

ORIGINAL

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

In Re:	:	11 - 2045
Complaint against	:	Case No. 11-029
Michael Patrick Meehan Attorney Reg. No. 0059515	:	Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio
<u>Respondent,</u>	:	
Disciplinary Counsel	:	
<u>Relator.</u>	:	

{¶1} This case involves several alleged instances in which Respondent, Michael Patrick Meehan, who was admitted on November 9, 1992, practiced law while under an administrative suspension that the Supreme Court imposed on November 3, 2009 due to his failure to renew his registration. *In re Attorney Registration Suspension of Meehan, 11/04/2009 Administrative Actions, 2009-Ohio-5786.*

{¶2} The hearing panel consisted of Lisa Lancione Fabbro, McKenzie Davis, and Paul De Marco, chair. None of the panel members resides in the appellate district in which the complaint arose, and none was a member of a probable cause panel that reviewed the complaint pursuant to Gov. Bar R. V, Section 6(D)(I). The panel heard testimony and arguments on September 23, 2011. Heather Hissom appeared on behalf of Relator, and Richard Koblentz appeared on behalf of Respondent.

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{¶3} Because the parties stipulated that Respondent committed violations of several Ohio Rules of Professional Conduct by repeatedly filing eviction actions while his license was suspended, the hearing and the pretrial proceedings that preceded it focused entirely on the appropriate sanction. For the reasons discussed below, the panel recommends a two-year suspension, all of it stayed on conditions, including that Respondent be continuously monitored and enter into and comply fully with an OLAP contract.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶4} Respondent owns and operates Evergreen Title Agency, Ltd. His practice is almost exclusively limited to eviction actions.

{¶5} At the time of the stipulated violations, Respondent had only two clients. His principal client was Midwest Properties, LLC.

{¶6} In 2009, Respondent failed to renew his registration and, thus, the Supreme Court suspended him from the practice of law effective November 3, 2009. Respondent testified that he received and signed for the letter notifying him of the suspension, but did not open it along with any other mail because, at the time, he was experiencing major depression.

{¶7} The parties stipulated that, during his five-month suspension, Respondent was responsible for filing eight eviction complaints for Midwest Properties—six in Akron Municipal Court and two in Cleveland Municipal Court—and for using his notary seal to notarize deeds in connection with his title business.

{¶8} Respondent's dealings with Midwest Properties regarding the eviction complaints at issue in this case exemplify his hands-off approach to serving his two clients' needs. Patrick Croghan, a nonlawyer who is the managing member of Midwest Properties, filled in each of the

eight complaints for Respondent, signed Respondent's name with his authorization, faxed the complaints to Respondent for his approval, and then filed them on Respondent's behalf.

{¶9} Respondent further testified that, due to this prolonged depressive episode, he did not learn of his suspension until May 2010, more than five months after it was imposed. Respondent recounted the circumstances that led him to learn belatedly about his suspension: "I became aware of that because my wife received a notice from the department of insurance regarding my continuing education for my title agent's insurance. And I would often take continuing ed, which was not only for the title agency's licensure, but also for continuing legal education. And I went on-line to see what I needed for my CLEs and I realized at that time that I was under suspension." (Hearing Tr. 31, lines 22-25 and 32, lines 1-5)

{¶10} Respondent testified that, as soon as he learned of his suspension, he immediately did what was necessary to be reinstated. His license was reinstated on May 18, 2010.

{¶11} Respondent testified that he did not file any complaints, notarize any documents, or engage in any other activities as a lawyer between the time he learned of his suspension and the date his license was reinstated.

{¶12} The parties stipulated that Respondent's actions violated Prof. Cond. R. 5.5(a) [a lawyer shall not practice law in a jurisdiction in violation of the regulations of that jurisdiction], Prof. Cond. R. 8.4(d) [a lawyer shall not engage in conduct that is prejudicial to the administration of justice], and Prof. Cond. R. 8.4(h) [a lawyer shall not engage in conduct that adversely reflects on his or her fitness to practice law].

{¶13} The parties also stipulated that Respondent was ordered to pay a monetary sanction for failing to meet the CLE requirements of Gov. Bar R. X, Section 3(A) for the 2007-2008 biennium.

{¶14} The first of the Midwest Properties complaints at issue was filed on December 10, 2009, 37 days after Respondent was suspended, while the last of them was filed on May 11, 2010, seven days before Respondent's license was reinstated.¹

{¶15} Literally everything written on the eight Midwest Properties complaints at issue was filled in by Patrick Croghan, the nonlawyer, who did not know of Respondent's suspension at the time he processed and filed the complaints.

{¶16} The signatories on the deeds Respondent notarized while under suspension also did not know of his suspension.

{¶17} The panel finds by clear and convincing evidence that Respondent violated Prof. Cond. R. 5.5(a), 8.4(d), and 8.4(h).

SANCTION

{¶18} The parties filed a timely discipline by consent for a 12-month suspension, all of it stayed. The panel rejected it and set the matter for a hearing. Prior to the hearing, the panel chair conducted an extensive conference with counsel in an effort to review the panel's concerns and focus the parties' evidence and arguments for the hearing. Specifically, the panel chair raised the fact that the Supreme Court has never stayed an entire suspension for practicing while under a suspension. The panel chair and counsel discussed the relevant case law. The panel chair also noted that the deposition testimony of Respondent's treating psychiatrist might not suffice to link Respondent's depressive episode, the onset of which the psychiatrist testified was early in 2010, to Respondent's initial impermissible filing of a complaint in early December 2009. The panel chair questioned whether the psychiatrist would be called as a witness to clarify

¹ The last of the Midwest Properties complaints was filed on May 11, 2010, five days after Respondent paid the monetary sanction for failing to meet the CLE requirements for the 2007-2008 biennium. This raises the question whether he might have learned about his suspension by the time he filed the last complaint. He denied that he had, and Relator presented no evidence to contradict him.

this possible discrepancy. Respondent's counsel was noncommittal because he did not know of the psychiatrist's availability. As it turned out, the psychiatrist was unavailable to testify, so the parties stipulated to admitting his deposition testimony and his two reports. Respondent was the only witness at the hearing. In closing arguments, counsel for Respondent and counsel for Relator argued again that the appropriate sanction would be a 12-month suspension, all of it stayed. During an extended colloquy with the panel members, however, counsel agreed that a longer suspension—up to a full 24 months—might be warranted, though they still maintained it should be stayed in its entirety.

{¶19} Arriving at the appropriate sanction requires consideration of the attorney's misconduct, the duties violated, the injuries caused, the attorney's mental state, and the sanctions imposed in similar cases. *Cleveland Bar Assn. v. McMahon*, 114 Ohio St.3d 331, 2007-Ohio-3673, ¶ 24. Before recommending a sanction, the panel weighs the mitigating and aggravating factors in the case, including not only those set forth in BCGD Proc. Reg. 10(B), but all factors relevant to the case. *Cincinnati Bar Assn. v. Mullaney*, 119 Ohio St.3d 412, 2008-Ohio-4541, ¶40.

Mitigating Factors

{¶20} The parties have stipulated to the following six mitigating factors set forth in BCGD Proc. Reg. 10(B)(2): (1) the lack of a prior disciplinary record; (2) the lack of a selfish or dishonest motive; (3) Respondent's full and free disclosure during the investigation; (4) his cooperative attitude toward these proceedings; (5) evidence of Respondent's good character and reputation; and (6) evidence that Respondent has a mental disability (*i.e.*, a major depressive disorder) diagnosed by a qualified health care professional who attests that it contributed to his

misconduct, that he has undergone a sustained period of successful treatment, and that he is able to return to competently and ethically practice law.

{¶21} The panel accepts the first five stipulated mitigating factors exactly as proffered and takes them into account in considering the duties Respondent violated, the injuries he caused, his mental state, and the sanctions imposed in similar cases. The panel does not, however, accept the sixth mitigating factor as exactly proffered by the parties.

{¶22} Respondent's treating psychiatrist, F. Gregory Noveske, M.D., opined that a depressive episode contributed to Respondent's practicing law while under suspension. Respondent submitted two reports from, and the deposition of, Dr. Noveske. (Agreed Stipulations, Ex. 10-12) While in both reports, Dr. Noveske generally noted Respondent's depression as "a mitigating factor in his misconduct," his initial report stated that Respondent began experiencing a depressive episode "in early 2010," which would have been *after* the first of the Midwest Properties complaints had been filed. (Agreed Stipulations, Ex. 10)

{¶23} Knowing that Dr. Noveske believes the depressive episode began in early 2010, makes us less confident in his opinion that depression contributed to misconduct that began on December 10, 2009, the first time Respondent filed a complaint while suspended. Moreover, in his deposition, Dr. Noveske did not specifically link Respondent's 2009-2010 depressive episode to his filing of complaints while under suspension. (Agreed Stipulations, Ex. 11) Indeed, he appears not to have understood the details of Respondent's violations. And he offered no view on how exactly Respondent's depression might have contributed to the violations (*e.g.*, his reluctance to open his mail).

{¶24} Even when Respondent's counsel coaxed Dr. Noveske toward opining that the depressive episode began earlier than Dr. Noveske had initially surmised, the most Dr. Noveske

could say was “It’s possible.” (Agreed Stipulations, Ex. 11 at 22, line 16) We are reluctant to give weight to an expert’s speculation about the onset of an illness, even a mental illness that, as common experience suggests to us, may be difficult to place in a fixed timeframe. Given Dr. Noveske’s explicit expression of his own uncertainty as to the onset of this particular depressive episode, it seems unlikely that he holds his onset opinion to a reasonable degree of psychiatric certainty. Under these circumstances, we decline to accord this speculative aspect of his opinion controlling weight or, for that matter, any weight at all.

{¶25} But that does not mean the panel finds Respondent cannot invoke BCGD Proc. Reg. 10(B)(2)(g) as a mitigating factor. To the contrary, we do not believe the fact Dr. Noveske never specifically opined that Respondent was experiencing a major depressive episode in early December 2009 (when Respondent filed the first of the Midwest Properties complaints) is fatal to this as a mitigating factor. Under BCGD Proc. Reg. 10(B)(2)(g)(ii), there must be “[a] *determination* that the ... mental disability contributed to the misconduct.” (Emphasis added.) In contrast to BCGD Proc. Reg. 10(B)(2)(g)(i), BCGD Proc. Reg. 10(B)(2)(g)(ii) does not specify that the requisite determination must be made *by* a “qualified health care professional.” Evidence permitting *the panel* to make that determination seems to suffice.

{¶26} In this instance, Respondent’s uncontradicted testimony permits the panel to determine that Respondent was in the midst of a depressive episode when he filed all eight complaints and that depression contributed to his unawareness of his suspension. This is not an instance in which a nontreating psychiatrist or psychologist has been hired to evaluate Respondent after the fact for purposes of the disciplinary proceeding and is attempting to attribute to Respondent some previously undiagnosed mental illness. While we believe Dr. Noveske’s testimony missed the mark in definitively pinpointing the onset date of Respondent’s

depressive episode, Dr. Noveske's testimony as Respondent's long-time treating psychiatrist does provide ample documentation that Respondent struggled with depression "off and on" for many years before this episode and that he was under Dr. Noveske's care at the time of these violations. Stated another way, Dr. Noveske's testimony documents that Respondent was prone to depression and was taking medication the doctor had prescribed in the fall of 2009. Respondent's testimony went the rest of the way toward establishing his depression as a mitigating factor under BCGD Proc. Reg. 10(B)(2)(g). Respondent's testimony linked his violations starting on December 10, 2009 (the first complaint filed while he was suspended) to a major depressive episode that started in October or November 2009. Respondent testified without contradiction that, at the time of the Supreme Court's November 3, 2009 administrative suspension order, he was already in the throes of depression triggered by business troubles and his daughter's illness, that as a result he had stopped opening his mail, and that the suspension order most likely was simply another piece of mail that went unopened during this period of depression.

{¶27} Thus, the panel finds that BCGD Proc. Reg. 10(B)(2)(g)(ii) has been satisfied. Because we find that BCGD Proc. Reg. 10(B)(2)(g)(i), (iii), and (iv) have also been established, Respondent's depression qualifies as an additional mitigating factor in this case.

Aggravating Factors

{¶28} Although the parties have not stipulated to them, the panel finds as aggravating factors that Respondent engaged in a pattern of misconduct and committed multiple offenses. BCGD Proc. Reg. 10(B)(1)(c) and (d). Because the same depressive episode gave rise to all of these offenses, the panel accords less weight to these aggravating factors than to the mitigating factors described above.

Duties Violated and Injuries Caused

{¶29} Respondent failed to disclose his suspension to his clients and to the signatories on the deeds he notarized. He testified this was due to the fact he himself did not know of his administrative suspension until “a few days before” his reinstatement on May 18, 2010. As noted above, Respondent testified that he belatedly learned of his suspension when he “went on-line to see what I needed for my CLEs and I realized at that time that I was under suspension.”

{¶30} Respondent owed his clients, his fellow lawyers, and the Supreme Court an absolute duty to abide by the suspension order. He clearly violated this duty. As Relator acknowledged at the hearing, the fact his suspension was based on a failure to register does not render it any less serious than if it were based on other misconduct. That said, the only apparent harm that resulted from Respondent’s violations was the need to dismiss voluntarily the last of the Midwest Properties complaints after his opposing counsel became aware of his suspension. He insists that this dismissal occurred after he was reinstated, but that he acceded to the voluntary dismissal because the complaint had been filed while he was suspended. Relator has not produced any evidence contradicting Respondent’s account on this point, and the other lawyer was not called to testify.

Respondent’s Mental State

{¶31} As already noted, Respondent testified without contradiction that he was in the throes of depression when he was suspended in November 2009 and when the misconduct began in December 2009. Dr. Noveske’s testimony established that he remained depressed into the spring of 2010. All of the evidence concerning this roughly five-month period depicts Respondent as totally disengaged from what under normal circumstances was a remarkably hands-off law practice. Respondent claims his utter detachment from work beginning in October

or November 2009 left him unaware of his administrative suspension until mid-May 2010, when he stumbled across notice of it while investigating his CLE credits. Thus, the sanction imposed must take into account that Respondent is prone to depression so severe that he might again descend to such depths as to be in the dark about something as serious as his own suspension literally for months at a time. When the panel chair asked him how “the public is going to be protected in an instance where you may fall back into an episode of depression and stop opening your mail and stop answering your phone,” Respondent answered that “I have been on a different regimen of medication that has worked quite well,” that “I have also involved my wife more directly in my treatment,” and that “I have learned to be more open with her, with my doctor, with respect to the signs.” (Hearing Tr. 49-50)

Sanctions Imposed in Similar Cases

{¶32} In *Disciplinary Counsel v. Koury*, 77 Ohio St.3d 433, 436, 1997-Ohio-91, the Supreme Court stated, “The normal penalty for continuing to practice law under suspension is disbarment.” It should be noted that in *Koury*, the Court departed from the normal penalty, imposing an indefinite suspension where the evidence in mitigation included the attorney’s psychiatric treatment for “mental and stress-related problems.” *Id.* at 435.

{¶33} The Supreme Court departed again from the normal penalty in two “practicing while suspended” cases decided the same day, about seven months after *Koury*. In these two cases—*Disciplinary Counsel v. Bancsi*, 79 Ohio St.3d 392, 1997-Ohio-378 and *Disciplinary Counsel v. Blackwell*, 79 Ohio St.3d 395, 1997-Ohio-377—the Court’s departure, for the first time in such a case, included a partial stay of a term suspension.

{¶34} In *Bancsi*, the Supreme Court suspended the respondent on August 11, 1995 for failing to meet CLE requirements, but because he had not informed the Court of his address

change, he did not receive the suspension order until September 20, 1995. The respondent engaged in the practice of law before and after learning he was suspended. The panel and the Board recommended a one-year suspension with six months stayed. Despite quoting *Koury's* “normal penalty” language, the Court adopted that recommendation, citing “the specific facts of this case, including respondent’s prompt attempt to cure the deficiency with respect to continuing legal education which resulted in his suspension, his immediate payment of the outstanding fines, the short duration of the suspension, and the recommendation of the panel * * *” *Bancsi*, 79 Ohio St.3d at 394.

{¶35} In *Blackwell*, the respondent continued practicing law after the Supreme Court suspended him for failing to meet his CLE requirements. Noting that the period during which the respondent violated his suspension order was considerably longer than that found in *Bancsi*, the Court—again, after quoting *Koury's* “normal penalty” language—imposed a two-year suspension with the second year stayed, citing “the specific facts and circumstances of this case, and particularly * * * the board’s recommendation and the fact that most of respondent’s violations occurred during a period when he was achieving a successful recovery from alcoholism * * *” *Blackwell*, 79 Ohio St.3d at 397.

{¶36} In *Disciplinary Counsel v. Carson*, 93 Ohio St.3d 137, 2001-Ohio-1300, the Court again had occasion to depart from the “normal penalty,” instead imposing a two-year suspension, with one year of it stayed, on an attorney who practiced for almost seven years after the Court had suspended him for failing to cure CLE deficiencies. *Id.* at 137-138.

{¶37} Based on this litany of “practicing while suspended” cases, the panel pauses to make these observations: (1) the Supreme Court has mentioned but not applied its “normal penalty” for this particular violation; (2) the Court has never stayed a suspension in its entirety

for this violation; (3) the Court has never articulated a rule precluding a fully-stayed suspension for this violation; and (4) the Court's selection of the appropriate sanction for this violation turns very specifically on the particular circumstances of the violation.

{¶38} The parties readily acknowledge there is no precedent for a suspension stayed in its entirety in “practicing while suspended” cases.² They are quick to point, however, that the Court has not hesitated to impose a fully-stayed suspension where the mitigating circumstances warrant it. The prime example they cite is *Disciplinary Counsel v. Pfundstein*, 128 Ohio St.3d 61, 2010-Ohio-6150. In *Pfundstein*, the respondent failed to act diligently in handling his clients' cases, failed to keep them updated on their cases, and lied to them. *Id.* at ¶¶ 6-8, 10-12. Although *Pfundstein* is not a “practicing while suspended case,” it involved a serious violation (misrepresentation to clients) ordinarily requiring an actual suspension. It also involved five of the six mitigating circumstances present in this case – *i.e.*, the lack of a prior disciplinary record, the respondent's full and free disclosure during the investigation, his cooperative attitude toward these proceedings, evidence of respondent's good character and reputation, and evidence of the respondent's mental disability. *Id.* at ¶¶ 16-17. Not only was the sixth mitigating factor from the instant case – *i.e.*, lack of dishonesty – absent from *Pfundstein*, that case actually involved a sustained charge of misrepresentations to clients. *Id.* at ¶ 24. The Supreme Court imposed a one-year suspension, all stayed on conditions, despite Disciplinary Counsel's objection that the respondent's dishonesty warranted an actual suspension. *Id.* at ¶¶ 24-30.

² Hearing Tr. 62 ([By the panel chair]: “* * * [A]m I correct that there have been no cases in all of the Supreme Court decisions in which the Supreme Court has imposed an entirely stayed suspension for practicing law under suspension? [By Relator's counsel]: That is correct. This would be the first.”); Hearing Tr. 86-88 (“[By the panel chair]: * * * We appreciate your argument that [the Supreme Court has] moved off disbarment, but they have not moved as far as you want us to go* * *. [By Respondent's counsel]: We absolutely understand that as of this point, a sanction of this type in a practicing under suspension case, has never happened; however, that doesn't mean it should never happen and it doesn't mean it can't happen.”).

{¶39} In the case before the panel, it should be noted that Relator and Respondent have joined in urging the panel to recommend a fully-stayed suspension for the first time in a case involving an attorney who practiced while suspended. The parties contend that the unique circumstances of this case—that Respondent was so debilitated by depression he did not realize he was suspended and that, once he realized it, he brought himself into compliance with the registration requirement and was reinstated—overwhelmingly favor a fully-stayed suspension.

{¶40} Our primary reason for hesitating to recommend this sanction is that, if an attorney can escape with a fully-stayed suspension for violating an order imposing an actual suspension, it would seem to undermine the Supreme Court’s apparent original intention—namely, that the attorney serve an actual suspension. This logic might be compelling if the primary purposes of disciplinary sanctions were to punish errant lawyers and to deter others from engaging in misconduct. But, as the Supreme Court repeatedly has emphasized, most recently in *Pfundstein*, “the primary purpose of disciplinary sanctions is not to punish the offender, but to protect the public.” *Id.* at ¶ 29 (quotations omitted).

{¶41} In this unusual case, we do not believe an actual suspension is necessary to protect the public. The parties agree that an actual suspension of any length would cause Respondent to lose his two remaining clients and his malpractice insurance and that he would be unlikely to regain either the clients or his insurance. In this sense, an actual suspension would effectively end Respondent’s practice. We do not believe it is necessary to end Respondent’s practice in order to protect the public. Ending a practice limited to eviction actions certainly would do nothing to protect the two clients who depend on him to file such actions on their behalf. It actually would harm these clients in ways that the original misconduct for which Respondent was suspended (*i.e.*, failing to renew his registration) did not.

{¶42} Given the nature of Respondent's practice, we believe the goal of public protection actually would best be achieved in this case if, instead of an actual suspension, Respondent receives a fully-stayed suspension subject to very stringent conditions. The strict conditions we recommend include the longest possible stayed suspension—two years³—during which Respondent would be closely monitored by a well-qualified practitioner selected by Relator and would be required, in addition to maintaining his existing psychiatric care, to enter into and adhere to an OLAP contract. These conditions would protect the public in two specific ways: they would ensure that Respondent can continue to serve his clients as long as he remains well; and if he again becomes mentally debilitated, these conditions would enable Relator and Respondent's clients to learn about his illness in a timely manner and to take the necessary precautions.

PANEL'S RECOMMENDATION

{¶43} The panel recommends that Respondent be suspended from the practice of law for a period of two years, all of which would be stayed as long as he fulfills the following conditions: (1) he must maintain continuous mental health treatment and counseling as recommended by his treating psychiatrist; (2) he must enter into an OLAP contract and comply with all of its requirements during the period of his stayed suspension; (3) he must comply with any and all CLE requirements imposed by the Supreme Court; (4) he must pay the cost of this action as required by the Supreme Court; (5) he must not commit any further misconduct during the period of his stayed suspension; and (6) following his suspension, he would be subject to a

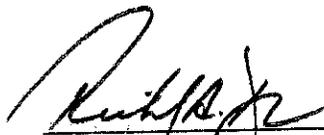
³ Counsel for the parties actually proposed a suspension as long as two years. Hearing Tr. 76-77 (“[By the panel chair]: So accepting that premise, if we believe Mr. Meehan’s depression and his practice warrant the longest possible period of monitoring during a stayed suspension, you folks have proposed a period of stayed suspension of 12 months? [By Relator’s counsel]: Yes. One year. [By the panel chair]: If we believe that the public would be better protected if his period of monitoring were longer than that, say 18 months, and therefore we imposed or recommended the imposition of an 18-month suspension entirely stayed and entirely monitored, do you believe the case law would support that? [By Respondent’s counsel]: Yes. No question. Up to 24 months. [By Relator’s counsel]: I was going to say 24 months. [By Respondent’s counsel]: 24 months, if that was desired.”

two-year probationary period, during which he must continue to abide by the foregoing requirements, to the extent they are of a continuing nature, and be monitored by Relator.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 6(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on December 1, 2011. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the panel and recommends that the Respondent, Michael Patrick Meehan, be suspended from the practice of law in Ohio for two years with the suspension stayed in its entirety, subject to the conditions recommended by the panel and set forth in ¶43 of this report. 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.



**RICHARD A. DOVE, Secretary
Board of Commissioners on
Grievances and Discipline of
the Supreme Court of Ohio**