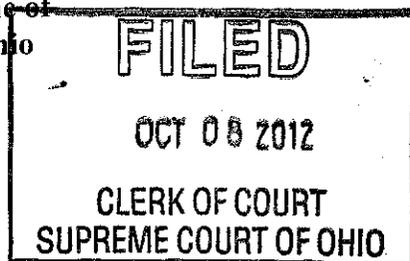


BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO

12-1692

In re: :
Complaint against : Case No. 11-002
Charles William McGowan : Findings of Fact,
Attorney Reg. No. 0066471 : Conclusions of Law, and
Respondent : Recommendation of the
Board of Commissioners on
Columbus Bar Association : Grievances and Discipline of
the Supreme Court of Ohio
Relator :



OVERVIEW

{¶1} This matter came before a panel consisting of Charles Coulson, Bernard K. Bauer, and Walter Reynolds, chair. None of the panel members resides in the district from which the complaint originated, nor did any of the panel members served on the probable cause panel that certified the complaint.

{¶2} The parties submitted stipulations of fact and misconduct and jointly waived a formal hearing on the matter. The panel accepted the stipulations without modification and recommends that Respondent be indefinitely suspended from the practice of law with reinstatement conditioned on Respondent's completion of his federal supervised release, restitution of the remaining balance, if any, of the unearned fees owing to Respondent's clients, restitution to the Client Security Fund of all claims, if any, it has paid, and payment of the costs of these proceedings. Further, the panel is recommending that Respondent be given credit for time served under the interim felony suspension.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶3} Respondent, Charles William McGowan, of Columbus was admitted to the practice of law in Ohio on November 12, 1996.

Count One—Felony Conviction

{¶4} On December 30, 2010, the Supreme Court of Ohio suspended Respondent's license to practice law on an interim basis following his felony conviction of one count of conspiracy to commit money laundering under 18 U.S.C. §§1956(h) and 1956 (a)(1)(i), and a second count of receiving, in the course of his trade or business as an attorney, currency in excess of \$10,000 and willfully failing to report the same, in violation of 31 U.S.C. §§5331 and 5332(a) and 31 C.F.R. §103.3. *In re McGowan, 12/30/2010 Case Announcements, 2010-6467.*

{¶5} On January 27, 2011, Relator filed a complaint against Respondent alleging three counts. Count One alleged that the conduct underlying Respondent's felony conviction also violated the following: Prof. Cond. R. 8.1(b) [knowingly failing to respond to a demand for information from a disciplinary authority];¹ Prof. Cond. R. 8.4(b) [commit illegal acts that reflect adversely on the lawyer's honesty and trustworthiness]; Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation]; and Prof. Cond. R. 8.4(h) [conduct adversely reflecting on the lawyer's fitness to practice].

{¶6} Regarding Count One, the parties stipulated, and the panel finds, by clear and convincing evidence, that Respondent violated Prof. Cond. R. 8.4(b), Prof. Cond. R. 8.4(c), and Prof. Cond. R. 8.4(h).

¹ Relator later withdrew the allegation regarding a violation of Prof. Cond. R. 8.1(b).

Count Two—Pyles Matter

{¶7} Count Two concerned a grievance involving Peggy Pyles, whom Respondent was retained to represent in a driving while intoxicated case. Pyles paid Respondent an initial retainer of \$500 in partial payment of a quoted fee of \$1,500.

{¶8} Respondent appeared at Pyles' arraignment but because he assumed that his appearance would result in him being automatically listed as counsel of record, he did not file a notice of appearance. Because Respondent was not listed as counsel for record, future notices were not sent to him and he did not appear at two hearings.

{¶9} Although Respondent did not appear at the hearings, he did make repeated attempts to obtain and review police records regarding the calibration of the breath test machine used to determine Pyles' degree of intoxication to see if she might have a defense to the charges against her.

{¶10} In addition to the initial retainer, Pyles paid an additional \$400. to Respondent.

{¶11} Respondent failed to appear at the October 21, 2009 pretrial and at the November 1, 2009 hearing. Pyles represented herself and entered a guilty plea and was sentenced.

{¶12} Pyles filed a grievance relating to the fees paid and the lack of representation provided. Relator notified Respondent of the grievance and requested a response. Respondent did not respond. Pyles filed a request for arbitration concerning the fees charged by Respondent. Notice of the arbitration request was provided to Respondent, but he did not reply and the matter never proceeded to arbitration.

{¶13} Relator alleges that Respondent violated the following: Prof. Cond. R. 1.1 [competency]; Prof. Cond. R. 1.3 [diligence]; Prof. Cond. R. 1.5(a) [charging a clearly excessive fee]; Prof. Cond. R. 1.15(d) [failing to deliver to a client funds to which the client is entitled];

Prof. Cond. R. 8.1(b); Prof. Cond. R. 8.1(d) [conduct prejudicial to the administration of justice]; Prof. Cond. R. 8.4(h); and Gov. Bar R. V, Section 4(G) [failing to cooperate with an alternative dispute resolution procedure]. As part of the stipulation, Relator withdrew the alleged violation of Prof. Cond. R. 1.1 and 1.5(a).

{¶14} Regarding Count Two, the parties stipulated and the panel finds, by clear and convincing evidence, that Respondent violated Prof. Cond. R. 1.3; Prof. Cond. R. 1.15(d); Prof. Cond. R. 8.1(b); Prof. Cond. R. 8.4(h); and Gov. Bar R. V, Section 4(G).²

Count Three—Thurman Matter

{¶15} Count Three relates to the grievance of James Thurman, Jr., who retained Respondent to represent him in a civil suit involving personal injuries suffered in a vehicle accident.

{¶16} Respondent agreed to represent Thurman and had him sign a contingent fee agreement. Respondent did not have professional responsibility insurance and failed to inform Thurman, or have him sign the required acknowledgment. After the initial engagement, Thurman became dissatisfied with Respondent's representation and terminated the relationship. Thurman obtained other counsel to represent him and Respondent cooperated with the successor counsel. Thurman filed a grievance.

{¶17} Relator sent Respondent a copy of Thurman's grievance and a notice to respond. Respondent did not respond.

{¶18} Relator charged Respondent with the following violations: DR 1-101(A)(6) [engaging in conduct adversely reflecting on fitness to practice]; DR 6-101(A)(1) [failing to

² Regarding Count Two, the stipulation does not address Prof. Cond. R. 8.1(d) [engaging in conduct prejudicial to the administration of justice]. Accordingly, without a stipulation or other evidence, the panel does not find a violation of this Rule.

provide competent representation]; DR 1-104 [failing to give notice of not having malpractice coverage]; DR 6-101(A)(3) [neglecting an entrusted matter]; Prof. Cond. R. 1.1; Prof. Cond. R.1.3; Prof. Cond. R. 1.4(c) [failing to give notice of no malpractice coverage]; Prof. Cond. R. 8.1(b); and Prof. Cond. R. 8.4(h). As part of the stipulation, Relator withdrew the charges of violation of DR 1-101(A)(6) and 6-101(A)(3). Also, Relator withdrew the charges of violation of Prof. Cond. R. 1.1 and 1.3

{¶19} Regarding Count Three, the parties stipulated, and the panel finds, by clear and convincing evidence, that Respondent violated DR1-104 and DR 6-101(A)(3), and after February 1, 2007³, violated Prof. Cond. R. 1.4(a), Prof. Cond. R. 1.4(c) , and Prof. Cond. R. 8.1(b).

AGGRAVATION, MITIGATION, AND SANCTION

{¶20} The parties stipulated and the panel finds by clear and convincing evidence the following evidence of aggravation: dishonest or selfish motive; pattern of misconduct; multiple offenses; initial lack of cooperation with disciplinary process; and vulnerability of victims of misconduct.

{¶21} Regarding mitigation, the parties stipulated, and the panel finds by clear and convincing evidence the following evidence of mitigation: absence of a prior record; and imposition of other penalties (prior to felony suspension).

{¶22} The parties jointly recommended a sanction of indefinite suspension with reinstatement conditioned on Respondent's completion of his federal supervised release, restitution of the remaining balance, if any, of the unearned fees owing to his clients, restitution to the Client Security Fund of all claims, if any, it has paid to Respondent's clients and payment

³ Regarding Count Three, the stipulation does not address Prof. Cond. R. 8.4(h). This alleged violation is basically the same violation as DR 1-101(A)(6) that was withdrawn by Relator. Thus, without a stipulation or other evidence, the panel does not find a violation of this Rule.

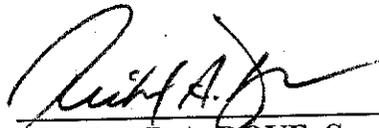
of all costs of these proceedings. The parties also jointly recommended that Respondent be given credit for time served under the interim felony suspension.

{¶23} The panel recommends acceptance of the recommended sanction, and support for the recommendation is based on the following cases: *Columbus Bar Assn. v. Hunter*, 130 Ohio St.3d 355, 2011-Ohio-5788 (imposing an indefinite suspension, with reinstatement conditioned upon completion of federal supervised release and the payment of restitution); *Disciplinary Counsel v. Smith*, 128 Ohio St.3d 390, 2011-Ohio-957 (imposing an indefinite suspension, with credit for time served on an attorney convicted of conspiracy to defraud the IRS, making false tax returns, and corruptly endeavoring to obstruct and impede an IRS investigation); and *Disciplinary Counsel v. Bennett*, 124 Ohio St.3d 314, 2010-Ohio-313 (imposing an indefinite suspension, with credit for time served under an interim felony suspension, and conditioning reinstatement on completion of supervised release for an attorney convicted of illegally structuring currency transaction to evade taxation).

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 October 5, 2012. The Board adopted the Findings of Fact, Conclusions of Law, and Recommendation of the panel and recommends that Respondent, Charles William McGowan, be indefinitely suspended from the practice of law in Ohio, with credit for time served under the interim felony suspension. The Board further recommends that Respondent's reinstatement to the practice of law be subject to the conditions set forth in ¶22 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.**

A handwritten signature in black ink, appearing to read "Richard A. Dove", written over a horizontal line.

RICHARD A. DOVE, Secretary