

FILE NO. A09-1998

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary
Action against JESSE GANT, III,
a Minnesota Attorney,
Registration No. 214772.

**MEMORANDUM IN SUPPORT
OF MOTION FOR
ADDITIONAL DISCIPLINE**

On June 8, 2010, the Minnesota Supreme Court publicly reprimanded Jesse Gant, III, hereinafter respondent, for violations of Rules 3.1 and 8.4(d), Minnesota Rules of Professional Conduct (MRPC) – the rules prohibiting frivolous claims and conduct prejudicial to the administration of justice. *In re Gant*, 782 N.W.2d 829 (Minn. 2010). The reprimand was conditioned on respondent making \$1,000 a month payments – commencing July 1, 2010 – toward sanctions and costs assessed against him by the trial court in the matter of *McClure v. Le Phan* – the matter that gave rise to the disciplinary proceedings.

The Court's order imposing the reprimand arose out of the findings of fact, conclusions of law, and recommendation of the Court's Referee, the Honorable Warren E. Litynski. Judge Litynski's findings and recommendation, in turn, arose out of an agreement read into the record between respondent and the Director's Office.

In reading the agreement into the record it was made clear the Director's position was that the failure to pay the sanctions was a factor properly considered in aggravation of the underlying misconduct. In other words, but for respondent's agreement to pay the sanctions, a more serious level of discipline would have been sought. Respondent, at the time the agreement was read into the record, clearly understood that his failure to pay the sanctions could result in the suspension of his license to practice law until such time as the sanctions were paid in full. *See p. 7,*

transcript of April 7, 2010, proceedings attached to Judge Litynski's May 4, 2010, findings.

Respondent made only one payment toward the sanctions assessed against him. After granting respondent several extensions of time to make payments and provide additional information regarding his financial affairs, the Director moved this Court for the imposition of additional discipline – the suspension of respondent's license to practice law until such time as the sanctions are paid.

While the Director is sympathetic to respondent's assertion that he is financially unable to make the payments ordered by the Court in its June 8, 2010, order, a couple of points need to be made.

First, respondent entered into the agreement leading to the June 8, 2010, order knowing full well what his obligations would be if the agreement was accepted by the Court. Implicit in his entering into that agreement was a representation that he had the ability to make the payments. While citing to his general financial difficulties, respondent does not point to any particular unforeseen event occurring after entering into the agreement that now precludes his compliance. Absent some significant change in circumstances since June 8, 2010, it would be inappropriate to allow respondent to now avoid the consequences he knew would follow for failure to make the required payments.

Second, it is significant that respondent has failed to tender even partial payments in an attempt to meet his obligations. Certainly a partial payment, while not entirely satisfactory, would be an indication of a good faith attempt to meet the payment schedule respondent voluntarily undertook.

Respondent has been given ample opportunity to abide by the conditions that he freely agreed to in order to avoid the suspension of his license to practice law. Having failed to abide by those conditions, suspension of his license is the only available option.

What is really at issue here is the appropriate length of suspension. In other words, ought respondent be suspended until he pays the sanctions, as was originally contemplated, or should he be suspended for a period of time appropriate for the underlying misconduct?

Respondent has been previously disciplined for misconduct similar to that at issue in the instant proceedings. In *In re Gant*, 615 N.W.2d 271 (Minn. 2000), respondent's license to practice law was suspended for 90 days. The misconduct for which he was suspended was more extensive than the misconduct currently before the Court, but included pursuit of frivolous litigation and failure to pay a court-ordered sanction. Respondent has also been privately admonished five times, dating back to 2001. The fact that respondent's violation of Rules 3.1 and 8.4(d), MRPC, is a repeat of prior misconduct is an aggravating factor. Respondent's failure to make payments towards the sanctions imposed by the trial court, even after being given ample opportunity to do so, is also an aggravating factor.

In *In re Tieso*, 396 N.W.2d 32 (Minn. 1986), an indefinite suspension with a three-month minimum was ordered where the attorney filed a single frivolous claim against his former spouse and her husband and refused to obey a court order awarding fees against him.

In *In re Pinotti*, 585 N.W.2d 55 (Minn. 1998), a 90-day suspension was ordered where the attorney repeatedly filed unsubstantiated claims and confusing and improper motions.

In *In re Jensen*, 542 N.W.2d 627 (Minn. 1996), an 18-month suspension was ordered where the attorney filed frivolous claims, failed to follow the rules of civil and appellate procedure, and disobeyed a court order.

Respondent's misconduct here – a repeat of prior misconduct and further aggravated by his failure to abide by a payment plan he freely agreed to – warrants at least a 90-day suspension. While the Director, in the motion currently before the Court,

originally asked that respondent's license to practice law be suspended until the sanctions and costs are paid in full, upon reflection this seems unnecessarily punitive. A suspension will deprive respondent of his ability to raise money through his practice to pay the sanctions. His judgment creditors still retain all of their collection rights and remedies. Given these facts, it seems the more just resolution is the imposition of a 90-day suspension for the underlying misconduct with reinstatement pursuant to Rule 18(f), Rules on Lawyers Professional Responsibility. Accordingly, the Director respectfully requests that the Court order respondent's license to practice law suspended for 90 days with the proviso that should respondent, during the 90-day suspension, become current in the payments called for in the June 8, 2010, order, he may then be immediately reinstated to the practice of law.

Dated: March 1, 2011.

Respectfully submitted,

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