ORIGINAL

BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO

In Re:	:	09-2284
Complaint against	:	**Case No. 09-044**
William Eric Minamyer **Attorney Reg. No. 0015677**	:	**Findings of Fact,** **Conclusions of Law and**
Respondent,	:	**Recommendation of the** **Board of Commissioners on**
Butler County Bar Association	:	**Grievances and Discipline of** **the Supreme Court of Ohio**
Relator.	:	
	:	

FILED
DEC 09 2010
CLERK OF COURT
SUPREME COURT OF OHIO

This matter was heard on June 28, 2010, in Columbus, Ohio, before a panel comprised of McKenzie Davis, Alvin Bell, and Judge Otho Eyster, panel Chair. None of the panel members is from the appellate district from which the complaint arose, and none was a member of the probable cause panel that certified this matter to the Board.

Relator was represented by Bennett A. Manning and Christopher J. Pagan. Respondent appeared pro se.

PROCEDURAL HISTORY

1. May 18, 2009: Complaint and certificate filed with the Board of Commissioners on Grievances and Discipline (Board) alleging violations by the Respondent of:

   Count One: Failure to disclose the absence of malpractice insurance coverage (Former DR 1-104; Current Prof. Cond. R. 1.4(c));

Count Two: Neglect of a legal matter (Former DR 6-101(A)(3); Current Prof. Cond. R. 1.3));

Count Three: Failure to communicate with the client (Current Prof. Cond. R. 1.4(3) and (4));

Count Four: Conduct involving dishonesty, fraud, deceit, or misrepresentation (Former DR 1-102 (A)(4); Current Prof. Cond. R. 8.4 (c)).

2. June 15, 2009: Notice of filing of complaint sent to Respondent.

3. October 1, 2009: Motion for default filed by Relator.

4. October 5, 2009: Board referral to Master Commissioner for a ruling on the motion for default.

5. November 3, 2009: Certified report of the Master Commissioner upon default filed with the Board.

6. December 18, 2009: Findings of Fact, Conclusions of Law and Recommendation of the Board certified to the Supreme Court of Ohio (Supreme Court) (Exhibit A).

7. January 6, 2010: Supreme Court issues order to show cause to Respondent.

8. January 25, 2010: Respondent files objections to findings and recommendation of the Board and memorandum denying the allegations contained in Counts Two, Three and Four and claiming to have "health issues."

9. March 30, 2010: Supreme Court issues Order remanding this matter to the Board "... for consideration of evidence to be submitted by the parties regarding Respondent's health conditions." (Exhibit B)

10. March 31, 2010: Board appoints hearing panel.

11. April 29, 2010: Panel Chair holds pre-hearing telephone conference at which time Respondent did not answer his phone. Hearing set for June 28, 2010.

12. June 28, 2010: Hearing held with Respondent appearing pro se.

13. July 21, 2010: Entry filed by Board ordering Respondent to submit to a psychiatric examination to be conducted by Douglas Beech, M.D.

14. November 8, 2010: Dr. Beech submits his report to the Board (Exhibit C).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

By Order of the Supreme Court, this matter is before the Board only for the purpose of considering evidence regarding Respondent's health conditions. The Findings of Fact and Conclusions of Law earlier found by the Board are not subject to reconsideration by this panel. Respondent was found to have violated all four counts contained in the complaint and the panel adopts all the findings of fact and conclusions of law set forth in attached Exhibit A. The panel will now consider the health issues and how they affect the recommendation of a sanction.

AGGRAVATION AND MITIGATION

At the hearing, Relator cited the fact that Respondent failed to cooperate with the investigation thereby depriving it of the opportunity to present evidence on the health issue.

Respondent introduced into evidence incomplete and unauthenticated medical records of minimal evidentiary value.

The panel considered the psychiatric examination and report made by Dr. Beech and finds that Respondent did suffer from a mental disability that contributed to the cause of his misconduct. Respondent does not meet the criteria for mental illness and should not be subject to a mental health suspension pursuant to Gov. Bar R. V(7).

The panel finds the Respondent's mental health condition does satisfy the requirements of BCGD Proc. Reg. 10(B)(2)(g) to be considered a mitigating factor. However, Dr. Beech concludes that Respondent's "...mental health difficulties likely played only a modest role in the alleged misconduct in his handling of the Davis matter. To whatever degree he was neglectful in his duties in the case, his conditions likely played a contributory, but not primary role."

The panel found Respondent unwilling to take responsibility for his conduct. Respondent had an excuse for everything, and his attitude seemed to be "to deny all wrongdoing, but if you don't believe me, then I suffer from a mental disability that accounts for my actions."

As further evidence of Respondent's unwillingness to accept responsibility for his conduct, the panel has attached his Response to findings and recommendation of Dr. Beech filed November 24, 2010. (Exhibit D)

It is the recommendation of the panel that the Board revise its earlier recommendation of a two-year suspension with one year stayed to a two-year suspension from the practice of law with eighteen months stayed on conditions. During Respondent's suspension and the stayed portion of the sanction, he must continue treatments recommended by his treatment team, continue ongoing pharmacological management by his treating physician, and work with a monitor appointed by Relator.

BOARD RECOMMENDATION

Pursuant to Gov. Bar Rule V(6)(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on December 3, 2010. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Panel and recommends that Respondent, William Minamyer, be suspended for two years with eighteen months stayed upon conditions contained in the panel report from the practice of law in the State of Ohio. The Board further recommends that the cost of these proceedings be taxed to Respondent in any disciplinary order entered, so that execution may issue.

Pursuant to the order of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendations as those of the Board.

JONATHAN W. MARSHALL, Secretary
Board of Commissioners on
Grievances and Discipline of
the Supreme Court of Ohio

BEFORE THE BOARD OF COMMISSIONER
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO

In Re:	:	09-2284
Complaint against	:	Case No. 09-044
William Eric Minamyer Attorney Reg. No. 0015677 Respondent Butler County Bar Association Relator	: : :	Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio

FILED
DEC 18 2009
CLERK OF COURT
SUPREME COURT OF OHIO

On October 5, 2009, this matter was referred to Jeffrey T. Heintz, a Master Commissioner of the Board of Commissioners on Grievances and Discipline ("Board") by the Secretary of the Board, for disposition pursuant to Gov. Bar R. V(6)(F)(2). Master Commissioner Heintz proceeded to prepare this report pursuant to Gov. Bar R. V(6)(J).

Procedural Background

Respondent holds Registration No. 0015677, and was admitted to practice on May 23, 1979. Relator's Complaint was filed on June 15, 2009, after having been certified by a probable cause panel of the Board on June 12, 2009. Service of the Complaint upon Respondent directed to his last known residence, which is the address that he provided to the Office of Attorney Registration. The certified mail receipt was signed on June 19, 2009, by "Debra Minamyer" who is presumably related to Respondent. On August 13, 2009, the Secretary of the Board notified Relator that Respondent was in default and had

Exhibit A

not filed an answer. Thereafter, on October 1, 2009, Relator filed its Motion for Default ("Motion") and the matter was referred to the Master Commissioner.

Findings of Fact

Relator alleges four counts of misconduct, all of which relate to Respondent's representation of Dionne Davis in a home improvement dispute with Fred Jackson and Mink Construction Company regarding remodeling work performed at Ms. Davis's residence. In support of the Motion, Relator on October 5, 2009, submitted a Memorandum and attached Exhibits. Included among the Exhibits is the transcript ("Tr.") of a hearing conducted by Relator prior to the filing of its Complaint.

Respondent's representation of Ms. Davis began when he was sharing office space with another attorney, and continued after he terminated that relationship and began working out of his home. Respondent filed a complaint in the Butler County Common Pleas Court on behalf of Ms. Davis in April 2006, and the defendants filed an answer and counterclaim. A Report Hearing (in the nature of a scheduling conference) was scheduled by the Court for September 5, 2006, and served on the parties (Respondent was served at the address he put on his complaint: 11085 Montgomery Road) but Respondent did not attend. On September 15, the Court entered a Pretrial Order setting dates for the completion of discovery, filing dispositive motions, mediation, and for final pretrial and trial. The docket and the court file reflect that these orders were served on Respondent at the Montgomery Road address and they were imaged and entered on the Butler County electronic docket system for access on the internet. Mediation was held on March 15, 2007, in which Respondent participated, but the mediation was not successful. Thereafter,

counsel for the defendants sought leave to withdraw. Respondent received notice of that motion (which was sent to the Montgomery Road address), and unsuccessfully opposed it.

Thereafter, Respondent failed to file a pretrial statement or appear at the scheduled pretrial on August 30, 2007.[1] Jackson filed a motion to dismiss the complaint, which Respondent failed to oppose, and the complaint was dismissed on September 18.

Respondent learned of the dismissal on September 22. He notified Ms. Davis that she need not appear for the trial, but did not tell her why. Davis repeatedly tried to contact Respondent regarding the status of her case between September and December, 2007, without success. On December 13, 2007, Ms. Davis received from the Court a statement of court costs due, and learned for the first time that her complaint had been dismissed. Ms. Davis filed a grievance against Respondent on January 13, 2008, to which Respondent replied by letter on March 14. On June 19, 2008, Relator took sworn testimony from both Respondent and Ms. Davis and Respondent had the opportunity to, and did, cross examine Ms. Davis.

In both his reply and at Relator's pre-complaint hearing, Respondent advanced various excuses for his inactivity: misdirection of his mail (Tr. 27), an incompetent secretary (Tr. 46), moving his office (Tr. 38), illness (Tr. 31) and the like. He offers no substantiation for any of this, and his testimony lacks credibility. He admits that he failed to advise his client that he carries no malpractice insurance (Tr. 65). He rationalizes this by asserting that his relationship with Ms. Davis originated when he was sharing office

[1] There is reference in Respondent's hearing testimony (Tr. 25, *et seq.*) to notes from the Court file in the Davis case regarding a telephone call to the Court placed by Respondent on August 30, and an inference that Respondent sought to excuse his failure to attend the final pretrial by claiming that he was on duty with the military reserves. Respondent was not in the military at the time, and testified that he has no recollection of making this call.

space with another lawyer, who had the required insurance. When he left that office-sharing arrangement, he says, he took Ms. Davis with him as a client but failed to advise her that he carried no insurance himself.

Ms. Davis testified that she paid Respondent money for court costs and money for fees (Tr. 80), and Respondent's cross examination of her confirms that fact (Tr. 89).[2] Respondent's cross examination of Ms. Davis at the bar hearing suggests that these fees were earned by him in exchange for services that he provided.

In his reply to Relator's initial grievance inquiry, Respondent professed to be "dumbfounded" that the Davis lawsuit had been dismissed without his knowledge. Nonetheless, since the date of Relator's pre-complaint hearing in June 2008, he has not offered any defense to these proceedings.[3]

As set forth above, Relator undertook a comprehensive investigation into Respondent's conduct, including taking sworn testimony. Based on the foregoing, and pursuant to Gov.Bar R. V (6)(F)(1)(b), the Motion is supported by "[s]worn or certified documentary prima facie evidence in support of the allegations made." *See Dayton Bar Association v. Sebree*, 104 Ohio St. 3d 448, 2004-Ohio-6560.

Relator's Allegations

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[2] In his testimony, Respondent claims to have had a contingency fee arrangement with Ms. Davis which, pursuant to R.C. 4705.15 must be in writing. Respondent claims to have complied with this requirement, but could not produce a copy of the agreement. Ms. Davis, in her testimony (Tr. 78), asserts that the only writings involved in her relationship with Respondent were the checks that she wrote to him for services. The possible failure to comply with R.C. 4705.15 is not the basis of any allegation of misconduct against Respondent.

[3] On September 18, 2008, shortly before the expiration of one year from the dismissal of the Davis complaint, Respondent filed a motion for relief from judgment on Davis's behalf, notwithstanding their currently adversarial relationship.

Relator alleges that Respondent has committed the following violations of the Code of Professional Responsibility ("Code") and the Ohio Rules of Professional Conduct ("Rules")[4]:

A. COUNT ONE – MALPRACTICE INSURANCE

Former DR 1-104; Prof. Cond. R. 1.4(c): Minamyer was not covered by a policy of malpractice insurance during his representation of Davis and failed to notify Davis of that fact.

B. COUNT TWO – NEGLECT OF A LEGAL MATTER

Former DR 6-101; Prof. Cond. R. 1.3: Minamyer failed to act with reasonable diligence in representing Davis, in that he failed to inform himself of dates that had been set by the Court regarding, inter alia, disclosure of expert witnesses, pretrial statement and the pretrial date.

C. COUNT THREE – FAILURE TO COMMUNICATE WITH CLIENT

Prof. Cond. Rule 1.4(a)(3) and 1.4(a)(4): Minamyer failed to inform Davis of the status other case when the case was dismissed on September 26, 2007, and she did not learn of the dismissal until she herself called the Judge's office after receiving, in mid-December, 2007, a notice of court costs due.

D. COUNT FOUR – ENGAGING IN DISHONEST CONDUCT

Former DR 1-102(A)(4); Prof. Cond. R. 8.4(c): Minamyer acted dishonestly when he failed to inform Davis of the status of the case when the case was dismissed on September 26, 2007.

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[4] The time frame relevant to these proceedings overlaps the effective time for the Code, and the effective date of the Rules.

Conclusions of Law

Based on the information submitted in support of the Motion, Relator has proven all of the alleged rule violations of Counts One through Four by clear and convincing evidence and the Master Commissioner recommends that the Board so find.

Mitigation, Aggravation and Sanction

Section 10 of the Board's Procedural Regulations sets forth guidelines for imposing lawyer sanctions, and provides factors to be considered in aggravation, and in mitigation of punishment. Here, Respondent committed multiple violations of the Code of Professional Responsibility and the Rules of Professional Conduct. His misconduct caused harm, economic and otherwise, to his client. His failure to notify Ms. Davis of the dismissal of her complaint, and to forthrightly deal with the consequences, was deceitful. He has failed to cooperate in these proceedings as required by Gov. Bar R. V(4)(G). There is no evidence of mental disability or substance abuse. Although Respondent makes reference to illness in his deposition, and to suffering from depression, he offers no substantiation of either.

In *Cleveland Bar Assn. v. Berk,* 114 Ohio St. 3d 478, 2007-Ohio-4264, the Supreme Court ordered a stayed suspension for a respondent who failed to attend court hearings and meet court deadlines. In that case, however, the respondent fully cooperated with the disciplinary process, and engaged in a course of rehabilitation designed to prevent reoccurrences of misconduct. Here, the opposite has occurred. Respondent has abandoned even his limited efforts to participate in these proceedings. The Supreme Court has repeatedly held that the primary purpose of disciplinary sanctions is not to punish the offender but to protect the public. *Disciplinary Counsel v. Agopian,* 112 Ohio St. 3d 103,

2005-Ohio-6510. Even when a lesser sanction might ordinarily be warranted, where there are unresolved issues regarding a respondent, the Court has imposed a more severe sanction than might otherwise be the case. *See e.g. Akron Bar Assn. v. Wittbrod,* 122 Ohio St.3d 394, 2009-Ohio-3549. Here, troubling unanswered questions exist with respect to Respondent's fitness to practice law. They might have been resolved had he chosen to participate in these proceedings, but he did not, and accordingly, an actual suspension from the practice of law is appropriate.

Relator suggests a one-year suspension, with one year's probation thereafter, during which Respondent is to be monitored by a supervising attorney appointed by Relator. The Master Commissioner concurs and recommends that Respondent be suspended from the practice of law for one year, and, upon reinstatement, that he be placed on one year's probation during which time he is monitored by a supervising attorney appointed by Relator.

RECOMMENDATION

Pursuant to Gov. Bar Rule V(6)(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on December 3, 2009. The Board adopted the Findings of Fact and Conclusions of Law of the Master Commissioner. It recommends, however, based on the record in this matter, that the Respondent, William Eric Minamyer, be suspended from the practice of law for a period of two years with one year stayed for probation and the appointment of a monitor. The Board further recommends that the cost of these proceedings be taxed to the Respondent in any disciplinary order entered, so that execution may issue.

Pursuant to the order of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendations as those of the Board.

JONATHAN W. MARSHALL, Secretary
Board of Commissioners on
Grievances and Discipline of
the Supreme Court of Ohio

The Supreme Court of Ohio

FILED

MAR 30 2010

CLERK OF COURT
SUPREME COURT OF OHIO

Butler County Bar Association,
Relator,
v.
William Eric Minamyer,
Respondent.

Case No. 09-2284

RECEIVED
MAR 30 2010
BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

ON CERTIFIED REPORT BY THE
BOARD OF COMMISSIONERS ON
GRIEVANCES AND DISCIPLINE OF
THE SUPREME COURT

ORDER

The Board of Commissioners on Grievances and Discipline filed its Final Report in this court on December 18, 2009, recommending that pursuant to Rule V(6)(B)(3) of the Supreme Court Rules for the Government of the Bar of Ohio the respondent, William Eric Minamyer, be suspended from the practice of law for a period of two years with one year stayed on conditions. Upon consideration thereof,

It is ordered by the court that this matter is remanded to the Board of Commissioners on Grievances and Discipline for consideration of evidence to be submitted by the parties regarding respondent's health conditions. Following consideration of the evidence by the Board, the Board shall file a final report with this Court. The Court anticipates that the final report will be filed within six months of the date of this order. Proceedings in this Court are stayed until further order of the Court. Costs to abide final determination of the case.

It is further ordered that respondent shall keep the Clerk, the Butler County Bar Association, and the Disciplinary Counsel advised of any change of address where respondent may receive communications.

It is further ordered, sua sponte, that all documents filed with this Court in this case shall meet the filing requirements set forth in the Rules of Practice of the Supreme Court of Ohio, including requirements as to form, number, and timeliness of filings.

It is further ordered, sua sponte, that service shall be deemed made on respondent by sending this order, and all other orders in this case, by certified mail to the most recent address respondent has provided to the Office of Attorney Services.

THOMAS J. MOYER
Chief Justice

Exhibit
B

ATTACHMENT NOT SCANNED

Before the Board of Commissioners on Grievances and Discipline of

Wm. Eric Minamyer, Oh Reg 0015677

~~In~~ the Supreme Court of the State of Ohio

FILED

NOV 24 2010

BOARD OF COMMISSIONERS ON GRIEVANCES & DISCIPLINE

Butler County Bar Association, Relator.	:	
v.	:	Case No. ~~2009-2284~~ 09-044
William Eric Minamyer, Respondent.	:	Response to Findings and Recommendation of Dr. Beech

COMES NOW the Respondent, William Eric Minamyer, and submits the following in response to Findings and Recommendations of Dr. Douglas Beech as well as the Butler County Bar Association's November 18, 2010 pleading.

Respondent provided complete access to his medical records and submitted to examination by a psychiatrist. The medical records supplied to the Commission-appointed expert revealed depression, Post Traumatic Stress Disorder and traumatic brain injury.

Dr. Beech concluded that Respondent's condition led to his failure to timely defend against the complaint by Ms. Davis with this Commission. Respondent admitted that Ms. Davis was not informed about the lack of insurance at the time of transfer of the file. If given an opportunity to defend the remaining charges, Respondent would deny the other allegations.

The trial court on November 10, 2009 granted the motion to set aside the dismissal written by Respondent and filed by both Respondent and Ms. Davis in September 2008. On August 16, 2010 Default Judgment was entered for Ms. Davis when the Defendants failed to respond to a Motion for Summary Judgment. The Defendant appearing *pro se* lied to the trial court about the nature of the case and that he served Respondent with pleadings.

Exhibit D

Relator cites but one aspect of Dr. Beech's conclusions. Dr. Beech opined that: "The recommendation by the BOC to appoint a monitor (from a mental health standpoint) is a reasonable safeguard for his future practicing law."

Dr. Beech noted that Respondent maintained during the interview that he did not receive the scheduling order. Two things about other address errors should be noted. The Butler County Clerk continues to list Respondent as counsel for Ms. Davis with an outdated address that was corrected when Respondent again moved his office. Ironically the Relator in its Certificate of Service lists an address for Respondent which he never had, which appears to be an apartment in Cincinnati. Clearly this is a typographical error, but it illustrates how easily addresses can be entered by mistake.

Respondent respectfully requests that he be permitted to continue to practice law under appropriate supervision and monitoring until such time as his health conditions are completely resolved or he retires.

Respectfully submitted,

Wm. Eric Minamyer OH 0015677
9832 Farmstead Drive
Loveland, Ohio 45140
513-885-6294
eminamyer@cinci.rr.com

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was mailed by U. S. Ordinary Mail and to The Butler County Bar Association and this 24th day of November, 2010.

Wm. Eric Minamyer