN THE SUPREME COURT OF ILLINOIS

In the Matter of:

RONALD GREGORY DRAPER,

Supreme Court No. M.R. 22644

Attorney-Respondent,

Commission No. 07 CH 46

No. 674168.

PETITION TO IMPOSE DISCIPLINE ON CONSENT

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, Albert S. Krawczyk, pursuant to Supreme Court Rule 762(b), with the consent of Respondent, Ronald Gregory Draper, and his attorney, Phillip A. Turner, and with the approval of a panel of the Hearing Board, petitions the Court to enter an order suspending Respondent from the practice of law for thirty days.

I. SUMMARY OF PETITION

1. Respondent was admitted to practice law in Illinois in 1976, and he is 58 years old. In 2005 and 2006, Respondent neglected a criminal appeal relating to the denial of his client's petition for post-conviction relief. A full description of Respondent's conduct is set forth in section II, below.
2. Respondent was previously disciplined in 1990 in connection with misconduct that occurred during a period in which he had a dependence on cocaine, a condition that has been long under control. During the period of time covering Respondent's present misconduct, he was caring for and monitoring the care of his elderly mother, who was severely ill.
3. Respondent has expressed remorse for his conduct and has cooperated with the Administrator in this matter. In light of the extent of Respondent's misconduct and in consideration of his willingness to admit his actions and other mitigating factors, a suspension of

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thirty days is warranted and is consistent with the sanction imposed in *In re Walsh*, Supreme Court No. M.R. 18753, Commission No. 02 CH 44 (September 19, 2004), and other cases. A full discussion of the discipline recommended is set forth in section III, below. Respondent's affidavit is attached as Exhibit One.

4. At the time this petition was prepared, a one-count complaint was pending before the Hearing Board of the Commission. The members of the panel assigned to consider the matter have, as required by Supreme Court Rule 762(b)(1)(b), reviewed this petition and approved its filing with the Court. A copy of the Hearing

Board order approving the submission of this matter to the Court is attached as Exhibit Two. A copy of the transcript of the Hearing Board proceedings is attached as Exhibit Three.

II. FACTUAL BASIS FOR RECOMMENDATION

A. Neglect of Darnell Brown's Post-Conviction Appeal

5. Beginning in 1999, Respondent represented Darnell Brown in connection with charges of aggravated criminal sexual assault and other offenses filed against him in the Circuit Court of Cook County, Illinois. In November 2000, Brown was found guilty after a bench trial, and, in January 2001, he was sentenced to thirty years imprisonment.

6. In 2001, the Office of the State Appellate Defender was appointed to represent Brown on the appeal of his conviction; however, while the appeal was pending, Respondent was appointed to represent Brown in connection with a writ of mandamus filed by the State with the Illinois Supreme Court contending that Brown should have been sentenced to a mandatory natural life term in prison as a result of his prior conviction of aggravated criminal sexual assault in an unrelated case.

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7. In March 2002, the Supreme Court awarded the writ conditionally, dependent upon the outcome of Brown's appeal. In August 2002, the Appellate Court affirmed Brown's conviction, finding that Brown had failed to challenge his conviction but instead had raised the constitutionality of the likely sentence of natural life imprisonment that had not yet been imposed. As a result, the Supreme Court issued the writ of mandamus, and the trial court re-sentenced Brown to life imprisonment.

8. In August 2003, Respondent filed a post-conviction petition on Brown's behalf, arguing, among other things, that the State Appellate Defender had rendered ineffective assistance of counsel in connection with the appeal of Brown's conviction by not pursuing the meritorious issues in the case.

9. On August 13, 2004, the trial court granted the State's motion to dismiss the post-conviction petition, and, on August 20, 2004, Respondent filed a notice of appeal. Respondent was then appointed to represent Brown on appeal.

10. In August 2005, the Clerk of the Circuit Court of Cook County transmitted the notice of appeal to the Appellate Court, and, on September 26, 2005, the Appellate Court entered an order directing Respondent to file a docketing statement on or before October 11, 2005, and the record on appeal on or before November 21, 2005.

11. On October 11, 2005, Respondent filed a motion for extension of time with the Appellate Court indicating that his mother had been hospitalized and that he was attending to her medical issues, and, on October 19, 2005, the Appellate Court entered an order extending the deadline for the filing of the docketing statement to "November 1, 2005, final." According to the order, the record on appeal remained due by "November 21, 2005, final."

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12. Respondent did not file a docketing statement or record on appeal in Brown's matter, and, on April 14, 2006, the Appellate Court entered an order dismissing the appeal for want of prosecution.

13. Respondent did not notify Brown, or anyone else on his behalf, of the dismissal of the appeal, or file a petition for rehearing within twenty-one days of the dismissal pursuant to Supreme Court Rule 367(a).

14. On November 13, 2007, Respondent, with notice to Brown, attempted to file an appellate brief on behalf of Brown, but the filing was not accepted by the Clerk of the Appellate Court. On November 29, 2007, Respondent filed a second post-conviction petition on Brown's behalf along with an affidavit signed by

Brown, with the trial court, raising, among other issues, Respondent's own ineffective assistance of counsel. Thereafter, Respondent arranged for other counsel to pursue the matter on Brown's behalf. As of the date of the filing of this petition, the matter remained unresolved.

B. Conclusions of Misconduct

15. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. failure to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3 of the Illinois Rules of Professional Conduct;
- b. failure to keep a client reasonably informed about the status of a matter in violation of Rule 1.4(a) of the Illinois Rules of Professional Conduct;
- c. failure to make reasonable efforts to expedite litigation consistent with the interests of the client in violation of Rule 3.2 of the Illinois Rules of Professional Conduct; and

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- d. conduct which is prejudicial to the administration of justice or which tends to defeat the administration of justice or to bring the courts or the legal profession into disrepute in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct and Supreme Court Rule 770.

C. Respondent's Background and Additional Considerations in Mitigation and Aggravation

16. Respondent is 58 years old, and was admitted to the practice of law in Illinois on May 18, 1976. He has been a sole practitioner for about twenty-seven years.

17. Respondent has acknowledged his misconduct, has cooperated in the disciplinary proceedings and has expressed remorse.

18. On October 4, 1990, Respondent was suspended from the practice of law for a period of three years and until further order of the Court; the suspension was stayed and Respondent was placed on probation with conditions, which included abstinence from controlled substances. *In re Draper*, Supreme Court No. M.R. 6691, Commission No. 87 CH 348.

19. In the prior disciplinary matter, Respondent was charged with various acts of neglect of legal matters in the 1980's, including the neglect of four criminal appeals and other misconduct. Respondent had acknowledged the regular use of cocaine from 1980 through January 1989. In 1993, the probation was continued, and, in 1996, it was terminated successfully. Respondent has explained that he has not used cocaine or other illicit drugs since he suffered a relapse over a period of months in 1991 and 1992, around the time of his wife's death.

20. Respondent is the guardian *ad litem* of his 87-year old mother. During the time that he was handling Brown's appeal, Respondent devoted a significant portion of his time to caring for his mother and monitoring her care. His mother suffered from numerous medical conditions. As a result of poor care at a nursing facility, she developed bedsores and ulcers and

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had multiple doctor visits, emergency room visits and hospital admissions.

21. Respondent has engaged in *pro bono* legal work through the Rainbow/PUSH Coalition and through Salem Baptist Church, which has a program to provide legal advice to inmates and ex-offenders. Respondent has been active in scouting and other community organizations, and he has been involved with a court referral program, mentoring, judicial evaluations and poll watching through the Cook County Bar Association and other bar associations. In addition, Respondent would have presented favorable character witness testimony had this matter resulted in a contested hearing.

III. RECOMMENDATION AND DISCUSSION OF PRECEDENT

22. The Administrator respectfully requests that the Court enter an order suspending Respondent from the practice of law for a period of thirty days. This sanction is consistent with discipline imposed by the Court for similar misconduct.

23. The Court suspended the attorney from the practice of law for thirty days in *In re Walsh*, Supreme Court No. M.R. 18753, Commission No. 02 CH 44 (September 19, 2004), for neglecting to pursue a criminal appeal after the respondent had been previously reprimanded for similar misconduct. In both matters, the respondent filed the docketing statement and record on appeal but failed to file a brief and the appeals were dismissed for want of prosecution. The respondent had provided *pro bono* legal services and had been active in bar activities.

24. In *In re Fawell*, Supreme Court No. M.R. 21692, Commission No. 06 CH 46 (September 18, 2007), the Court also suspended the lawyer for thirty days after the attorney allowed his client's criminal appeal to be dismissed. The respondent did not inform the client

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until almost two years later. He had failed to file a brief despite two extensions, and the client was arrested on a warrant.

25. Thirty-day suspensions were also imposed in *In re Jones*, Supreme Court No. M.R. 19160, Commission No. 00 CH 40 (January 20, 2004), where the respondent failed to file a brief in his client's criminal appeal after obtaining one extension and after requesting a further extension in response to the State's motion to dismiss, and in *In re Payonk*, Supreme Court No. M.R. 17639, Commission No. 00 CH 6 (September 21, 2001), where the lawyer took no action after filing a notice of appeal on behalf of a criminal defendant. There, the lawyer never filed a docketing statement, and he did not respond to numerous inquiries from his client and his client's family.

26. In light of the circumstances of Respondent's present misconduct and his rehabilitation from the drug dependence that was present at the time of his prior misconduct, a thirty-day suspension is sufficient to protect the public and is consistent with the foregoing precedent.

WHEREFORE, the Administrator, with the consent of the Hearing Board, requests that the Court enter an order suspending Respondent from the practice of law for a period of thirty days.

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Respectfully submitted,

Jerome Larkin,
Administrator
Attorney Registration and
Disciplinary Commission

By: Albert S. Krawczyk