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ATTORNEY GRIEVANCE COMMISSION
OF MARYLAND v. GOODMAN:

*Intentionally Dishonest Conduct by Attorney
Results in Disbarment*

By: Rebecca A. Romig

The Court of Appeals of Maryland held that intentionally dishonest conduct by an attorney results in disbarment. *Att’y Grievance Comm’n of Md. v. Goodman*, 381 Md. 480, 850 A.2d 1157 (2004). In so holding, the court determined that the most severe sanction of disbarment will be imposed in cases involving intentionally dishonest conduct by an attorney, unless compelling extenuating circumstances mitigate against imposing such a sanction. *Id.* at 497-98, 850 A.2d at 1167-68.

Ellis H. Goodman (“Goodman”) was admitted to the Maryland Bar on June 23, 1966. Prior to this case, no other disciplinary action had been filed against him. At the time of this action, Goodman was employed as an Assistant Public Defender in Baltimore City.

In 1991, Goodman founded Heroes of Hope, a charitable organization designed to raise money for families of children with life-threatening illnesses. Thereafter, Goodman developed InterMall, a program to raise money for his organization through advertising kiosks located in shopping malls. Goodman sold advertising space to Fairfield Communities, Inc. (“Fairfield”). Fairfield allegedly failed to pay for the space, and Goodman filed an action in district court on behalf of InterMall to collect damages in the amount of \$2,176.80. In his complaint, Goodman provided the name of D. David Herman (“Herman”) as his attorney.

During this time, Herman, who was residing in Hawaii, was not aware of this lawsuit, and did not give Goodman permission to use his name. Goodman pretended to be Herman throughout the pendency of the case and negotiated a settlement in Herman’s name over the telephone with Thomas W. Jones, counsel for Fairfield.

When Goodman appeared in court under his own name, Jones recognized his voice and informed the judge of the deception. Goodman denied the allegations and lied to the judge by failing to acknowledge that Herman was not the attorney of record in the case.

On June 26, 2003, based on Jones' complaint to Bar Counsel, the Attorney Grievance Commission filed for remedial or disciplinary action against Goodman in the Court of Appeals of Maryland. The complaint alleged that Goodman violated Maryland Rules of Professional Conduct ("MRPC") 3.3(a), 3.4(c), 8.4(b)-(d), and section 8-606 of the Criminal Law Article. The court of appeals turned the case over to the Circuit Court for Baltimore City for that court to make findings of fact and conclusions of law. The circuit court judge found that Goodman violated MRPC 3.3(a)(1), by "knowingly mak[ing] a false statement of material fact or law to a tribunal," and MRPC 3.4(c), by "knowingly disobey[ing] an obligation under the rules of a tribunal. . . ." The court further found that Goodman disobeyed MRPC 8.4(c) when he "engage[d] in conduct involving dishonesty, fraud, deceit or misrepresentation," and violated section 8-606 of the Criminal Law Article by "willfully making a false entry in a public record." However, the judge determined that Goodman's conscientious and diligent performance of his job and his supervisor's willingness to allow him to continue working in the public defender's office mitigated his conduct.

Goodman filed numerous exceptions to the circuit court's findings of facts and conclusions of law, and asserted that he should be sanctioned with a stern reprimand. The Attorney Grievance Commission recommended disbarment and filed an exception to the circuit court's decision not to find a violation of MRPC 8.4(b). The court of appeals overruled Goodman's exceptions, sustained the exception of the Attorney Grievance Commission, and found that the appropriate sanction was disbarment.

The court began its analysis by reasoning that the circuit court's finding that Goodman committed a criminal act should have led the lower court to conclude that Goodman violated MRPC 8.4(b). *Id.* at 491, 850 A.2d at 1164. This rule provides that professional misconduct occurs when an attorney commits a criminal act that reflects negatively on the honesty and integrity of the lawyer. *Id.*

The court of appeals went on to address Goodman's exceptions, including his claim that the lower court failed to make a number of factual findings. *Id.* The court found that the circuit court was not required to make any of the findings asserted by Goodman. *Id.* at 492, 850 A.2d at 1164. The court also found that the circuit court judge was aware of the facts in the case, discussed the evidence, but was not compelled to believe the testimony presented. *Id.*

The court next addressed Goodman's claim that the circuit court failed to find that he "did not act with intentional dishonesty," and that he "would not have taken the actions but for the mental and physical conditions from which he suffered at the time." *Id.* at 493, 850 A.2d at 1165. Furthermore, the court found that the lower court did not err, and that its findings were supported by evidence proving Goodman intentionally pretended to be someone he was not. *Id.* Goodman asserted that the lower court erred by failing to find that he had a "reputation for honesty, integrity, good character, and commitment to charitable causes," that he was qualified to practice law, and that the public would not be harmed by this practice. *Id.* at 494, 850 A.2d 1165. The court of appeals disagreed, stating, "intentional dishonest conduct is closely entwined with the most important matters of basic character to such a degree as to make intentional dishonest conduct by a lawyer almost beyond excuse." *Id.* (quoting *Att'y Grievance Comm'n v. Vanderlinde*, 364 Md. 376, 418, 773 A.2d 463, 488 (2001)).

Next, Goodman contended that the lower court erred in finding that he was required to prove a mental disorder. *Goodman*, 381 Md. at 495, 850 A.2d at 1166. The court of appeals noted that the lower court made no such finding, and, in fact, the lower court found that evidence presented by Goodman failed to support his claim that a mental health disorder caused him to be unable to comply with the law. *Id.* at 495-96, 850 A.2d at 1166-67. The court elaborated by stating that "in cases of intentional dishonesty, misappropriation cases, fraud, stealing, serious criminal conduct and the like, we will not accept, as 'compelling extenuating circumstances,' anything less than the most serious and utterly debilitating mental or physical health conditions. . . ." *Id.* (quoting *Vanderlinde*, 364 Md. at 413-14, 773 A.2d at 485).

Turning to the issue of sanctions, the court of appeals considered similar cases involving attorney misconduct when deciding the appropriate sanction to be imposed on Goodman. *Goodman*, 381 Md. at 496-96, 850 A.2d at 1167-68. The court explained that the goal of sanctions is threefold: to protect the public, to deter other lawyers from violating the MRPC, and to preserve the integrity of the legal profession. *Id.* at 497, 850 A.2d at 1167. The court compared the case at bar to previous cases involving intentional dishonest conduct where it found disbarment appropriate. *Id.* at 497-98, 850 A.2d at 1167-68. The court noted that absolute honesty is fundamental to the integrity of the judicial system. *Id.* at 498, 850 A.2d at 1168. The court concluded that, in cases of dishonesty and fraudulent behavior, only compelling extenuating circumstances could justify a sanction less severe than disbarment. *Id.* at 498-99, 850 A.2d at 1168. Those circumstances were not present in Goodman's case. *Id.*

In *Goodman*, the court sends a clear message that dishonesty and fraud are among the most severe violations of the rules of professional conduct, and that attorneys who participate in such behavior will be prohibited from practicing law. A less severe sanction may only be warranted in cases where compelling extenuating circumstances lead to the dishonest conduct.