

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

In Re: : SCO Case No. 2011-1016

Complaint against : Case No. 11-021

Michael Motylinski : Findings of Fact,
Attorney Reg. No. 0076628 : Conclusions of Law and
Respondent : Recommendation of the
Disciplinary Counsel : Board of Commissioners on
Relator : Grievances and Discipline of
the Supreme Court of Ohio

FILED
APR 17 2012
CLERK OF COURT
SUPREME COURT OF OHIO

OVERVIEW

{¶1} This matter was heard by a panel consisting of Keith Sommer, Alvin Bell, and Stephen C. Rodeheffer, chair. None of the panel members resides in the district from which the complaint originated or served on the probable cause panel that certified this grievance pursuant to Gov. Bar R. V, Section 6(D)(1).

{¶2} Based on its consideration of this matter, the panel recommends a six-month suspension from the practice of law, with the suspension stayed in its entirety on a condition set forth below.

PROCEDURAL BACKGROUND

{¶3} On February 14, 2011, Relator filed a complaint with the Board of Commissioners on Grievances and Discipline.

{¶4} On May 26, 2011, the parties filed a consent to discipline with the Board, and the panel's recommendation that the consent be adopted was approved by the Board on June 9,

2011. The consent to discipline agreement presented to and approved by the Board contained a recommended sanction of a six-month suspension, stayed in its entirety. The secretary of the Board filed its report with the Supreme Court of Ohio on June 16, 2011.

{¶5} On August 25, 2011, the Supreme Court issued an order rejecting the sanction and remanding the case to the Board for further proceedings to “consider whether to wait to impose a sanction until the respondent returns to active registration status.” *Disciplinary Counsel v. Motylinski, 08/25/2011 Case Announcements, 2011-Ohio-4228.*

{¶6} The remand order is somewhat confusing inasmuch as Respondent was on active status both when the Board originally considered this matter and when the Supreme Court issued its August 25, 2011 order rejecting the Board’s recommendation.¹ Notwithstanding this apparent contradiction, the panel chose to review the facts and sanction anew to ensure that the stipulated facts supported both the charged rule violations and the agreed sanction.

{¶7} Upon remand, the panel set the matter for a hearing to be conducted on March 16, 2012, however, on March 7, 2012, the parties submitted stipulations of fact and law, including a stipulated sanction of a six-month stayed suspension. The panel agreed to accept the stipulations in lieu of a hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶8} The facts underlying Respondent’s ethical violations are easily summarized. While representing a corporate client in a collection matter pending in the Cuyahoga Court of Common Pleas, Respondent decided to take advantage of an opportunity to move to the Virgin Islands and work for the prosecutor’s office there. Respondent left for the Islands in August 2009, and placed himself on inactive status in Ohio on September 1, 2009. Notwithstanding his

¹ One possible explanation for the court’s apparent misunderstanding regarding Respondent’s status is that the Board report filed with the Supreme Court on June 16, 2011 contained an incorrect attorney registration number. The number contained in the Board report was that of a lawyer who was under an indefinite suspension.

inactive status, he continued to represent the client long distance hoping to negotiate a settlement and collect a fee. Respondent also stipulated to being dilatory in communicating with the client and admits to not having told the client of his inactive status. Eventually the trial judge learned of his inactive status and dismissed the case, yet Respondent still continued for several months to try and settle the matter leaving his client in ignorance of the dismissal. Eventually the client's in-house attorney learned of both the dismissal and Respondent's inactive law license and terminated Respondent.

{¶9} Respondent is charged with and has admitted violating the following: Prof. Cond. R. 1.4(b) [a lawyer shall explain a matter to the extent reasonably necessary to make informed decisions regarding the representation]; Prof. Cond. R. 1.4(a)(4) [a lawyer must comply as soon as practicable with reasonable requests for information from the client]; Prof. Cond. R. 5.5(a) [a lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction]; and Prof. Cond. R. 5.5(b)(2) [a lawyer who is not admitted to practice in this jurisdiction shall not hold himself out to the public or otherwise represent that he is admitted to the practice of law in this jurisdiction].

{¶10} Respondent's admission notwithstanding, the panel does not find that the stipulations provide sufficient facts to find a violation of Prof. Cond. R. 5.5(a) and recommends that that allegation of the Complaint be dismissed. The panel finds that the stipulations do provide sufficient facts for the panel to find a violation of the remaining rules, and the panel recommends that the Board find a violation of Prof. Cond. R. 1.4(b); Prof. Cond. R. 1.4(a)(4); and Prof. Cond. R. 5.5(b)(2).

SANCTION

{¶11} The parties' stipulation sets forth three mitigating factors and no aggravating factors. The stipulated mitigating facts are no prior disciplinary record, full and free disclosure and cooperation with Relator, and the lack of a dishonest or selfish motive. The panel, however, cannot agree that Respondent's motive in this matter was not selfish and dishonest. In his deposition, which is appended to the stipulations, he admits that he kept practicing law after going on an inactive status hoping to collect a fee in any settlement he could achieve. Respondent kept his inactive status from both the trial judge and his client, and even continued to work the case after the trial judge had dismissed the litigation. (See Stipulations ¶14-16) For that reason, the panel rejects this as a mitigating factor.

{¶12} The parties have stipulated to a sanction of a six-month suspension, all stayed with no conditions. The panel finds this sanction in line with a least one decision previously issued by the Supreme Court. In *Cincinnati Bar Assn. v. Bucciare*, 121 Ohio St.3d 274, 2009-Ohio-1156, the respondent received a public reprimand for representing two clients while on inactive status both on appeal and in the ensuing proceedings in their cases when the appellate court ordered a remand.

{¶13} While the panel agrees with the sanction and recommends that the Board adopt it, the panel believes that a single requirement should be imposed as a condition of the stay. The panel recommends that Respondent be required to repay to his client, Roth Global, the \$150 filing fee given to him that went for naught when the trial court dismissed the client's case because of Respondent's inactive law license.

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 April 13, 2012. The Board amended the Findings of Fact and Conclusions of Law to find a violation of Prof. Cond. R. 5.5(a), based on the fact that Respondent engaged in the practice of law while on inactive status, and to dismiss the alleged violation of Prof. Cond. R. 5.5(b)(2) in recognition that although on inactive status during the period in question, Respondent was admitted to practice in Ohio. The Board further adopted the Recommendation of the panel and recommends that Respondent, Michael Motylinski, be suspended from the practice of law for six months, stayed in its entirety upon condition set forth in ¶13 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 Recommendation as those of the Board.



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