

ORIGINAL

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

FILED:
OCT 08 2012:
CLERK OF COURT
SUPREME COURT OF OHIO

12-1694

In re:

Complaint against

Kevin Michael Hunt
Attorney Reg. No. 0073405

Respondent

Dayton Bar Association

Relator

Case No. 11-083

Findings of Fact,
Conclusions of Law and
Recommendation of the
Board of Commissioners on
Grievances and Discipline of
the Supreme Court of Ohio

OVERVIEW

{¶1} This matter was heard on July 3, 2012 in Columbus before a panel consisting of members Martha Clark, Paul DeMarco, and Judge John Street, chair. None of the panel members resides in the district in which the complaint arose, and none was a member of the probable cause panel that reviewed the complaint pursuant to Gov. Bar R. V, Section 6(D)(I). Thomas J. Replogle represented Respondent and Andrew Storar represented Relator.

{¶2} Relator accused Respondent of mishandling a personal injury action arising out of an automobile accident. During the representation, Respondent failed to investigate the client's claims; he sued the wrong party; he did not respond to motions for summary judgment; he allowed the statute of limitations to run; and he lied to his clients about the status of the case. The evidence demonstrated that Respondent violated DR 6-101(A)(1) by attempting to handle a matter that he was not competent to handle; DR 6-101(A)(2) by attempting to handle a legal

matter without adequate preparation; DR 6-101(A)(3) by neglecting a legal matter; DR 7-101(A)(1) by intentionally failing to seek the lawful objectives of his client; and DR 1-102(A)(4) by engaging in conduct involving dishonesty or misrepresentation. In view of Respondent's misconduct, the panel recommends that he be indefinitely suspended from the practice of law.

{¶3} Relator filed a complaint against Respondent on September 20, 2011. The complaint alleged that Respondent had violated provisions of the Code of Professional Responsibility and the Rules of Professional Conduct for the manner in which he handled a personal injury case from 2002 through 2006.

{¶4} Count One alleged that Respondent violated Prof. Cond. R. 1.1 and DR 6-101(A)(1) and DR 6-101(A)(2). Count Two alleged that Respondent violated Prof. Cond. R. 1.3 and DR 6-101(A)(3). Count Three alleged that Respondent violated DR 7-101(A)(1). Count Four alleged that Respondent violated Prof. Cond. R. 8.4(c) and DR 1-102 (A)(4).

{¶5} Respondent filed an answer to the complaint on December 15, 2011.

{¶6} At the start of the hearing, the panel and counsel for the parties discussed whether the Rules of Professional Conduct or the Code of Professional Responsibility, or whether both would apply. Because all of the conduct in this case occurred prior to the adoption of the Rules of Professional Conduct in 2007, the panel ruled that only the disciplinary rules alleged to have been violated under the Code of Professional Responsibility would apply.

{¶7} The parties presented stipulations of facts and stipulated exhibits. Relator called Respondent to testify on cross-examination and the grievant, Jennifer Pond, to testify on direct examination. Respondent testified on his own behalf.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶8} On June 6, 2002, Jennifer Pond and her two daughters were involved in a motor vehicle accident in Miami County, Ohio. The accident occurred when a vehicle driven by Loren Penrod, a 17 year old minor, crashed into a car stopped in front of her. The stopped vehicle, driven by Carl Brumbaugh, was waiting to make a left turn. The Penrod-Brumbaugh collision caused the Brumbaugh car to cross the centerline and to crash into the on-coming vehicle driven by Jennifer Pond. Both Jennifer Pond and one of her daughters, three-year-old Sarah, were injured as a result of the crash. In August 2002, Mrs. Pond and her husband retained Respondent to represent them and Sarah in a personal injury action against the negligent drivers.

{¶9} Respondent claims to have performed research as to the facts and the law, but he did not produce any documentation of his activity for nearly two years before he filed a complaint in the Miami County Common Pleas Court on June 4, 2004. The complaint named Robert Penrod as father, natural guardian and next of kin of Lauren A. Penrod, a minor, and Carl Brumbaugh as defendants. The complaint did not name Lauren Penrod as a defendant, even though she was the driver at fault in the accident. At the time he filed the complaint, Respondent believed that Carl Brumbaugh was the driver responsible for causing the accident. Respondent also mistakenly thought that he had to sue the parent of a minor for the damages the minor caused in the accident. Respondent was not aware of the legal standard to hold a minor responsible for negligent acts.

{¶10} In approximately February 2005, Mr. and Mrs. Pond gave their depositions. At the depositions, the Ponds were advised that a scheduling conference was planned for sometime in July. Respondent later called Mrs. Pond and confirmed that the scheduling conference would be held on July 18, 2005.

{¶11} Before the settlement conference took place, however, both defendants moved for summary judgment. Defendant Penrod filed a motion for summary judgment on March 22, 2005. Respondent did not respond to the motion, and summary judgment was granted in favor of Mr. Penrod on April 21, 2005. At the hearing, Respondent explained that he did not respond to the Penrod motion because he believed Brumbaugh was the main culprit in the crash. Respondent was, therefore, not terribly concerned that Penrod was prevailing on a motion for summary judgment. Hearing Tr. 119-121.

{¶12} Brumbaugh filed a motion for summary judgment on May 26, 2005. Respondent did not reply to this motion either, and summary judgment was granted in favor of Brumbaugh on June 22, 2005. Respondent explained that when he got the Brumbaugh motion for summary judgment, he realized that he had mixed up the negligent parties in his own mind, but he never explained why he did not respond to the motion.

{¶13} On July 14, 2005, the court filed a judgment entry dismissing the case. On July 18, 2005, shortly before the settlement conference would have taken place, Respondent called the Ponds and spoke to Mrs. Pond. She and her husband were getting ready to attend the hearing and to drop off their children with their grandparents. Respondent told Mrs. Pond that the settlement conference had been canceled and that it would be rescheduled. On a couple of occasions after that Respondent assured Mrs. Pond that the case was still active. The Ponds continued to wait to hear about the rescheduled conference even though Respondent was not returning their calls.

{¶14} On April 25, 2006, Respondent filed a motion for relief from the summary judgment order. The court granted the motion and gave Respondent 20 days to file a response to the defendant's summary judgment motions. Respondent, however, still did not file any

responses, and the court again granted summary judgment in the defendant's favor on July 24, 2006.¹

{¶15} On October 3, 2006, Respondent filed a Civil Rule 60(B) motion seeking relief from the court's judgment. It was denied on November 8, 2006, because it did not contain a proper certificate of service.

{¶16} In early November 2006, Mrs. Pond consulted with another attorney because she still had not heard anything from Respondent and did not know the status of her case. The other attorney went to the courthouse and checked the court's file and discovered that the case had been dismissed in 2005. The Ponds then retained the other attorney to represent them in a malpractice action against Respondent for the loss of Mrs. Pond's claims because the statute of limitations had expired. The other attorney also undertook the representation of their daughter, Sarah. The statute of limitations had not run on her claim because she was a minor.

{¶17} The panel finds by clear and convincing evidence that Respondent violated DR 6-101(A)(1), (A)(2), and (A)(3); DR 7-101(A)(1); and DR 102(A)(4).

AGGRAVATION, MITIGATION, AND SANCTION

{¶18} With respect to aggravation, the panel finds the presence of the following aggravating factors that are further explained in the ensuing paragraphs: prior disciplinary offense; dishonest or selfish motive; a pattern of misconduct; multiple offenses; refusal to acknowledge wrongful nature of conduct; and vulnerability of and resulting harm to clients.

{¶19} Respondent suspended from the practice of law for six months on December 21, 2010. *Dayton Bar Assn. v. Hunt*, 127 Ohio St.3d 390, 2010-Ohio-6148. Respondent has not

¹The evidence did not include copies of the motion filed by Respondent. The court's entry of July 24, 2006, refers only to judgment pertaining to Brumbaugh. There is no mention of Penrod's motion. It may be then that Respondent did not seek to have Penrod's motion overturned.

kept up with his CLE requirements, has not been reinstated to the practice of law as a result of his prior suspension, and also is suspended for failing to register with the Supreme Court for the current biennium. The prior disciplinary case resulted from similar conduct where Respondent had represented two clients in a medical negligence lawsuit. Respondent timely filed the complaint, but thereafter he failed to obtain an expert witness, respond to discovery, or respond to separate motions for summary judgment. As a result, the case was dismissed. Respondent did not notify the clients that the case was dismissed, and he also failed to respond to their inquiries on several occasions throughout the lawsuit. The misconduct in the prior case occurred after the misconduct in the present case, but it came to light before Relator became aware of the allegations in this case. As the prior case involved similar types of misconduct where Respondent failed to act with reasonable diligence and promptness in representing a client, and failing to keep the client informed, the panel finds that there is an aggravating factor. The factor is more in the sense of a pattern of misconduct and multiple offenses than a situation where Respondent engaged in new misconduct after previously being found to have committed misconduct.

{¶20} Respondent had a dishonest or selfish motive in telling his clients that the settlement conference would be continued and that the case was still active after it had been dismissed. Respondent was trying to keep his clients from discovering the truth about his extremely poor representation of them.

{¶21} Respondent committed multiple offenses. Respondent was not competent to handle this case, he did not adequately prepare, he neglected his clients, he did not seek the clients' objectives, and he lied to his clients.

{¶22} Respondent failed to acknowledge his wrongful conduct. Even though Respondent stipulated to most of the alleged misconduct, he offered little insight or explanation into his misconduct. Respondent claimed to have records that might be helpful to him, but had not tried to locate them, even though he had been through not only this disciplinary proceeding but also a legal malpractice case. Respondent's attitude seemed to be one of indifference.

{¶23} The Ponds were vulnerable clients, and Respondent caused harm to them. Respondent's actions delayed the ability of the Ponds to recover for their injuries. It caused them to have to file a malpractice action against Respondent. It left them tired and bitter about lawyers and the legal system. Mrs. Pond eventually did recover from her malpractice action against Respondent, but she was clearly not satisfied. In addition, the Ponds' daughter was able to reach a settlement on her claim for injuries. Hearing Tr. 77-80.

{¶24} Very little mitigation evidence was offered. Respondent was admitted to the practice of law in May of 2001. Respondent graduated from the University of Dayton Law School. Respondent clerked with his father's firm, Richard Hunt LPA, before passing the bar and becoming employed with his father's firm. Respondent worked for his father from 2001 to 2010, when Respondent was suspended from the practice of law. Since his suspension, Respondent has not kept up on his CLE requirements and is currently not registered as an attorney. Respondent has taken a job with General Dynamics in Dayton as a contract administrator and has no desire to return to the practice of law at the present time, but he does not want to lose his law license altogether.

{¶25} Relator recommended that Respondent be permanently disbarred from the practice of law. Respondent recommends a two-year suspension. The panel recommends that Respondent be indefinitely suspended from the practice of law.

{¶26} In *Cincinnati Bar Assn. v. Larson*, 124 Ohio St.3d 249, 2009-Ohio-6766,

respondent had misled one client repeatedly as to what he had accomplished on her behalf. In two other cases, he totally neglected his client's matters. At ¶¶17-19, the Supreme Court reviewed sanctions imposed in similar cases:

In *Disciplinary Counsel v. Davis*, 121 Ohio St.3d 84, 2009-Ohio-500, a lawyer failed to notify her client's insurer of a settlement with a tortfeasor's insurer, causing the client's insurer to deny a claim for underinsured-motorist coverage. She then misled the client for years by not telling him of the denial. We suspended the lawyer's license for two years, staying the second year on conditions including monitored probation, explaining:

"In sanctioning lawyers who have engaged in a sustained course of conduct to conceal from their clients a failure to competently pursue claims on their behalf, we have typically imposed a suspension of at least two years. See, e.g., *Disciplinary Counsel v. Manning*, 111 Ohio St.3d 349, 2006-Ohio-5794, ('The number and intricacy of respondent's lies to his clients, the three-and-a-half-year period during which he continued to mislead them, and the large number of ethical violations found by the board all justify the recommended two-year suspension'). But we have sometimes stayed the last year of a two-year suspension when it was warranted by the circumstances of the case. See, e.g., *Cuyahoga Cty. Bar Assn. v. Glaeser*, 120 Ohio St.3d 350, 2008-Ohio-6199, (lawyer candidly admitted wrongdoing and had only recently been admitted to the bar when he committed the misconduct)."

A two-year suspension with one year stayed is as appropriate here as it was in *Davis*, considering the nature of respondent's misconduct. Though he did not hide his inaction for years, respondent did deceive one client and ignored two others. Moreover, respondent is a seasoned professional, whereas *Davis* was inexperienced. *Davis*, 121 Ohio St.3d 84, 2009-Ohio-500. And as in *Davis*, respondent evaded inquiries of disciplinary authorities during the disciplinary process. Both respondent and *Davis* also inflicted financial injury: respondent failed to promptly return unearned fees to three clients; *Davis*'s actions foreclosed her client's ability to claim insurance proceeds. [Internal citations omitted.]

{¶27} In *Cuyahoga Cty. Bar Assn. v. Glaeser*, 120 Ohio St.3d 350, 2008-Ohio-6199,

respondent had misled his client, failed to pursue his client's case as promised, and then failed to promptly return his client's property. In imposing a two-year suspension with one year stayed, the Court discussed other similar cases:

In *Toledo Bar Assn. v. Hickman*, 107 Ohio St.3d 296, 2005-Ohio-6513, we found a lawyer in violation of DR 1-102(A)(4), 6-101(A)(3), and 7-101(A)(2) because he had falsely advised a couple that he had filed a wrongful-death action for them and then lied repeatedly about how the case was progressing. In addition, the lawyer had previously dismissed the couple's son's personal-injury action without permission and then lied about the circumstances of the dismissal, telling the couple that the defendant had agreed to settle the case and that he was having difficulty collecting the money. The statute of limitations lapsed on both claims, although the lawyer's malpractice insurance covered some of the clients' losses.

In *Hickman*, the lawyer's 25-year, previously unblemished legal career weighed in his favor, as did his complete admission to and remorse for his wrongdoing. That lawyer also presented strong evidence of his overall good character and reputation. We suspended the lawyer's license to practice for one year and stayed the last six months on the condition of no further misconduct.

In *Disciplinary Counsel v. Keller*, 110 Ohio St.3d 240, 2006-Ohio-4354, the lawyer failed to advise a client that he had no malpractice insurance as required by DR 1-104, lied about having filed a personal-injury action and having received a settlement offer from the insurer, and then tried to get his client to agree to the insured's alleged settlement offer so that the attorney could pay the amount himself to conceal his malpractice. Mitigating factors included that the lawyer had no disciplinary record, had conceded all wrongdoing, and had shown good character apart from the incidents at issue. That lawyer had also experienced great misfortune at the time of his wrongdoing, including the murder of his child and an alcohol addiction that contributed to cause his dishonesty. We suspended the lawyer for two years and stayed the last 18 months on the conditions of restitution, compliance with an Ohio Lawyers Assistance Program, and no further misconduct.

The lawyer in *Disciplinary Counsel v. Novak*, 110 Ohio St.3d 134, 2006-Ohio-3823, violated the same disciplinary rules as respondent and some additional rules as well. That lawyer accepted money to file an appeal, failed to file it, and then lied more than once to the client about the filing. The lawyer also told one of his clients that he had filed successive motions to enforce a settlement when he had not. The lawyer had also failed to appear at a hearing in a third client's case, prompting the court to grant summary judgment against his client and award sanctions. The lawyer further failed to tell his clients that he had no malpractice insurance and ignored efforts to investigate his misconduct.

We ordered a two-year suspension of the lawyer's license in *Novak*, with a stay of the second year on conditions that the lawyer completed a six-month monitored probation of his practice and make restitution. That lawyer had no prior record of discipline, and he also eventually conceded his ethical lapses. Also weighing in favor of the stayed suspension was the fact that the lawyer had a depressive

condition that had contributed to cause his ethical misconduct and for which he had sought treatment.

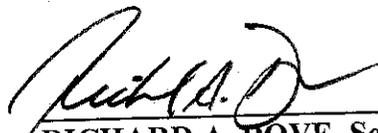
Id. at ¶¶11-15 [internal citations omitted].

{¶28} Respondent in the present case violated the same rules as the lawyers in the above cases. In those cases, the sanctions ranged from one year with six months stayed to two years. The general rule is that in these types of cases the sanction will be an actual suspension of at least two years. The Court has reduced that when warranted by the circumstances. Those circumstances have often involved mitigating factors such as remorse, admission of wrongdoing, strong evidence of overall good character, and great personal misfortune at the time of the misconduct. Very little mitigating evidence was offered on behalf of Respondent in this case. Respondent has shown little or no remorse for his actions. In addition, Respondent has stopped practicing law. Respondent has not sought reinstatement after his previous suspensions. As a result, the panel recommends that he be indefinitely suspended.

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, Kevin Michael Hunt, 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.**

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

RICHARD A. DOVE, Secretary