SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

In the Matter of Alton H. Maddox, a suspended attorney,

GRIEVANCE COMMITTEE FOR THE SECOND AND ELEVENTH JUDICIAL DISTRICTS,

Petitioner,

ALTON H. MADDOX,

Respondent.

AFFIRMATION IN OPPOSITION

ROBERT H. STRAUS, an attorney duly admitted to the practice of law in the Courts of the State of New York, affirms as follows, under penalty of perjury:

1. I am attorney for the Grievance Committee for the Second and Eleventh Judicial Districts, and am fully familiar with all the facts and circumstances had herein.

2. I make this affirmation in opposition to respondent's motion for reargument of an Opinion and Order of this Court, dated August 1, 1994, suspending respondent from the practice of law for a period of five years.

3. Respondent is not entitled to reargument inasmuch as he has failed to demonstrate that the Court "overlooked or misapprehended relevant facts, or misapplied any controlling principle of law." See, eg., Barry v. Good Samaritan Hospital, 86 AD2d 853, rev'd on other grounds 56 NY2d 921, mod. on rem. 91 AD2d 673; See also, 22 NYCRR 670.6.

4. Respondent's arguments, i.e., that he was denied due process of law, have previously been amply expounded upon by

City of New York
Certified in Kings County
Commission Expires Nov. 30, 19

respondent and addressed at length by petitioner.

5. A motion for reargument is "not a vehicle to permit a party to again raise the same questions previously decided." Foley v. Roche, 68 AD2d 558 (2nd Dept. 1979). There is nothing contained in respondent's moving papers which has not already been considered by this court.

6. The salient factor in these proceedings is now, and has always been, respondent's failure to cooperate with the Grievance Committee despite an Order of the Appellate Division, Second Department, directing him to do so.

7. Following respondent's interim suspension, by order dated May 21, 1990, he had only to cooperate with the Grievance Committee to cure his suspension. However, he failed to do so. A hearing became necessary only after it became clear that respondent would not comply.

8. Contrary to respondent's assertion, an interim suspension is not punitive in nature. Rather, it is a device sanctioned by the Court of Appeals to elicit cooperation from any attorney who obstructs investigation into complaints of professional misconduct. See, Matter of Padilla, 67 NY2d 440 (1986).

9. Because an interim suspension is not discipline, it cannot serve as a bar to discipline. In fact, interim suspensions are often effective until a disciplinary proceeding is conducted and the issue of discipline is resolved. See, eg., Matter of McLaughlin, 158 AD2d 12 (1st Dept. 1990)(respondent attorney disbarred following period of interim suspension despite

27. The fact of respondent's numerous refusals to appear is undisputed. That those refusals were wilful and deliberate and that respondent's excuses are unworthy of belief was established by overwhelming evidence:

> From the beginning, in writing and orally, respondent proclaimed that the Grievance Committee was without jurisdiction, that it was proceeding based on the Dred Scott decision, that it was emulating South African apartheid practices, that he would not testify except at a public forum, that the justices of the Second Department were racially biased against him, that he was entitled to an apology, that the Grievance Committee was violating attorney-client privileges and was engaging in a witch-hunt.

(Special Referee's Report, page 33).

28. The Special Referee found that these "accusations and declarations" were sufficient to "permit a strong inference that respondent never intended to testify." Id.

29. Respondent's contention that the Special Referee's findings improperly "penalized" him for his statements (Paragraphs 35-41 of his Affidavit) simply misses the point. Respondent's words were a reflection of his intentions, from which factual inferences were properly drawn. Respondent's intention was to withhold his testimony.

30. This Court has consistently held that the failure to cooperate with investigations of its Grievance Committees constitutes serious professional misconduct. Matter of Blaha, 192 A.D.2d 255 (1993); Matter of Burger, 182 A.D.2d 52 (1992); Matter of Goldkang, 181 A.D.2d 350 (1992), Matter of Tighe, 131 A.D.2d 116 (1991), Matter of Wanderman, 100 A.D.2d 309 (1984).

contention that the sanction was too severe in light of suspension); Matter of Kurtz, 174 AD2d 207 (1st Dept. 1992) (suspended attorney subsequently disbarred "in accord with recent precedent...not only because of eight instances of misappropriation of client funds...but also because of respondent's failure to cooperate in these proceedings.")

WHEREFORE, petitioner respectfully submits that respondent's application for reargument should be denied.

ROBERT H. STRAUS

Dated: Brooklyn, New York
September 16, 1994.