

11/28/00

SUPREME COURT OF LOUISIANA

No. 00-B-1966

IN RE: JOHN BURT KLEINPETER

LEMMON, J., Concurring in Part and Dissenting in Part

Respondent's conduct, from a reading of the cold record, warrants the thirty-six month suspension imposed by the majority, the upper limit of the recommendation by disciplinary counsel of a suspension of twenty-four to thirty-six months. However, because the Hearing Committee that actually heard the witnesses and weighed the mitigating circumstances recommended a suspension of eighteen months (with nine deferred), plus probation with specified conditions, because the Disciplinary Board recommended the same period of suspension (with none deferred), and because Disciplinary Counsel alternatively recommended an eighteen-month suspension with probation on the conditions proposed by the Hearing Committee, I would impose a thirty-six month suspension from practice, but would suspend the penalty and place respondent on probation, with one of the conditions being that he actually serve an eighteen-month suspension.

Respondent's misconduct, as inferentially found by the disciplinary agencies, could be attributed more to inexperience and poor judgment and management skills than to dishonesty or a pattern of fraud that is usually involved in a thirty-six month suspension. The credit card incident, as found by the Hearing Committee, stemmed from an emotionally charged divorce which, although four years old, had ended shortly before the credit card incident with a bitter community property settlement. This foolhardy conduct, although very serious, was an isolated incident in which respondent made full restitution and the federal authorities decided not to pursue

charges, after which respondent himself reported the incident to Disciplinary Counsel.

As to the Bates matter, Disciplinary Counsel admitted that charging the normal one-third contingency fee, rather than the specially quoted one-fourth fee, likely was inadvertent. Moreover, according to the evidence apparently accepted by the disciplinary agencies, respondent's secretary never advised him that Bates threatened to file a disciplinary complaint, but merely told him Bates had been reported to the credit bureau because of his failure to pay her medical expenses, whereupon he directed the secretary to send Bates a check for \$500 for her inconvenience. The secretary drafted and mailed the letter that accompanied the check. Giving deference to the disciplinary agencies, I would not find any disciplinary violations based on this conduct.

The remaining charges in the Bates matter--the commingling of funds and the failure to pay the medical expenses--warrant (along with the credit card incident) a penalty in line with the recommendations of the disciplinary agencies.

Therefore, while I concur in a thirty-six month suspension, I dissent in part and would suspend the penalty and impose probation with conditions, including an actual suspension of eighteen months.