ORIGINAL

In the Supreme Court of the State of Ohio

Butler County Bar Association, Relator.	:	
	:	Case No. 2009-2284
v.	:	
	:	**Response to Show Cause Order**
William Eric Minamyer, Respondent.	:	

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

FILED
JAN 03 2011
CLERK OF COURT
SUPREME COURT OF OHIO

In the Supreme Court of the State of Ohio

Butler County Bar Association, Relator.	:	
	:	Case No. 2009-2284
v.	:	
	:	**Response to Show Cause Order**
William Eric Minamyer, Respondent.	:	

COMES NOW the Respondent, William Eric Minamyer, and submits the following Response to Show Cause Order dated December 14, 2010.

On March 30, 2010, this Honorable Court remanded this matter to the Board of Commissioners on Grievances and Discipline for consideration of evidence to be submitted by the parties regarding Respondent's health conditions. These conditions are relevant to (1) the health conditions and their effects at the time of the representations of the grievant, (2) the fitness for Respondent to practice law, and (3) the effect of the conditions upon the Respondent's ability to defend against the grievance. The only evidence presented was by the Respondent and a Commission-ordered mental health evaluation was conducted, comprised of a review of Respondent's health records and an interview.

Health Effects on Conduct in 2007

The first issue is what effect, if any, Respondent's health affected the representation. The report of the doctor appointed was submitted to the Commission and addressed each of these issues. It was opined that the health conditions affected the Respondent at the time of representation, concluding that the "mental health difficulties likely played only a modest role in the alleged misconduct" and that "to whatever degree he was neglectful of his duties in the case, his conditions played a contributory, but not primary role." This finding is consistent with the

statements made by Respondent during the interview. Respondent admitted that he should have informed the client of the lack of insurance and should have been certain that he received the scheduling order rather than assume that it was received and the dates properly entered in his calendar.

The report is in error in respect to when he learned of and informed the client of the dismissal. It was not the day of trial. Respondent telephoned the court the day prior to the trial date to inquire when he and his client should appear. The judge's secretary informed him of the dismissal, but would not give the reasons instead referring him to the order. Respondent called the client and left a message. Respondent stated that he does not recall exactly what was said to the client, but that there were two conversations. In the message, the client was informed that the case was dismissed for a reason he did not know at that time. A conversation occurred once Respondent had received the dismissal entry and he informed the client that he would have to file papers to get the case reinstated, as was his intension. It was during the last months of 2007 when Respondent and his wife learned of her lung cancer and she had half her left lung removed in December of that year. Before Respondent could file the motion to reinstate the case, the client filed the grievance and instructed him to do nothing further in the case, by which he assumed she would retain substitute counsel.

The dismissal followed the filing of a Motion to Dismiss by the defendant pro se. Despite the signed notice of service, the defendant did not so serve Respondent. Similarly Defendant did not serve his pretrial statement which was replete with falsehoods about the case, which were accepted by the trial court as true. On the basis of an affidavit and motion filed by Respondent

the client's case was reinstated and default judgment entered in her favor. A copy of the affidavit is attached, which provides the factual basis for the motion to reinstate the case.[1]

Fitness to Practice Law

The second issue is fitness to practice law. The report of the doctor states that Respondent "has taken measures to support his ability to practice law in a safe and responsible manner going forward, minimizing work load and obtaining external support. The recommendation by the BOC to appoint a monitor (from a mental health standpoint) is a reasonable safeguard for his future practicing law." It has been Respondent's intention to seek employment with a corporate legal department or the government. The pendency of these proceedings and the potential findings have made such a career change impossible. Respondent's practice is reduced to a half dozen or so matters at a time, nearly all of which with clients predating 2007. I have a pending disability claim with the Veterans Administration.

Effects on Defense of the Underlying Grievance

The doctor's report states the "most significant role played by his conditions was his avoidance of responding to the complaint in a timely manner."

As a result of the failure to file a timely answer before the Commission, their decision reflects acceptance of the allegations by Relator. The finding goes so far as to accuse Respondent of "having an excuse for everything" and of having an attitude of "if you don't believe me, then I suffer from a mental disability that accounts for my actions."[2] Respondent possesses no such attitude. Relator's accusation of failing to provide information as to mental health is belied by the

---

[1] Permission of the client was denied to Respondent to file this until the date on the pleading.

[2] The Commission also belittled Respondent's statement that he was "dumbfounded" by the dismissal. Having not received a copy of the motion, any notice of a hearing on that motion, a copy of the decision, or any communication from the court about it, counsel was dumbfounded when a secretary in the judge's office told him about it on the eve of a trial for which he was prepared to proceed. The secretary did not provide any explanation other than that the case was dismissed.

fact that he offered on numerous occasions to provide Relator with releases to obtain complete medical records, which are voluminous.

The Commission report criticizes Respondent's response to the phychiatrist's report, accusing him of not accepting responsibility. They misinterpret that response. Respondent points out that Dr. Beech concluded that Respondent did not timely defend himself due to his conditions. Respondent desires an opportunity to defend against those allegations he denies. The Respondent admitted to failing to inform the client about the lack of insurance. All other allegations could be defended by Respondent. Respondent earlier should have been engaged in addressing the issues before the Grievance Commission, but given the effect of the health issues on his ability to do so the Court should not find all allegations against him on the basis of that failure.

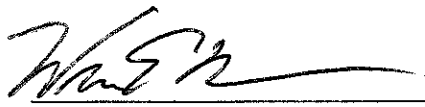
Sanction

Since this matter has been pending Respondent's law practice has dwindled to a handful of matters and few clients. The grievance matter has become public knowledge and Respondent has been embarrassed by this. If part of the purpose of sanctions is to induce change in the counselor involved, that has occurred. As noted in the report of Dr. Beech, Respondent voluntarily reduced his case load and instituted other steps to ensure the quality of his work His practice is restricted to Hamilton County, Clermont County and federal court.[3]

I apologize to this Court for my condition leading to my recent lack of responsiveness. I respectfully request that I be given a full opportunity to defend against the allegations, given the finding by Dr. Beech as to failure to timely defend. In the alternative, I respectfully request to be permitted to continue to practice without a suspension or with the entire suspension stayed.

[3] Counsel has in 31 years as an attorney appeared in Butler County very few times.

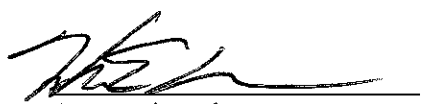
Respectfully submitted,



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

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 the Commission on Grievances this 3rd day of January, 2011.



Wm. Eric Minamyer

FILED
2008 SEP 17 PM 3:44
CINDY CARPENTER
BUTLER COUNTY
CLERK OF COURTS

Wm. Eric Minamyer, Oh Reg 0015677

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO
CIVIL DIVISION

DIONNE DAVIS 5385 SOUTH GILMORE ROAD FAIRFIELD, OHIO 45014, PLAINTIFF	)	CASE NO. CV 2006 04 1137
vs.	)	JUDGE ONEY
FRED JACKSON 1725 BERKLEY AVENUE CINCINNATI, OHIO 45237 and MINK CONSTRUCTION COMPANY 1725 BERKLEY AVENUE CINCINNATI, OHIO 45237, DEFENDANTS	)	**AFFIDAVIT OF WM. ERIC MINAMYER**

COMES NOW Wm. Eric Minamyer, after being duly cautioned and sworn, and states as follows:

1. I was the attorney for Dionne Davis in the above matter.

2. I did not receive the scheduling order until after the case was dismissed and was not aware of the final pretrial date or the other scheduled matters that were not noticed by a separate notice.

3. Before the trial I called the court and learned of the dismissal.

4. I did not intentionally miss the pretrial or the other dates in that I did not receive a copy of the scheduling order; misses dates was inadvertent regardless of the reason why I did not receive the scheduling order.

5. In March 2007, after the mediation failed I prepared a pretrial statement, which I intended to present to the court.

6. We had no expert witnesses and thus I did not identify any.

7. I received no exhibits from the Defendant.

8. I did not receive a copy of the Defendant's pretrial statement as indicated on the pretrial statement filed by Defendant and note that no date is entered in the certificate of service.

9. I did not receive a copy of the motion to dismiss; no hand-delivery was made to me.

10. If Defendant had tried to serve a copy at 11085 Montgomery Road, Suite 202, Cincinnati, Ohio he would have been told that my office was relocated to 9832 Farmstead Drive, Loveland, Ohio 45140 and they would not have accepted it.

11. Defendant lied in his motion to dismiss with respect to the Plaintiff refusing to allow an inspection.

12. He appeared at Plaintiff's condominium on November 15 without prior confirmation of the time and date by either the Defendant or Mr. Hart.

13. Neither I nor Plaintiff was aware he planned to come.

14. Her painter on the scene did not allow Defendant to enter, but in a later telephone conversation I had with Mr. Hart I agreed that we would schedule an inspection., but they never did that.

15. I was out of town in Florida at the time and dealt with the situation by telephone.

16. When I filed the complaint I filled out all the forms requested of me by the clerk's office and do recall pointing out that my address was a change from what was probably on file.

17. I discovered that they had the 2001 address in the system and eventually after several visits to the clerk's office including a special trip solely for that purpose I was able to get a correction.

18. My file does include many notices with the correct address, but the scheduling order that I finally got from the court records does not have an address on it.

19. I was present at the scheduling conference due a traffic accident I witnessed on my way to court where I remained initially to help (I was a Special Deputy Sheriff at the time) and to give a witness statement.

20. This accident occurred on Montgomery road at a very busy intersection and resulted form one driver running a red light at a high rate of speed causing severe damage to the two cars and what appeared to me to be potentially serious injury to the driver of the struck vehicle, although I do not know for certain what her injuries were if any.

21. When I called the court to advice the bailiff of the situation I was still involved at the scene, the cruisers having just arrived.

22. I recall getting the trial date and being told I would receive confirmation in the mail, so I noted the trial date on my calendar in the car and went back to dealing with the accident.

23. The statement in the last paragraph of the Court's Entry that a copy of the scheduling order was given to me is incorrect inasmuch as I was not there.

24. In the last sentence of Defendant's Pretrial Statement he asserts that "the underlying case involves dispute over the quality of renovation and repairs performed under a home improvement contract."

25. What actually happened is that little work was done, funds provided by plaintiff for the purchase of materials was used by Defendant either on someone else's home or for his personal use, and when he received a letter from me he immediate took all his tools from the jobsite and refused to return."

26. He states he "contends the work performed was done within the scope of the contract and performed in a good and workmanlike manner."

27. The videotape of the condominium and photographs taken when he abandoned the project show no completed work and a mess left behind.

28. He claims Plaintiff interrupted the performance of the job when in fact he abandoned the project when I as her attorney wrote to complain that he was to be completed with the work by that date and that nothing was anywhere near completion.

29. The so-called initial deposit was to pay for materials, which he purchased none of.

30. The contract is attached to the complaint and was written by him.

31. He claims to have "performed extensive electrical work and renovation in the bathroom" but the videotape belies this assertion.

32. He claims under a heading "Request for On-Sire Visit" that he was denied access to the property for an inspection. Without setting up a time or advising in anyway his intentions to come to the condominium he just showed up.

33. A painter working on the site refused to let him in and called Ms. Davis who then called me in Florida where I was vacationing at the time.

34. I called Mr. Hart and we agreed that the inspection could be scheduled later, but Defendant never asked to schedule it.

35. He states under a heading "Plaintiff's Actions Resulted in Her 'Damages'" that her "behavior" was the reason the project was not completed, including a claim that she was to provide materials when the contract states otherwise.

36. The key fact is that when I wrote to him to complain about the delay in completion of the project he took his tools and left the jobsite completely in a mess and misspent her $10,000 for materials elsewhere.

37. In the Certificate of Service Defendant claims to have hand-delivered the pleading on an unlisted date in August 2007.

38. I moved from the office at 11085 Montgomery Road, Suite 202, Cincinnati, Ohio 45249 on July 31, 2007.

39. I checked with Scott Schweiger who remained at that location and he states no one served any papers in any case upon me at any time after July 31, 2007.

40. He further states that if anyone had tried to make service of paper or hand-deliver anything to me in August 2007 they would have been directed to my new location and given my telephone number.

41. Likewise, Defendants claim to have made hand-delivery of the Motion to Dismiss on August 31, 2007 is untrue.

42. In looking at the decision on the issue of withdrawal of counsel I see clearly that the date of the pretrial is in that order, but at the time I read it I did not check to verify that the date was on the calendar because I incorrectly assumed that it would be in the ordinary course.

43. My failure to recognize that this date was not intentional and was completely inadvertent.

44. No willful act occurred that led to my not following the scheduling order other than I had not seen it.

45. My old address from 2001 was in the clerk's office system because I was on active duty for much of the period from 2001 until October 2003.

46. Thereafter I worked briefly in a law office before accepting an in-house position in Columbus followed by working for the Ohio Department of Job and Family Services.

47. I returned to practicing law in 2005 with Buckley King and did not appear in Butler County until I started a solo practice sharing office space at the 11085 Montgomery Road address.

48. I recall having only appeared in three cases in Butler County since: one in Domestic Relations Court, the present case, and one in Juvenile Court that is now pending.

49. When I filed the first case I ascertained that the 8280 Montgomery road address was in the system and asked that they be sure to change this.

50. I later discovered that the correction had been made and I called the clerk's office, I emailed using the courts system address, and I even made a special trip to the clerk's office to get it corrected.

51. I cannot recall the exact dates of those communications, but eventually this was corrected.

52. Plaintiff did not retain an expert because one was not required and therefore no expert was declared by her.

FURTHER AFFIANT SAIETH NAUGHT.

Wm. Eric Minamyer

JURAT

Sworn to and subscribed in my presence this 17 day of ~~June~~ Sept 2008.

Glenn R Hubbard
Notary Public

GLENN R HUBBARD
NOTARY PUBLIC
STATE OF OHIO
MY COMMISSION EXPIRES
04-16-13