

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

12-1331

In Re: :
Complaint against : Case No. 11-089
April Marie Bogdanski : Findings of Fact,
Attorney Reg. No. 0074879 : 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
AUG 06 2012
CLERK OF COURT
SUPREME COURT OF OHIO

OVERVIEW

{1} A formal hearing was held in this matter on June 20, 2012, in Columbus, Ohio, before a panel consisting of members, John A. Polito, Sanford E. Watson, and Roger S. Gates, chair. None of the panel members reside in the district from which the complaint arose or served as a member of the probable cause panel that reviewed the complaint pursuant to Gov. Bar R. V, Section 6(D)(I). Respondent, April Marie Bogdanski, failed to appear at the hearing. Lori J. Brown represented Relator.

SUMMARY

{2} The panel finds that the evidence presented by Relator at the hearing proves, by clear and convincing evidence, that the allegations of the second amended complaint are true.¹ These allegations establish that:

¹ At the commencement of the hearing, Relator indicated documents provided by Respondent on May 9, 2012, had established that Respondent was covered by malpractice insurance during the time period relevant to Count Two and that Relator was withdrawing the allegations of paragraph 23 of the second amended complaint.

- As alleged in Count One, Respondent forged the signature of her client and notarized the forged signature on affidavits filed with the court as evidence and that Respondent also forged her client's signature on discovery responses.
- As alleged in Count Two, Respondent failed to competently perform work on behalf of her client, failed to appear at hearings, repeatedly failed to communicate with her client, made false statements to her client and the court as to why work was not performed and why she had failed to attend hearings, and that she was found in contempt by the court for her failure to timely comply with representations made to, and orders issued by, the court.
- As alleged in Count Three, Respondent failed to competently perform work on behalf of her client, repeatedly failed to communicate with her client, made false statements to her client as to why work was not performed, and failed to cooperate with the investigation of the client's grievance by the Columbus Bar Association.

{¶3} Based upon these findings, the panel concludes by clear and convincing evidence that Respondent committed misconduct by offering false evidence to a court, failing to competently represent and act with reasonable diligence as to two clients, failing to keep a client reasonably informed of the status of her matter, failing to provide adequate explanations to a client, engaging in conduct involving fraud, deceit, dishonesty or misrepresentation, engaging in conduct which is prejudicial to the administration of justice and which adversely reflects on her fitness to practice law, failing to inform a client that she lacked malpractice insurance, failing to respond to a request for information in a disciplinary matter, and failing to assist in a disciplinary investigation. After considering the aggravating and mitigating evidence and Relator's recommendation, the panel recommends that Respondent be indefinitely suspended from the practice of law and that she not be reinstated to the practice of law until she refunds \$945 to Amanda Leonard and completes a substance abuse evaluation and a mental health evaluation by health professionals designated by Relator.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶4} As noted above, Respondent failed to appear at the hearing pursuant to the notice of formal hearing issued by the Board to Respondent at her registration address on February 29, 2012; the return receipt was signed by “C Reynolds.” The testimony of Jonathan E. Coughlan established that Coughlan had personally spoken with Respondent while she was in Relator’s office on May 9, 2012, and that Respondent had expressly acknowledged that she was aware of the hearing date of June 20, 2012, and that she had it written in her calendar. Hearing Tr. 17-18; Relator’s Ex. 35.²

{¶5} The panel finds that Relator has proven by clear and convincing evidence the allegations of the second amended complaint (with the exception of ¶23) and adopts those allegations as the panel’s findings of fact. The panel provides the following summary in lieu of repeating those allegations in this report.

Count One—Morales Matter

{¶6} In 2010, Respondent was employed as an independent contractor by the law firm known as Barr Jones and Associates, LLP of Columbus. As an attorney at Barr Jones, Respondent provided legal services to Ruben Morales.

{¶7} During the course of her representation, Respondent forged Ruben Morales’ signatures on affidavits that were submitted as evidence in *Morales v. Clark*, Franklin County Case No. 10 CVC 10074. When Respondent filed the Morales complaint on July 8, 2010, Respondent attached an “affidavit” bearing the forged signature of Morales accompanied by Respondent’s notary statement falsely verifying the authenticity of Morales’ signature. In

² Two days after the hearing, Respondent replied to an email from the Board’s office and stated that she had marked the wrong date for the hearing in her calendar and apologized for missing the hearing. The panel does not find Respondent’s statement to be credible. Respondent has not filed any request subsequent to the hearing that she be provided with an opportunity to present evidence which she would have presented at the hearing if she had been present.

addition, Respondent prepared and served Morales' responses to the defendant's requests for production of documents. Respondent forged Morales' signature to the "verification" on the discovery response and falsely notarized the forged signature.

{¶8} During Morales' deposition taken in the *Morales v. Clark* case, Respondent admitted that Morales did not sign either the affidavit or the verification and that her notary statement was false in both instances. Therefore, Respondent twice offered evidence that she knew to be false.

{¶9} Based upon the findings of fact, the panel concludes by clear and convincing evidence that Respondent committed misconduct by violating the following: Prof. Cond. R. 3.3(a)(3) [knowingly offer evidence that the lawyer knows to be false]; Prof. Cond. R. 8.4(c) [conduct involving fraud, deceit, dishonesty, or misrepresentation]; Prof. Cond. R. 8.4(d) [conduct that is prejudicial to the administration of justice]; and Prof. Cond. R. 8.4(h) [conduct that adversely reflects on the lawyer's fitness to practice law].

Count Two—Phillips Matter

{¶10} In February 2010, Heather Phillips ("Phillips") retained the services of Barr Jones & Associates and Respondent to file a complaint for divorce against her then-husband, Christopher Phillips. From the inception of their attorney-client relationship, Respondent made excuses for why her work was not completed and for why her representation was inadequate.

{¶11} Throughout the course of her representation of Phillips, Respondent failed to provide competent representation and to act with reasonable diligence. The filing of the complaint for a divorce was delayed for a year from the date Respondent was retained. During the time the divorce was pending, Respondent failed to appear for multiple scheduled court hearings and to prepare the documents necessary to complete a simple divorce with essentially

no contested issues. As a result of her conduct, Respondent was ultimately found in contempt by Judge Don W. Fraser of the court of common pleas of Union County and was ordered to refund the fees paid by Phillips and pay a \$250 fine. Although she required an extension of time, Respondent did comply with the contempt order.

{¶12} At the only court hearing that Respondent actually attended, Respondent erroneously told the magistrate that Phillips wanted full custody even though Respondent had been informed that Phillips and her husband had already agreed to a shared parenting arrangement at a mediation conducted by a court employee. Even after Phillips paid Respondent an additional \$400 fee to complete the divorce and shared parenting documents, Respondent called a court bailiff one day prior to the scheduled hearing and asked if the bailiff could provide her with a sample of the forms the court required. Respondent never prepared the required documents.

{¶13} Throughout her representation of Phillips, Respondent failed on numerous occasions to respond to Phillips' attempts to contact Respondent to learn the status of her case. When she did respond, Respondent made false and misleading statements to Phillips and the court in an effort to excuse her incompetence and her failure to act with reasonable diligence. While any one of these excuses may have been believable on its own, the fact that these excuses were repeated, unsubstantiated and at times contradictory causes the panel to find that they were fabrications designed to deceive Phillips and the court into believing that she was not at fault for unreasonably delaying the completion of this simple divorce. As a result of Respondent's failure to provide information and the false information which was provided, Phillips' divorce was unreasonably delayed and Phillips suffered undue frustration, inconvenience, and missed work.

{¶14} In August, 2011, Phillips discharged Respondent and filed a grievance against her with the Columbus Bar Association (CBA). In response, Respondent continued her barrage of excuse-making. On August 11, 2011, the CBA sent Respondent a letter of inquiry regarding the grievance. Although her response to the letter of inquiry was due on or before August 21, 2011, Respondent did not respond until September 1, 2011, and claimed, inter alia, that she was unable to timely submit her response because a client had died. From that date until the CBA transferred the investigation to Relator, Respondent never provided a response to the inquiry but instead provided a string of false, misleading and contradictory excuses for her failure to respond. On October 25, 2011, the CBA transferred the investigation of Phillips' grievance against Respondent to Relator because Respondent was going to testify for the CBA in relation to a disciplinary matter against another attorney and the CBA wanted to avoid any appearance of a conflict regarding that testimony.

{¶15} On December 1, 2011, Relator sent Respondent a letter requesting that Respondent provide Relator, by January 4, 2012, with information and documentation regarding her conduct and her representation of Heather Phillips. Starting on January 5, 2012, Respondent made multiple false representations that she was sending or had sent her response to Relator's letter of inquiry, however no response was received by Relator. Finally, on January 11, 2011, Respondent sent Relator an email which stated:

I apologize that I did not e-mail the letter that I referenced last night in my e-mail at approximately 8:38 p.m. The letter was on my USB drive that I did not have with me at the time I e-mailed you. I save everything on my USB drive. I should have been more specific as to when I planned on sending it and did not mean to mislead you that I was going to send it at the time of the e-mail last night. My intention was to send it to you today and I should have told you that. Is there any way you can hold off filing the formal complaint if I send this attachent (sic) to you this evening after I get the drive out of my friend's car? Thank you.

Relator's Ex. 22.

{¶16} On January 20, 2012, Relator filed its amended complaint³ without having received a response from Respondent to its letter of inquiry on the Phillips grievance.

{¶17} Based upon the findings of fact, the panel concludes by clear and convincing evidence that Respondent committed misconduct by violating the following: Prof. Cond. R. 1.1 [competency]; Prof. Cond. R. 1.3 [diligence]; Prof. Cond. R. 1.4(a) [a lawyer shall keep the client reasonably informed about the status of the matter]; Prof. Cond. R. 1.4(a)(4) [a lawyer shall comply as soon as practicable with reasonable requests for information from the client]; Prof. Cond. R. 8.1(b) [in connection with a disciplinary matter and in response to a demand for information, a lawyer shall not knowingly fail to respond]; Prof. Cond. R. 8.4(d); and Prof. Cond. R. 8.4(h). In addition, Respondent's conduct violated Gov. Bar R.V, Section 4(G) [no attorney shall neglect or refuse to assist in a disciplinary investigation].

Count Three—Leonard Matter

{¶18} In October 2010, Amanda Leonard retained Respondent to represent her concerning a possible divorce. Because Respondent was working at the firm of Barr Jones & Associates, Leonard paid a \$500 retainer fee to Barr Jones. In early January 2011, after Respondent's relationship with Barr Jones had ended, Leonard decided to retain Respondent to represent her in the termination of her marriage and paid Respondent an additional \$445 for fees. At that time, Leonard was a resident of Licking County.

{¶19} Between January and May 2011, Leonard and Respondent communicated via email, telephone, and text message regarding whether and/or when Leonard would be filing for divorce. On May 24, 2011, Leonard instructed Respondent via email to file for divorce. That same day, Leonard also told Respondent that she would be "filing bankruptcy" and asked if Respondent had "a contact" in the area of bankruptcy law. Respondent failed to explain to

³ The original complaint filed on September 23, 2011, was based only on the Morales matter.

Leonard that the filing of a bankruptcy would automatically stay a pending divorce case until completion of the bankruptcy.

{¶20} Over the next three months, Respondent repeatedly either failed to respond to Leonard's requests for information about the status of her case or made false and misleading statements to attempt to excuse her failure to file the complaint for divorce as Leonard had directed. Respondent finally filed the complaint on August 23, 2011. However, even though Leonard had told Respondent that she was concerned about child support and child custody, Respondent did not request temporary child support or temporary custody for Leonard. Respondent told Leonard that, by the time the court would schedule a hearing on any temporary custody and support request, the divorce would be already be completed.

{¶21} Once the divorce complaint was filed, Respondent again failed to warn Leonard about the consequences of filing bankruptcy while the divorce was pending. On October 7, 2011, an attorney at Barr Jones filed a Chapter 7 Bankruptcy Petition on Leonard's behalf.

{¶22} After the Licking County Court scheduled an uncontested final divorce hearing for November 22, 2011, Respondent informed Leonard that everything could be ready for the hearing. However, when Leonard contacted Respondent three weeks later in preparation for the hearing, Respondent falsely claimed that she had notified Leonard that she could not attend the hearing because she would be out of town. Despite her unavailability, Respondent promised that she would, by the next day, send Leonard the documents that would be needed for the final hearing.

{¶23} Although Respondent failed to send any documents, Leonard appeared for the hearing with two witnesses as directed by Respondent. Because Respondent failed to appear, the court refused to proceed with the uncontested hearing and reset the matter for January 3, 2012.

Respondent subsequently falsely told Leonard that she was actually only late for the hearing and that her boyfriend had failed to call Leonard and tell her that Respondent's car had slid off the road in a rain storm while she was driving to court. Respondent also claimed that she had been unable to call either Leonard or the court from the car because her cell phone had "no signal."

{¶24} Even though Respondent asked Leonard to meet her at the courthouse on January 3, 2012, 30 minutes before the hearing, so that Leonard could "sign" the documents, Respondent failed to appear for the hearing while Leonard and her witnesses waited for 90 minutes before the court started the hearing with Leonard proceeding *pro se*. At the conclusion of the hearing, Leonard created and filed a motion asking to discharge Respondent.

{¶25} Shortly after the January 3, 2012 hearing, Respondent contacted Leonard and again offered false excuses for missing the hearing. Respondent subsequently offered to refund Leonard's fees by January 18, 2012 and that she would continue to represent Leonard at the next hearing scheduled for February 6, 2012. Respondent falsely claimed that she had mailed Leonard a refund check; claimed that she was going to rent a car to get to court; and claimed that she would call Leonard before the hearing. Leonard appeared in court for the February 6, 2012 hearing with her two witnesses. Respondent did not appear.

{¶26} After learning that Leonard's bankruptcy was pending, the court, on February 10, 2012, filed an order staying the Leonard divorce. Leonard received her discharge from the bankruptcy court on May 31, 2012. As of June 20, 2012, Leonard had not received a refund from Respondent.

{¶27} At no time after Respondent began to represent Leonard as a sole practitioner did Respondent and Leonard discuss professional liability insurance. Despite the fact that

Respondent's coverage lapsed on September 17, 2011, Leonard was never asked to sign and never signed the "notice to client" required by Prof. Cond. R. 1.4(c).

{¶28} Based upon the findings of fact, the panel concludes by clear and convincing evidence that Respondent committed misconduct by violating the following: Prof. Cond. R. 1.1; Prof. Cond. R. 1.3; Prof. Cond. R. 1.4(b) [a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation]; Prof. Cond. R. 1.4(c) [a lawyer shall inform a client if the lawyer does not maintain professional liability insurance]; Prof. Cond. R. 8.4(c) [conduct involving fraud, deceit, dishonesty or misrepresentation]; Prof. Cond. R. 8.4(d); and Prof. Cond. R. 8.4(h).

AGGRAVATION, MITIGATION, AND SANCTION

{¶29} When recommending sanctions for attorney misconduct, the panel must consider relevant factors, including the ethical duties Respondent violated and the sanctions imposed in similar cases. *Stark Cty. Bar Assn. v. Buttacavoli*, 96 Ohio St.3d 424, 2002-Ohio-4743. The panel must also weigh evidence of the aggravating and mitigating factors listed in BCGD Proc. Reg. 10(B)(1) and (2). *Disciplinary Counsel v. Broeren*, 115 Ohio St.3d 473, 2007-Ohio-5251.

{¶30} The sole mitigating factor established by the evidence is Respondent's lack of a prior disciplinary record. Although Respondent did make restitution to Heather Phillips, the panel does not regard this as a mitigating factor because Respondent made such restitution only after being found in contempt by the trial court and being ordered to purge herself of contempt by refunding the fees paid by Phillips.

{¶31} Although the record contains no evidence to meet the requirements of BCGD Proc. Reg. 10(B)(2)(g), so that the panel might possibly consider chemical dependency or mental disability as a mitigating factor. Jonathan Coughlan testified that Respondent had suggested to

him that she may have suffered from some mental health issues, that she had contacted OLAP, and that she was trying to obtain a mental health evaluation so that she could seek assistance from OLAP.

{¶32} The panel concludes that the following aggravating factors described in BCGD Proc. Reg. 10(B)(1) are present in this case: Respondent has displayed a dishonest or selfish motive; Respondent has engaged in a pattern of misconduct; Respondent has committed multiple offenses; Respondent has failed to cooperate in the disciplinary process; Respondent has engaged in deceptive practices during the disciplinary process; Respondent refuses to acknowledge the wrongful nature of her conduct; Heather Phillips and Amanda Leonard were vulnerable victims and experienced harm as a result of the misconduct; and Respondent has failed to make restitution to Amanda Leonard.

{¶33} Although not a part of the conduct described in the second amended complaint, the panel also views Respondent's conduct during the course of the Board's proceedings as an additional aggravating factor. Although, she expressed during the prehearing conference her intention to be cooperative in the proceedings, Respondent's conduct thereafter was uncooperative in the following ways: Respondent failed to timely file her answers to the amended complaint and the second amended complaint; Respondent failed to timely provide complete responses to Relator's written discovery requests despite the chair's order that she do so; Respondent failed on multiple occasions to appear for deposition at such dates and times either as ordered by the chair or as Respondent expressly agreed with Relator's counsel; Respondent failed to attend the hearing pursuant to the notice of formal hearing served by the Board; and Respondent falsely represented to the Board that she had failed to attend the formal hearing because she had written down the wrong date in her calendar.

{¶34} Relator recommends that Respondent be indefinitely suspended from the practice of law. Respondent failed to attend the hearing and therefore made no recommendation as to a sanction in this matter.

{¶35} When an attorney engages in a pattern of neglect and fails to cooperate in an ensuing disciplinary investigation, the misconduct warrants an indefinite suspension especially where the misconduct also involves dishonest behavior. *Disciplinary Counsel v. Golden*, 97 Ohio St.3d 230, 2002-Ohio-5934; see, also, *Columbus Bar Ass'n v. Port*, 102 Ohio St.3d 395, 2004-Ohio-3204 (indefinite suspension warranted where the respondent repeatedly neglected entrusted legal matters, deceived his clients, and failed to cooperate in the investigation of his misconduct.)

{¶36} In this matter, Respondent engaged in dishonest conduct by forging her client's signature and falsely attesting as a notary to the genuineness of those signatures. Respondent failed to appear at numerous court hearings and failed to provide competent representation to her clients in regards to the processing of two simple divorces and to clearly explain the impact of a filing of a bankruptcy petition on Leonard's divorce. Respondent also made repeated false and misleading statements to her clients and the court to attempt to hide her incompetence and repeated neglect of her obligations to her clients in the Phillips and Leonard matters.

{¶37} Respondent's incompetence and neglect caused harm to Phillips and Leonard and Respondent has failed to make restitution to Leonard. Even if the panel might suspect that chemical dependency or mental health issues may have contributed to Respondent's pattern of neglect and deceit, "attorneys are obligated to secure the medical or other therapeutic assistance they need before any client * * * suffers from the attorney's professional incompetence." *Disciplinary Counsel v. Ault*, 110 Ohio St.3d 207, 2006-Ohio-4247, ¶22.

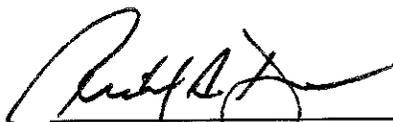
{¶38} Finally, Respondent failed to cooperate with the investigation of the Phillips grievance, and displayed an uncooperative attitude toward the proceedings before the Board.

{¶39} For the foregoing reasons, the panel recommends that Respondent be indefinitely suspended from the practice of law and that she not be reinstated until she refunds \$945 to Amanda Leonard and completes a substance abuse and mental health evaluation conducted by either the Ohio Lawyers Assistance Program (“OLAP”) or health care professional designated or approved by Relator and complies with the recommendations of either OLAP or the designated health care professional.

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 August 3, 2012. The Board adopted the Findings of Fact, Conclusions of Law, and Recommendation of the panel and recommends that Respondent, April Marie Bogdanski, be suspended indefinitely from the practice of law with reinstatement subject to the conditions stated in ¶39 of this report. The Board further recommends that the costs 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**