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Attorney Grievance Comm'n of Maryland v. Painter An Attorney Who Commits Repeated Domestic Violence and Has Been Convicted for Similar Conduct Is Subject to Disbarment

By Valerie G. Esch

In a case of first impression, the Court of Appeals of Maryland held that an attorney who commits acts of violence on his wife and children, and violates court ordered probation, has engaged in conduct prejudicial to the administration of justice and is subject to disbarment. *Attorney Grievance Comm'n v. Painter*, 356 Md. 293, 739 A.2d 24 (1999). This issue was uniquely treated by the court compared to other jurisdictions, which have imposed much lighter sanctions. Where other courts have merely imposed suspensions, the court of appeals disbarred an attorney with a history of repeated domestic violence.

Richard Painter was a member of the District of Columbia and Maryland bars, and had various legal jobs during his career including a People's Court judge. While holding this position, it was alleged that he hit a female acquaintance and threatened her with a revolver. In 1960, Painter returned to private practice until 1993 at which time he voluntarily closed his law office after being a member in good standing of the Bar for forty-two years. His "self-imposed exile" from practicing law was, according to him, due to his "mental state."

Richard Painter was married in 1978 and had two children. From the time of his honeymoon, and throughout his marriage, Painter

engaged in a course of violent conduct by physically and mentally abusing his wife and children. Despite a protective order, Painter was caught stalking his wife with two loaded handguns. Painter was charged on a twelve-count indictment claiming various degrees of domestic violence against his family. He ultimately pled guilty to two counts of transporting a handgun and two counts of battery.

In his defense, Painter argued that there was no medical evidence that he inflicted any physical injuries on his family. He argued further that the court analogized his behavior to President Clinton's, reasoning that what happened behind closed doors had not influenced his fitness as an attorney. Despite his arguments, the Circuit Court for Montgomery County found it apparent from the record, and from Painter's comments in court, that he neither appreciated, nor could account for, the violence he inflicted on his family. Painter's criminal conduct was not an isolated incident, but rather was conduct that spanned a sixteen-year period.

Under the authority granted by Maryland Rule 16-711, the Court of Appeals of Maryland remanded the matter to the circuit court and subsequently adopted the findings of fact and law therefrom. *Painter*, 356 Md. at 295, 739 A.2d at 26. After reviewing Painter's history of

domestic violence and criminal conduct, the only issue the Court of Appeals of Maryland considered was Painter's sanction. The court based its decision largely on whether Painter's criminal conduct "reflect[ed] adversely . . . on his fitness as a lawyer in other respects" and/or "[was] prejudicial to the administration of justice." *Id.* at 300, 739 A.2d at 28 (quoting Maryland Rules of Professional Conduct, Rule 8.4(b) & (d)).

The court began its analysis by reviewing similar cases in other jurisdictions that dealt with violations of professional conduct rules and the role of an attorney, similar to Maryland Rule of Professional Conduct 8.4. *Id.* at 299, 739 A.2d at 28. Rule 8.4 provides in pertinent part that "[i]t is professional misconduct for a lawyer to: . . . (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; . . . or . . . (d) engage in conduct that is prejudicial to the administration of justice." *Id.* at 295, 739 A.2d at 25. The court noted that when an attorney is guilty of serious misconduct, the outrageous behavior is "a world apart from what this Court, the profession, and the public is entitled to expect from members of the bar." *Id.* at 299, 739 A.2d at 28 (quoting *Attorney*

Grievance Comm'n v. Protokowicz, 329 Md. 252, 257, 619 A.2d 100 (1993)).

The court recognized that the instant case was unique, in that the conduct at issue involved domestic violence, rather than relating to "traits so closely associated with the legal profession . . ." *Id.* at 302, 739 A.2d at 29. The lack of Maryland law on this particular issue forced the court to examine the law of other states, particularly those with similar domestic violence statutes and a strong public policy against such acts. *Id.* at 302-03, 739 A.2d at 29-30. The court noted that most courts addressing the issue used suspension as the imposed sanction consistent with American Bar Association ("ABA") Standard 5.12, which provides that "[s]uspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice." *Id.* at 304, 739 A.2d at 30. The court further stated that cases in which an attorney was disbarred generally involved aggravated assaults in conjunction with other misconduct. *Id.* at 305, 739 A.2d at 31. According to ABA Standard 5.11, disbarment of an attorney is generally appropriate when: "(a) a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice . . .; or (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the

lawyer's fitness to practice." *Id.* at 302 n.4, 739 A.2d at 29.

From its review of cases that involved disbarment, the court found that an attorney's repeated conduct involving domestic violence was seen as "prejudicial to the administration of justice" and could impact an attorney's ability to practice law. *Id.* at 305, 739 A.2d at 31. The court also recognized that "conduct prejudicial to the administration of justice" provides courts with the authority and obligation to consider certain conduct of a person who is an officer of the court, in relation to the duties of a profession that invites public trust and confidence. *Id.* at 306, 739 A.2d at 32. In that regard, the court acknowledged that "conduct that impacts on the image of the perception of the courts or the legal profession and that engenders disrespect for the courts and for the legal profession may be prejudicial to the administration of justice." *Id.* Furthermore, the court stated that "[l]awyers are officers of the court and their conduct must be assessed in that light." *Id.* In the instant case, the court found that Painter committed serious criminal acts against his wife and children resulting in a conviction within the meaning of Rule 8.4 of the Maryland Rules of Professional Conduct and Maryland Rule 16-710(e). *Id.* at 300, 739 A.2d at 28.

The court compared the instant case to *Protokowicz*, in which the court imposed an indefinite suspension, with the right to apply for reinstatement after one year, for a one-time isolated incident of criminal conduct, where excessive

consumption of alcohol was involved. *Id.* at 301, 739 A.2d at 29. In distinguishing the instant case from *Protokowicz*, the court of appeals put much emphasis on the length of time during which the misconduct occurred, Painter's past disciplinary history, and the fact that it was unmitigated by alcohol abuse or mental illness. *Id.*

The court further noted that Rule 8.4(b) recognizes, by its reference to character traits, that the commission of certain crimes demonstrates a character flaw that, if applying for admission to the bar, could prohibit admission, or, if already admitted, could result in disbarment. *Id.* at 306, 739 A.2d at 31-32. Under the facts of the instant case, the court held that Painter, an attorney and an officer of the court, who committed repeated acts of violence on both his wife and children, and who violated court ordered probation, at the very least, engaged in conduct that was "prejudicial to the administration of justice." *Id.* at 307, 739 A.2d at 32. In so holding, the court concluded that where the conduct is repetitious and involves a conviction for similar conduct, the appropriate sanction is disbarment. *Id.*

The Court of Appeals of Maryland in *Painter*, as a matter of first impression, held that repeated domestic violence by officers of the court will not be tolerated. In so holding the court sets an example that this issue is serious and such ill acts on the part of an officer of the court will be punished by the Maryland judiciary. This case expands outside the practice of law and shows that for

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purposes of disciplinary actions, not only is an attorney's professional conduct considered, but their personal conduct is relevant as well.