

ORIGINAL

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

In Re:	:	BCGD Case No. 11-023
Complaint against	:	SCO Case No. 2011-1727
Mark Robert Pryatel Attorney Reg. No. 0019678	:	Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio
Respondent	:	
Cleveland Metropolitan Bar Association	:	
Relator	:	

FILED  
 AUG 06 2012  
 CLERK OF COURT  
 SUPREME COURT OF OHIO

PURSUANT TO REMAND

{¶1} This matter was heard on May 11, 2012, at the Eighth District Court of Appeals in Cleveland, Ohio. The panel consisted of Judge Lee H. Hildebrandt, Jr., Charles E. Coulson, and Keith A. Sommer, chair. None of the panel members reside in the district from which the complaint originated, nor did any of the panel members serve on the probable cause panel that certified the complaint.

{¶2} Richard C. Alkire represented Respondent, Mark R. Pryatel. Ian N. Freeman represented Relator, Cleveland Metropolitan Bar Association.

{¶3} Following consideration of this matter pursuant to the limited remand order from the Supreme Court of Ohio, the panel recommends the Respondent be indefinitely suspended from the practice of law in Ohio.

## PROCEDURAL BACKGROUND

{¶4} On August 23, 2011, this matter was referred to Master Commissioner, Jeffrey T. Heintz, pursuant to Gov. Bar R. V, Section 6(F)(2) for ruling on Relator's motion for default judgment. Master Commissioner Heintz found that Relator had proven allegations of the complaint on two separate counts by clear and convincing evidence and recommended his findings to the Board. Master Commissioner Heintz found that Respondent committed multiple offenses, failed to make restitution, failed to acknowledge the wrongful nature of his conduct, and failed to cooperate in the proceedings. Master Commissioner Heintz further found that there was no evidence of chemical dependency or mental disability. Master Commissioner Heintz recommended a sanction of indefinite suspension with appropriate conditions placed on Respondent's reinstatement to the practice of law.

{¶5} The Board adopted the findings of fact and conclusions of law of the master commissioner, finding that Respondent violated Prof. Cond. R. 1.1, 1.3, 1.4(a)(3), 1.4(a)(4), 1.5(a), 1.15(c), 3.3(a), and 8.4(c). The Board found that Respondent had no prior disciplinary record and in aggravation misrepresented facts concerning a client to a tribunal and found an act of dishonesty justifying actual suspension from the practice of law. The Board also found that Respondent had no prior disciplinary record, but that Respondent committed multiple offenses, failed to make restitution, failed to acknowledge the wrongful nature of his conduct, and failed to cooperate in the proceedings before the Board in violation of Prof. Cond. R. 8.1 and Gov. Bar R. V, Section 4(G), even though Respondent was not charged with these violations.

{¶6} The Board further commented on Relator's argument that "the normal sanction for misappropriation of clients' funds coupled with neglect of client matters is disbarment, citing *Cleveland Bar Assn. v. Glatki*, 88 Ohio St.3d 381, 384, 2000-Ohio-354. The report also referred

to *Trumbull Cty. Bar Assn. v. Kafantaris*, 121 Ohio St.3d 387, 2009-Ohio-1389, which states misappropriation of client funds carries a “presumptive sanction of disbarment.”

{¶7} The Board amended the sanction recommended by the master commissioner and recommended Respondent be permanently disbarred. The Board found in its report filed October 11, 2011, with the Clerk of Court of the Supreme Court of Ohio, that Respondent had no prior disciplinary record and that there were no other discernable factors that mitigate Respondent’s behavior.

{¶8} In response to the show cause order issued by the Supreme Court, Respondent, through counsel, filed a motion on November 28, 2011 to remand this matter to the Board. Realtor filed a memorandum in opposition to this motion on December 7, 2011. On January 12, 2012, the Supreme Court granted the motion to remand and ordered that the remand be limited to consideration of mitigation evidence.

#### CONCLUSIONS OF LAW

{¶9} Neither Gov. Bar R. V or the Board regulations, require clear and convincing evidence of mitigating or aggravating factors. Although, Respondent has the burden of proof concerning mitigating factors, the Supreme Court of Ohio has not applied a clear and convincing standard to evidence presented on mitigating or aggravating factors.

{¶10} The Court held in *Stark Cty. Bar Assn. v. Buttacavoli*, 96 Ohio St.3d 424, 2002-Ohio-4743:

When imposing sanctions for attorney misconduct, we consider the duties violated, the actual or potential injury caused, the attorney’s mental state, and sanctions imposed in similar cases.

{¶11} In *Cleveland Bar Assn. v. Glatki*, 88 Ohio St.3d 381, 2000-Ohio- 354 the Court stated:

Before making a final determination, we also weigh evidence of the aggravating and mitigating factors listed in Section 10 of the Rules and Regulations Governing Procedure on Complaints and Hearings Before the Board of Commissioners on Grievances and Discipline.

### MITIGATION

{¶12} The panel makes the following findings with respect to mitigating factors set forth in BCGD Proc. Reg. 10(B)(1).

{¶13} It was previously found that Respondent did not have a prior disciplinary record.

{¶14} Mr. Martich, one of the complaining witnesses, testified that Respondent was never dishonest with him or selfish. Hearing Tr. 114. He further testified that if Respondent “needed me anytime I’ll be there.” *Id.* at 115. Martich admitted that it was four years and two months later when Respondent returned the retainer check which was in the amount of \$2,025. *Id.* at 122.

{¶15} Respondent testified that he did not have a dishonest motive or selfish motive concerning the situation with Troyan. He testified that he felt that he had earned the fees. *Id.* at 224-225. Troyan did not testify.

{¶16} Concerning criminal charges filed, Respondent pled guilty to aggravated theft (Under \$1,000), R.C. 2913.02(A)(2)(m)(1). This is further discussed below.

{¶17} Based on some confusing testimony by Respondent concerning Troyan’s grievance, the exhibits concerning Troyan’s grievance, and Respondent’s pleading guilty to theft, the panel does not find the absence of a dishonest or selfish motive as a mitigating factor.

{¶18} Respondent’s Exhibits A and B are checks payable to Troyan in the total amount of \$15,000. The first check dated March 20, 2012, was in the amount of \$7,000; the second check dated March 20, 2012, was in the amount of \$3,000; the third check dated April 24, 2012, was in the amount of \$5,000. Respondent testified that he did not agree with Troyan “that he felt that \$20,000 was owed and that the balance was now \$15,000.” Respondent further testified “the

balance that he had put in there of the \$15,000 was subsequently paid in full.” *Id.* at 222.

Respondent testified that this was full reimbursement and, in fact, excessive reimbursement. *Id.* at 2.

{¶19} Exhibit C is a check from Respondent payable to Martich dated September 28, 2011, in the amount of \$2,025 which was reimbursement in full. Martich testified that on July 3, 2007, Respondent gave him a receipt for a check that he wrote from his own personal account for \$2,025 and gave it to Respondent to expunge his son’s record. *Id.* at 107. As previously stated, Martich admitted that it was four years and two months later that he got the check back for \$2,025. Martich testified live, favorably to Respondent.

{¶20} Based on the substantial lapse of time, the panel does not find that there was a timely good faith effort to make restitution or to rectify consequences of this conduct as required to constitute a mitigating factor.

{¶21} Respondent appeared to have a cooperative attitude during the hearing held May 11, 2012. The default judgment was obviously based on his prior lack of cooperation. The panel must consider the entire disciplinary proceeding. The panel, therefore, cannot find that Respondent had a full and free disclosure to disciplinary Board or cooperative attitude to proceedings.

{¶22} Several judges submitted favorable character and reputation reports, including Judge Brandon J. Sheehan, Judge Brian Corrigan, and Judge Ronald Suster, all of the Cuyahoga County Court of Common Pleas. Respondent’s Ex. H, I, and U. Judge Sheehan stated that Respondent has always represented his clients honestly and competently and he attested to Respondent’s professional and honest conduct with the court on all occasions. Judge Corrigan attested to Respondent’s compassion and diligence in representing clients and stated that he was

always willing to share his knowledge and expertise with others. Judge Suster stated that Respondent is a skilled and zealous advocate with a solid reputation within the community and acknowledged Respondent's respectful demeanor. Judge Suster also stated that Respondent filled a critical need in our criminal justice system by frequently representing poor defendants who faced significant prison terms. He stated that Respondent posed no threat to the public.

{¶23} Attorneys David Rowthorn, Peter A. Sackett, John Stanard, and James A. Vargo all gave favorable character and reputation testimony. They testified to Respondent's involvement in representing poor clients. Attorney Stanard, a public defender, stated that Respondent serves the low status of people who are economically and educationally disadvantaged. Hearing Tr. 150. Attorney Vargo stated that Respondent's work ethic was amazing as he travels from one municipal court to another. *Id.* at 164-164.

{¶24} The panel finds the judges' positive character and reputation reports and the favorable testimony of the lawyers substantiate character and reputation as a mitigating factor in Respondent's favor.

{¶25} Respondent pled guilty to one count of misdemeanor theft. Respondent was sentenced to the Cuyahoga County Jail for a term of six months; execution of the sentence was suspended and defendant was to serve one-year probation; Respondent was ordered to report to the probation department and to abide by the rules and regulations of the probation department; Respondent was ordered to be supervised by regular supervision unit and to perform 100 hours of pro bono work for Cleveland Legal Aid. Respondent was ordered to pay a fine in the sum of \$1,000 and to pay supervision fees, plus costs of the prosecution.

{¶26} The panel finds the imposition of the above penalties a mitigating factor in Respondent's favor.

{¶27} Joseph Vlaskovits, M.D., performed a psychiatric evaluation on Respondent and submitted a letter marked Respondent's Ex. F and testified live. Dr. Vlaskovits is a diplomat in psychiatry and a member of the American Board of Psychiatry and Neurology, and is located at University Hospitals, Case Medical Center, Department of Psychiatry, in Cleveland, Ohio. The purpose of the evaluation was to prepare a report for use in court.

{¶28} Dr. Vlaskovits conducted seven hours of interviews with Respondent on three different occasions, reviewed a personality assessment administered to Respondent, and reviewed the complaint and certificate filed with the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, and further reviewed Respondent's depositions, motion for default judgment, and motion to remand filed with the Supreme Court of Ohio.

{¶29} Dr. Vlaskovits submitted a written report and testified live.

{¶30} Dr. Vlaskovits reported that Respondent told him he first experienced psychiatric problems in the 1990s and had a number of stresses in his life, including financial difficulties, employment, and other personal problems. He reported starting in July 2009, Respondent experienced excessive anxiety and worry about work and family life. He reported Respondent's mother's death in July 2011, causing sadness and other problems, including passing thoughts of suicide and not having the energy to even sort through his mail or answer his answering machine, and his work suffered. *Id.* at 42-43.

{¶31} Respondent reported that in late October 2011, he learned from another attorney that his name was mentioned for a default judgment, and he then sought help from his family and contacted Ohio Lawyers Assistance Program and attend local self-help groups for anxiety and depression. *Id.* at 44. Respondent told Dr. Vlaskovits that he was in the process of making an

appointment with a psychiatrist, Dr. Roknedin Safavi, but has not to date made that appointment. Respondent's Ex. F.

{¶32} The diagnostic impressions of Dr. Vlaskovits include generalized anxiety disorder; major depressive disorder, recurrent, in full remission. *Id.*

{¶33} Dr. Vlaskovits, in his written opinion, stated that with reasonable medical certainty, Respondent suffered from major depressive disorder, recurrent, severe without psychotic features, from July 2011 until November 2011. His report further stated that in his opinion, with reasonable medical certainty, Respondent has a favorable prognosis provided he receives treatment for his generalized anxiety disorder. He further opined that the generalized anxiety disorder contributed to his initial failure to respond to the notice of intent to file that he received January 2011; that the symptoms of major depressive disorder contributed to his failure to later address the notice of intent to file. His final opinion in his written report stated that "it is likely that Mr. Pryatel would have continued to participate in the disciplinary proceedings." *Id.*

{¶34} He further expressed several opinions to a reasonable medical certainty stating that Respondent suffers from general anxiety disorder since 2009; that Respondent suffered from major depressive disorder, recurrent, severe without psychotic features.

{¶35} The prognosis of Dr. Vlaskovits stated that Respondent has a favorable prognosis provided he receives treatment for his generalized anxiety disorder and that this contributed to his initial failure to respond to the notice of intent that he received in January 2011 but knew that he was in "trouble." He further stated that the major depressive disorder contributed to his failure to later address the notice of intent to file and that but for his anxiety and depression, "it is likely that Mr. Pryatel would have continued to participate in the disciplinary proceedings." *Id.*

{¶36} Dr. Vlaskovits could not express an opinion as to when Respondent could return to the competent practice of law. Respondent had not yet consulted with or been treated by a psychiatrist. Dr. Vlaskovits testified, “it is my opinion that if he follows up with the treatment recommendation and follows up with OLAP and so forth, that he can return to the competent practice of law.” Hearing Tr. 83. He further testified, “I think he would first have to establish a relationship with the psychiatrist.” *Id.*

{¶37} Although Dr. Vlaskovits’ testimony was impressive, his report and his testimony do not meet the requirements of mental disability as a mitigating factor pursuant to BCGD Proc. Reg. 10(B)(2)(g). Mental disability requires a sustained period of successful treatment. Respondent has not received treatment by a psychiatrist or other qualified health care professional. Mental disability also requires a prognosis from a qualified health care professional that the attorney will be able to return to competent, ethical professional practice under specified conditions. Although Dr. Vlaskovits testified that Respondent can return to the competent practice of law, he stated that he must follow up with the treatment recommendation and follow up with OLAP. Although Respondent’s apparent depression explains his failure to cooperate in the disciplinary proceeding, the panel does not find mental disability a mitigating factor.

{¶38} Megan R. Snyder of Ohio Lawyers Assistance Program met with Respondent December 8, 2011, for a mental health assessment. She reported that he was honest and cooperative throughout the evaluation. She made a diagnosis of adjustment disorder with mixed anxiety and depressed mood, chronic, and recommended an OLAP mental health contract for monitoring and support. She reported that Respondent attends OLAP mental health support group on a weekly basis and also attends group sessions, and is in compliance with his contract with OLAP. Respondent’s Ex. G.

{¶39} The panel finds other interim rehabilitation a mitigating factor in Respondent's favor.

#### CASE LAW

{¶40} In *Mahoning Cty. Bar Assn. v. Pritchard*, 131 Ohio St. 3d 97, 2012-Ohio-44, the Supreme Court adopted the Board's conclusions, finding that the respondent violated several Ohio Rules of Professional Conduct and indefinitely suspended the respondent. Respondent committed dozens of disciplinary violations that harmed approximately 20 clients, some irreversibly. Aggravating factors were that the respondent acted with a dishonest or selfish motive, demonstrated a pattern of misconduct, committed multiple offenses, failed to cooperate in the disciplinary process prior to the institution of formal proceedings, harmed vulnerable clients, and failed to make restitution. The respondent previously received an attorney-registration suspension. Based on the parties' stipulations and Board's findings, the Court found full and free disclosure of misconduct, a cooperative attitude toward the disciplinary proceedings, and evidence of good character and reputation. The Court further recognized that respondent's misconduct occurred as he was struggling with major depression related to marital problems.

{¶41} The misconduct of Respondent Pritchard was substantially more egregious than Respondent Pryatel and the Court affirmed the Board's recommendation to a sanction of an indefinite suspension.

{¶42} In *Disciplinary Counsel v. Davis*, 130 Ohio St.3d 440, 2011-Ohio-6016, the Court adopted the Board's recommended sanction and indefinitely suspended the respondent from the practice of law. In 2009, the respondent was suspended from the practice of law for two years. The respondent failed to cooperate with Disciplinary Counsel and violated several Rules of Professional Conduct. The parties stipulated and the Court agreed that the respondent failed to

respond to a demand for information from a disciplinary authority; his conduct was prejudicial to the administration of justice; the respondent failed to cooperate in a disciplinary investigation; failed to act with reasonable diligence and promptness in representing a client; failed to deliver to the client all papers and property; and failed to refund promptly any part of a fee when he withdrew. Aggravating factors included a dishonest or selfish motive; performing little or no work; failing to return client retainers; failing to make restitution; engaging in a pattern of misconduct involving three clients and multiple offenses; failure to cooperate in the disciplinary process; and refusal to acknowledge the wrongful nature of her conduct and harmed vulnerable victims. The Board concluded and the Court agreed that there were no mitigating factors.

{¶43} In the *Davis* case, the respondent's record and conduct was more egregious than Respondent Pryatel, and Respondent Davis had no mitigating factors.

{¶44} In *Disciplinary Counsel v. Bandman*, 125 Ohio St.3d 503, 2010-Ohio-2115, the respondent wrote checks on his client's family trust account payable to himself, his business, his fiancé, and business partner without the knowledge or approval of the grantor. The parties stipulated and the Board found that the Respondent violated several Ohio Rules of Professional Conduct. The respondent appropriated trust assets for his own benefit, concealed his actions, made false and misleading notations on checks that they represented payment for quarterly administration of the estate, and altered bank records to conceal his wrongful actions. The respondent was indefinitely suspended with reinstatement conditioned on proof of full restitution to the trust or reimbursement to the Client Security Fund for any claims paid as a result of his misconduct. The respondent's client was diagnosed with dementia in 2006 and the respondent waited until June 2007, to submit a bill for the preparation of the trust and other estate planning tasks.

{¶45} The Board found four of nine aggravating factors, including a dishonest or selfish motive; a pattern of misconduct; multiple offenses; and the vulnerability of and resulting harm to the victim. In mitigation, the respondent had no prior disciplinary record, demonstrated a cooperative attitude toward the disciplinary proceedings, was remorseful, and paid restitution. The Court also mentioned good character as a mitigating factor.

{¶46} The Court adopted the Board's recommended sanction of an indefinite suspension. The respondent's conduct was more egregious than Respondent Pryatel's conduct.

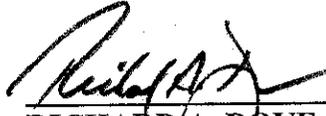
#### **SANCTION**

{¶47} Based on mitigation evidence presented, the panel recommends a reduction in the sanction originally recommended by the Board to an indefinite suspension.

#### **BOARD RECOMMENDATION**

Pursuant to remand order of the Supreme Court dated January 12, 2012, 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, Mark Robert Pryatel, be indefinitely suspended from the practice of law in the State of Ohio. 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.**



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