

ORIGINAL

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

In Re: : SCO Case No. 2006-1148

Reinstatement of : BOC Case No. 05-068

Steven Lynn Crossmock : Findings of Fact,
Attorney Reg. No. 0041947 : Conclusions of Law, and

Respondent

Toledo Bar Association

Relator

FILED
FEB 14 2012
CLERK OF COURT
SUPREME COURT OF OHIO

Recommendation of the
Board of Commissioners on
Grievances and Discipline of
the Supreme Court of Ohio

REINSTATEMENT TO THE PRACTICE OF LAW

{¶1} This matter came on for hearing in Columbus, Ohio on November 10, 2011, upon the petition of Respondent, Steven L. Crossmock, for reinstatement to the practice of law, pursuant to Rule V, Section 10 of the Rules for the Government of the Bar of Ohio, before a panel consisting of Judge John Street, Paul DeMarco, and Judge Robert Ringland, chair, all of whom are duly qualified members of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio. None of the panel members resides in the appellate district in which Respondent resided at the time of his suspension. Respondent appeared and was represented by Steven Groth at the hearing, and Relator was represented by Michael Bonfiglio and Michael Manahan.

{¶2} The burden is on Respondent to show by clear and convincing evidence that he should be reinstated to the practice of law in the state of Ohio. He must establish that he possesses all of the mental, educational, and moral qualifications that were required of an

applicant for admission to the practice of law at the time of his original admission, and that he is now a proper person to be readmitted to the practice of law in Ohio, notwithstanding the previous disciplinary action. Respondent must also show by clear and convincing evidence that he has made restitution to any persons harmed by his misconduct, and that he has complied with the continuing legal education requirements as prescribed by Gov. Bar R. X, Section 3(G).

{¶3} For the reasons set forth below, the panel recommends the denial of Respondent's petition for reinstatement.

FINDINGS OF FACT

{¶4} On August 8, 2005, Relator, Toledo Bar Association, filed a complaint charging Respondent, Steven Crossmock, with the following professional misconduct.

{¶5} Count I. Between 1993 and 2003, Respondent converted for his own use some funds that belonged to his law firm. His actions violated the agreements that he made with his firm for dividing fees from judgments and settlements in the firm's personal injury cases. Respondent deposited checks payable to the firm in his own escrow account, paid all amounts owed to the firm's clients, and then converted the balance of the settlement or judgment proceeds for his own use, rather than sharing that balance with his law firm as he had agreed to do. The total amount of the firm's money that Respondent converted for his own use appeared to exceed \$300,000. In 2003, Respondent left the law firm and repaid the money that he had improperly taken.

{¶6} Count II. Respondent represented a client in a personal-injury matter between 1999 and 2003. During the representation, Respondent made roughly 40 payments either to the client directly or to others for that client's benefit. Most payments were permissible advances to cover litigation-related or investigation-related expenses, but seven payments totaling more than

\$6,500 were not. At least one of the seven improper payments covered medical treatment for the client, and two others paid for health insurance coverage on the client's behalf.

{¶7} At a hearing before a panel in May 2006, Respondent admitted, and the Board found, that his actions violated the following disciplinary rules: DR 1-102(A)(4) (prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation); DR 1-102(A)(6) (barring conduct that adversely reflects on a lawyer's fitness to practice law); and DR 5-103(B) (prohibiting a lawyer from providing financial assistance or advancing funds to a client for expenses other than litigation costs). Joint Ex. 3.

{¶8} As aggravating factors, the Board found that Respondent had acted with a dishonest or selfish motive and had engaged in a pattern of misconduct. *Id.*

{¶9} Mitigating factors identified by the Board were the absence of any prior disciplinary record, Respondent's timely and good-faith effort to provide restitution to his law firm, and his cooperative attitude during the disciplinary proceedings. The Board also noted that Respondent did not harm any clients or misappropriate any client funds. In addition, Respondent testified that he had sought and received mental-health treatment for a bipolar disorder since 2003, and he presented letters from his treating psychiatrist and clinical counselor supporting that testimony. *Id.*

{¶10} Relator and Respondent both recommended that Respondent be indefinitely suspended from the practice of law. The panel and the Board issued similar recommendations. *Id.*

{¶11} The Supreme Court agreed with the recommended sanction, and on November 15, 2006, indefinitely suspended Respondent from the practice of law. The Court ordered that if Respondent petitioned for reinstatement, he must: (1) demonstrate that he has continued to

receive treatment for his bipolar disorder as recommended by psychiatrist, psychologist, or other licensed health care professional; (2) demonstrate that he has taken as directed all medications prescribed for him by a licensed health care professional; and (3) be evaluated by a psychiatrist, psychologist, or other licensed mental health professional within 60 days prior to his petition for reinstatement and present a written report from that professional stating that Respondent is able to return to the competent and ethical practice of law. See *Toledo Bar Assn. v. Crossmock*, 111 Ohio St.3d 278, 2006-Ohio-5706, ¶12.

{¶12} The order from the Supreme Court of Ohio also stated:

It is further ordered that the Respondent immediately cease and desist from the practice of law in any form and is hereby forbidden to appear on behalf of another before any court, judge, commission, board, administrative agency or other public authority.

It is further ordered that Respondent is hereby forbidden to counsel or advise or prepare legal instruments for others or in any manner perform such services.

Joint Ex. 2

{¶13} Respondent is now requesting that the Supreme Court readmit him to the practice of law. Respondent alleges that he has undergone rehabilitation and that his mental disorder is now controlled with medication.

{¶14} Relator requested, and counsel for Respondent agreed, to provide all medical and psychiatric treatment records.

{¶15} Since Respondent's mental condition is alleged to have led to the actions that formed the basis for his indefinite suspension, Relator had the records of his care and treatment reviewed by an independent psychiatrist, and the psychiatrist conducted an evaluation and interviewed Respondent prior to the Board's scheduled hearing of November 18, 2011.

{¶16} Respondent now resides in or around the Cleveland, Ohio area. Relator selected Dr. Stephen Noffsinger, of Cleveland, Ohio, who conducted a record review and an evaluation of Respondent, in order to have an independent evaluation of Respondent's mental health and his suitability for the practice of law. Dr. Noffsinger's report was admitted into evidence without objection. Dr. Noffsinger's opined with reasonable medical certainty that Respondent can return to the competent and ethical professional practice of law and that his mental condition/disorder does not impair his ability to practice law or to meet the demands of the practice of law. He did recommend the following:

- Respondent should remain in the care of a qualified psychiatrist for medication management.
- Respondent should comply with all medications prescribed by his psychiatrist.
- Respondent should authorize his treating psychiatrist to send quarterly reports to the Board of Commissioners describing Respondent's compliance with treatment and psychiatric status, should the Board so desire.
- Respondent should see his treating psychiatrist more often – at least once monthly – for monitoring and medication management.
- Should Respondent experience significant mood symptoms, he should temporarily suspend his law practice until his symptoms have resolved.

Joint Ex. 4, pp. 5-6

{¶17} Respondent has not previously petitioned for reinstatement, and five years have elapsed since his indefinite suspension was imposed.

{¶18} There are no formal disciplinary proceedings pending against the Respondent.

{¶19} Respondent has completed CLE attendance as required by the order of suspension, and by Gov. Bar R. X, Section 3(G), and is in compliance with the CLE and registration requirements in the state of Ohio as of the filing of his petition.

{¶20} All costs of the prior proceeding have been paid.

{¶21} However, Respondent disclosed evidence of an arguable failure to follow the November 15, 2006 order of the Supreme Court which stated in part:

It is further ordered that the Respondent immediately cease and desist from the practice of law in any form and is hereby forbidden to appear on behalf of another before any court, judge, commission, board administrative agency or other public authority.

It is further ordered that Respondent is hereby forbidden to counsel or advise or prepare legal instruments for others or in any manner perform such services.

{¶22} At several points in Respondent's testimony at the November 18, 2011 hearing, he testified as follows (Tr. 27, 41, 62-65, and 74-75):

Mr. Groth: Okay. And then over the next several years, you worked as a full-time father, but also had part-time jobs; is that accurate?

Respondent: Absolutely.

Mr. Groth: What did you continue to do to make yourself busy?

Respondent: * * * I ghostwrote some pleadings for a couple attorneys and even my old partner. * * *

* * *

Mr. Manahan: Okay. What kind of arrangement did you have with [attorney Matt Fech]?

Respondent: * * * After my suspension, he [Fech] continued to do all the legal work and handle the case, and I did -- you call it ghostwriting or a pleading for him on that case.

Mr. Manahan: Did you receive any compensation for the work that you were doing?

Respondent: No. I mean, I received compensation for the case, but it was based upon my work that I had done prior to my suspension.

* * *

Panel Member DeMarco: Now, the order of suspension from the Supreme Court required you to cease and desist from the practice of law in any form, and it states that you are, quote, hereby forbidden to – and I'm skipping some words – prepare legal instruments for others or in any manner perform such services.

I'm concerned about the fact that you prepared, for example, a legal brief for someone else, an appellate brief. Can you tell us more about that? When did it occur and, you know, what did it consist of?

Respondent: Well, it was a brief that was prepared in, and I'll say, 2007 or 2008. I just wrote it for another attorney, and they were responsible for filing it and reading it and editing it, and that's all I did.

Panel Member DeMarco: Was it a case that had been yours?

Respondent: Yes, it was.

* * *

Panel Member DeMarco: Was there some reason you prepared the appellate brief instead of someone else who was, you know, at that time entitled to practice law?

Respondent: I was intimately familiar with the facts and the – of the case, as well as had written the – the summary judgment motions.

Panel Member DeMarco: Did you have any employment or contractual relationships with any law firms –

Respondent: No.

Panel Member DeMarco: – after your suspension?

Respondent: No.

Panel Member DeMarco: So –

Respondent: Well, now, let me take that back. I – I have a – we filed a paper with Mr. Groth and the Disciplinary Counsel concerning any future work that I would have done sometime in 2010 or '11 because there was some – Stevin had talked to me about hiring me, and the meaning of the Disciplinary Rules at that time said that that's what you needed to do.

Panel Member DeMarco: Okay. I was going to ask you if you had

made any records of relationships with the Office of Disciplinary Counsel. And that's the only one?

Respondent: Yes.

Panel Member DeMarco: Okay. So in the other instances that I think you alluded to where you prepared an appellate brief – what were the other things that – that you did?

Respondent: For John Kuhl, I did –

Panel Member DeMarco: You say you ghostwrote something for him?

Respondent: Pardon?

Panel Member DeMarco: You say you ghostwrote something for him?

Respondent: Yeah.

Panel Member DeMarco: What was it?

Respondent: I think replies to summary judgment. And I think maybe an appellate brief on that – on one of his cases, but I'm not real positive. And on the case over in Indiana was a summary judgment reply.

Panel Member DeMarco: Okay. The other work that you did where you also didn't get paid, what was – what was the payment arrangement for that? I thought you said that you were – your old partner, you did some work for your old partner.

Respondent: That was the appellate brief.

Panel Member DeMarco: Okay.

Respondent: One of the appellate briefs.

* * *

Panel Chair Ringland: * * * for that matter, ghostwriting pleadings as well as preparing a brief or briefs, you did not report that to the – to any disciplinary group that you were doing that kind of work.

Respondent: I didn't.

* * *

Panel Chair Ringland: Okay. Let's – Let's get down to the order itself. And you've seen and read the order signed by the Chief Justice –

Respondent: Yes.

Panel Chair Ringland: -- and the terms therein.

Part of the order, and it's been discussed by the – Mr. DeMarco here, is – and I am not going to quote the whole paragraph, but basically it says, "...hereby forbidden to counsel or advise or prepare legal instruments for others.

How do you interpret that, sir?

Respondent: I think that I would interpret that I couldn't prepare a complaint for somebody, meaning a person who would then file it pro se. I don't think I could prepare wills or those type of documents. I don't think I could prepare any legal instrument that someone who was not an attorney would use.

Panel Chair Ringland: So in your mind, you see no inconsistency with what you did for other attorneys and this – this particular paragraph?

Respondent: Yes, that's correct.

{¶23} At the time of the suspension, the following version of Gov. Bar R. V,

Section 8(G)(1) was in effect:

Employment of a Suspended Attorney. A suspended attorney may be employed by another attorney during the term of suspension, provided the employment of the suspended attorney does not involve the practice of law. The suspended attorney and employing attorney shall register the employment with the Disciplinary Counsel on a form prescribed by the Disciplinary Counsel that includes all of the following:

- (a) A statement that the suspended attorney will not perform work in the course of his or her employment that constitutes the practice of law;
- (b) A statement that the employing attorney will supervise and be responsible for the work of the suspended attorney to ensure that the suspended attorney does not engage in the practice of law;

(c) Any other information considered necessary by the Disciplinary Counsel.

{¶24} The rule was later amended to add to “employment” the term “contractual or consulting relationship.” The rationale provided to the Supreme Court in correspondence dated January 8, 2008 from then-Secretary of the Board, Jonathan Marshall, was that the amendment was necessary * * * “to regulate more closely the employment and use of disbarred and suspended lawyers in Ohio.” The necessity of the amendment can be construed to indicate that the term “employment” as indicated in 2006 may not have covered this factual situation in the case at hand since Respondent did not receive actual compensation under the then understanding of what “employment” originally meant under the original Gov. Bar R. V.

{¶25} More problematic, however, is the original order that Respondent may not “prepare legal instruments for others” or “in any manner perform such services.” Admittedly, these terms are broad and Respondent’s actions did not cause Relator any concern. However, Respondent’s answers give the panel considerable pause in granting reinstatement at this time. Considering his original violations involved dishonesty and a failure to follow the rules governing the Bar, this “ghostwriting” could be construed as a continuation of his disregard for following the rules and orders of the Court. For this reason, this panel recommends that reinstatement be denied.

CONCLUSIONS OF LAW

{¶26} Based upon the foregoing, the panel determines, by clear and convincing evidence, that:

- The Respondent possesses all of the mental, educational and moral qualifications that were required of an applicant for admission to the practice of law in the state of Ohio at the time of his original admission;

- Respondent has complied with the CLE requirements of Gov. Bar R. X, Section 3(G); and
- Respondent is now a proper person to be readmitted to the practice of law in the state of Ohio, notwithstanding the previous disciplinary action, but for his violation of the Supreme Court's order of November 15, 2006.

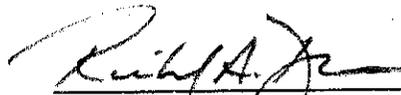
CONCLUSION

{¶27} Respondent's petition for reinstatement should be denied at this time.

BOARD RECOMMENDATION

Pursuant to Gov. Bar Rule V, Section 10(G)(5) and (6), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on February 10, 2012. The Board adopted the Findings of Fact, Conclusions of Law, and Recommendation of the panel and recommends that Respondent, Steven Lynn Crossmock, be denied reinstatement to 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 Recommendation as those of the Board.



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