

ORIGINAL

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

12-2060

In re:

Complaint against

John Joseph Gruttadaurio
Attorney Reg. No. 0042083

Respondent

Cleveland Metropolitan Bar Association

Relator

FILED
DEC 10 2012
CLERK OF COURT
SUPREME COURT OF OHIO

Case No. 11-114

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 June 18, 2012, in Columbus, Ohio before a panel consisting of members Sharon L. Harwood, Janica Pierce Tucker and Bernard K. Bauer, Chair. None of the panel members is from the district from which the complaint arose or was a member of the probable cause panel in this matter.

{¶2} Relator was represented by Cathleen M. Bolek and Joseph P. Dinson. Respondent, John Gruttadaurio, appeared *pro se*.

{¶3} Relator proceeded upon its nine count complaint which alleged that Respondent committed misconduct in his representation of two clients, made false statements to Relator's investigator, misrepresented the status of his professional liability insurance to clients, and failed to maintain and use an IOLTA account, thereby violating Prof. Cond. R. 1.3, Prof. Cond. R. 8.4(c), Prof. Cond. R. 8.1(a), Prof. Cond. R. 8.4(d), Prof. Cond. R. 1.5, Prof. Cond. R. 1.4(a)(3), Prof. Cond. R. 1.15(a), Prof. Cond. R. 1.4(c), and Prof. Cond. R. 8.4(h).

{¶4} For the reasons that follow the panel recommends Respondent be found to have violated Prof. Cond. R. 1.3, Prof. Cond. R. 1.5, Prof. Cond. R. 1.4(a)(3), Prof. Cond. R. 1.15(a), Prof. Cond. R. 1.4(c), and Prof. Cond. R. 8.4(h) and, based upon such conclusions, recommends that Respondent receive a two-year suspension, with 18 months stayed on conditions.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶5} Based upon the stipulations of the parties, Respondent's answer, the testimony, and the exhibits, the panel makes the following findings based upon clear and convincing evidence.

{¶6} Respondent was duly admitted to practice law in the State of Ohio on November 6, 1989 and, at all times relevant to this action, was and is subject to the Ohio Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

{¶7} Respondent maintains an office in Chagrin Falls.

{¶8} Luigia Britta ("Luigia") is the mother of Aldo Britta ("Britta") and Elizabeth Leroy ("Leroy").

Count One—Britta Matter

{¶9} Britta is currently incarcerated at the Marion Correctional Institution for an eight year sentence following a November 2008 jury trial for four counts of gross sexual imposition.

{¶10} Britta was represented by attorney John Ricotta at his trial and the Lake County Public Defender's Office filed an appellate brief on behalf of Britta in the Eleventh District Court of Appeals on July 6, 2009.

{¶11} In June or July 2009, Respondent was retained by Luigia and Britta to represent Britta in his appeal and, if necessary, in the Supreme Court of Ohio.

{¶12} Respondent specifically agreed, in a written engagement letter, to take over Britta's appeal from the public defender's office, file any reply brief, and argue the case at oral argument.

{¶13} At no time did Respondent file a notice of appearance or brief in the Eleventh District Court of Appeals on Britta's behalf.

{¶14} Respondent did not notify Britta's appellate counsel at the public defender's office that he had been retained by Britta.

{¶15} Respondent attended the oral argument of Britta's case in the Eleventh District Court of Appeals on January 12, 2010, but did not argue the case. Rather, he sat in the courtroom gallery while a representative of the Lake County Public Defender's office argued the case.

{¶16} On or about March 15, 2010, the Eleventh District Court of Appeals affirmed Britta's conviction.

{¶17} Notwithstanding that he had agreed to do so, Respondent failed to properly file a notice of appeal to the Supreme Court of Ohio on Britta's behalf.

{¶18} Respondent failed to properly file a memorandum in support of jurisdiction in the Supreme Court of Ohio on Britta's behalf.

{¶19} Respondent missed the deadline to initiate an appeal in the Supreme Court of Ohio on behalf of Britta.

{¶20} On or about July 6, 2010, attorney Ken Bossin filed a motion to file delayed appeal on behalf of Britta. That motion was successful, although the appeal, prosecuted by Bossin on behalf of Britta, was not.

{¶21} As to Count One, involving Respondent's failure to file a notice of appeal and file a memorandum in support of claimed jurisdiction on behalf of Britta, Relator and Respondent have stipulated that Respondent violated Prof. Cond. R. 1.3 [diligence].

{¶22} Based upon clear and convincing evidence, the panel concludes that Respondent by his actions violated Prof. Cond. R. 1.3.

Count Two—Leroy Matter

{¶23} During the pendency of Britta's Eleventh District Appeal, Respondent was retained by Leroy in a domestic relations matter.

{¶24} After filing the case, appearing at least one pre-trial conference and drafting settlement paperwork, Respondent failed to appear at the final hearing.

{¶25} As to Count Two, involving Respondent's failure to attend the final hearing in Leroy's divorce, Relator and Respondent have stipulated that Respondent violated Prof. Cond. R. 1.3.

{¶26} Based upon clear and convincing evidence, the panel concludes that Respondent by his actions violated Prof. Cond. R. 1.3.

Count Three—Misrepresentation to Relator's Investigator

{¶27} Respondent represented to Relator in the investigation of this matter that he prepared and mailed a notice of appeal and/or a memorandum in support of jurisdiction to the Supreme Court of Ohio in Britta's case on or about April 21, 2010.

{¶28} Respondent represented to Relator in the investigation of this matter that he served a copy of that notice of appeal and/or memorandum in support of jurisdiction on the prosecuting attorney in Britta's case via regular U.S. mail.

{¶29} Respondent further represented to Relator's investigator that "he called on a couple of occasions and spoke with someone at the Supreme Court and he was told that documents he had filed were not on the docket yet, but were 'in the system' but not docketed yet and that that was not unusual." Hearing Tr. 37. However, at the investigator's second meeting with Respondent, Respondent indicated "that he may not have called the Supreme Court to follow up on the filing." Hearing Tr. 41.

{¶30} Relator's investigator testified that "During that second meeting [the Respondent] produced -- I believe it was a Quicken ledger that had deposits and withdrawals and also referenced the Supreme Court payment which -- or the ledger of the Supreme Court payment. At that time he indicated that the check that he had sent, or allegedly sent, had not cleared and that was what caused him to recognize that the check never cleared and that he had concern as to whether or not his pleading had ever been received." Hearing Tr. 42-43

{¶31} Further, Relator's investigator testified that:

Q. Sir, was it your understanding that the first alert that Mr. Gruttadaurio received about the potential failure to file the documents came when the check didn't clear?

A. That was the impression that he gave to me, that I left that meeting with, yes.

Hearing Tr. 43.

{¶32} The clerk's office of the Supreme Court of Ohio did not receive a notice of appeal or memorandum in support of jurisdiction for filing in Britta's case.

{¶33} The Eleventh District Court of Appeals did not receive a notice of appeal or memorandum in support of jurisdiction from Respondent in Britta's case.

{¶34} The prosecuting attorney in Britta's case did not receive service of a notice of appeal or memorandum in support of jurisdiction.

{¶35} No copy of a notice of appeal or memorandum in support of jurisdiction in Britta's case has been returned to Respondent by the U.S. Postal Service.

{¶36} Relator offered the cover letter, notice of appeal and the memorandum in support of claimed jurisdiction which had been purportedly mailed by Respondent and Respondent indicated that "I prepared them for mailing. What happened after that, I honestly don't know." Hearing Tr. 112.

{¶37} As to Count Three, involving Respondent's dealings with Relator's investigator, Relator has claimed that Respondent's conduct in making false statements to its investigator about the mailing of the notice of appeal and the memorandum in support of claimed jurisdiction violated Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation], and Prof. Cond. R. 8.1(a) [in connection with a * * * disciplinary matter, lawyer shall not * * * knowingly make a false statement of material fact] and, since it delayed Britta's appeal, in failing to mail the notice and memorandum Respondent violated Prof. Cond. R. 8.4(d) [conduct that is prejudicial to the administration of justice].

{¶38} Based upon clear and convincing evidence, the panel concludes that Respondent by his actions violated Prof. Cond. R. 8.4(d).

{¶39} However, based upon the evidence submitted, the panel cannot conclude that Respondent knowingly violated Prof. Cond. R. 8.4(c) and Prof. Cond. R. 8.1(a) and recommends that such allegations of misconduct be dismissed.

Count Four—Statements Regarding Malpractice Insurance

{¶40} Beginning in 2009, at the outset of Respondent commencing a solo practice, he began to research the cost of malpractice insurance.

{¶41} When it became clear that Respondent could not afford such coverage, he failed to inform clients who had received engagement letters telling them that Respondent was “in the process” of applying for legal malpractice insurance that that status had changed.

{¶42} As to Count Four, involving Respondent’s failure to accurately inform clients that he had discontinued efforts to obtain professional liability insurance, Relator and Respondent have stipulated that Respondent violated Prof. Cond. R. 8.4(c).

{¶43} Based upon clear and convincing evidence, the panel concludes that Respondent by his actions violated Prof. Cond. R. 8.4(c).

Count Five—Excessive Fee in Britta Matter

{¶44} Respondent entered into a written fee agreement with Britta.

{¶45} The agreement, in the form of a letter of engagement, is dated July 23, 2009, but was purportedly signed by Britta on June 27, 2009.

{¶46} The fee agreement provides that Respondent would take over representation of Britta from the public defender’s office, file any reply brief, argue the case at oral argument, and make a determination about any further appeals.

{¶47} The fee agreement entered into between Respondent and Britta provides Respondent agreed to represent Britta in his appeal pro bono, but that Britta would be responsible for any costs.

{¶48} Despite the terms of the letter of engagement with Britta, and prior to its execution, Luigia and Respondent had a discussion about a fee for his services regarding Britta’s Eleventh District Appeal.

{¶49} Respondent quoted the sum of \$4,000, which Luigia offered to pay in monthly installments.

{¶50} Over the course of approximately ten months, Luigia paid Respondent \$4,000.

{¶51} Notwithstanding his conduct and the results obtained by his representation, Respondent has not repaid any of the fees collected.

{¶52} As to Count Five, involving Respondent's failure to diligently represent Britta, accepting payment for services he did not perform, and failing to refund the money paid to him in representing Britta, Relator has claimed that Respondent's conduct violated Prof. Cond. R. 1.5(a) [mak[ing] an arrangement for, charg[ing], or collect[ing] an illegal or clearly excessive fee].

{¶53} Based upon clear and convincing evidence, the panel concludes that Respondent by his actions violated Prof. Cond. R.1.5(a).

Count Six—Communication in Britta Matter

{¶54} From the time Respondent was engaged by Luigia and Britta until after the deadline for initiating an appeal in the Supreme Court of Ohio on Britta's behalf expired, Luigia made multiple efforts to contact Respondent to discuss Britta's appeal to the Supreme Court of Ohio. Respondent often failed to answer and/or return Luigia's telephone calls and Luigia's letters to Respondent were unclaimed and/or returned.

{¶55} Respondent often told Luigia he would call her back with a status update, but failed to do so.

{¶56} During that same time period, Respondent failed to contact Britta to advise him that he would not be performing the services for which he was retained.

{¶57} As to Count Six, involving Respondent's failure to notify Luigia and Britta of the failure to file the notice of appeal and memorandum in support of jurisdiction, and specifically the failure to respond to specific inquiries from Luigia, Relator, and Respondent have stipulated

that Respondent violated Prof. Cond. R. 1.4(a)(3) [failure to keep a client reasonably informed about the status of the matter].

{¶58} Based upon clear and convincing evidence, the panel concludes that Respondent by his actions violated Prof. Cond. R. 1.4(a)(3).

Count Seven—IOLTA Violations

{¶59} Respondent deposited the funds received from Luigia into his corporate and/or personal bank accounts.

{¶60} Respondent has not offered evidence that he had earned the funds at the time he deposited them into his bank accounts.

{¶61} At no time during Respondent's representation of Britta, did he maintain an IOLTA account.

{¶62} Respondent has routinely deposited funds received from clients, whether earned or unearned, into his corporate and/or personal bank accounts.

{¶63} As to Count Seven, involving Respondent's failure to maintain and utilize an IOLTA account respecting Britta's fee, Relator has claimed that Respondent's conduct violated Prof. Cond. R. 1.15(a) [a lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property].

{¶64} Based upon clear and convincing evidence, the panel concludes that Respondent by his actions violated Prof. Cond. R. 1.15(a).

Count Eight—Notice of Malpractice Insurance

{¶65} Respondent has not carried legal malpractice insurance since sometime prior to November 2008.

{¶66} Respondent did not, at any time, inform Luigia or Britta of his failure to carry legal malpractice insurance.

{¶67} As to Count Eight, involving Respondent's failure to timely inform Britta that he did not maintain professional liability insurance, Relator and Respondent have stipulated that Respondent violated Prof. Cond. R. 1.4(c) [failure to inform a client that the lawyer does not maintain professional liability insurance].

{¶68} Based upon clear and convincing evidence, the panel concludes that Respondent by his actions violated Prof. Cond. R. 1.4(c).

Count Nine—Fitness to Practice

{¶69} Respondent's conduct as it relates to Counts One, Two, Four Five, Six, Seven, and Eight adversely reflects on his fitness to practice law.

{¶70} As to Count Nine, involving the violations found in Counts One, Two, Four, Six, and Eight, Relator and Respondent have stipulated that Respondent violated Prof. Cond. R. 8.4(h) [conduct adversely reflecting on the lawyer's fitness to practice law].

{¶71} Based upon clear and convincing evidence, the panel concludes that Respondent by his actions violated Prof. Cond. R. 8.4(h).

AGGRAVATION, MITIGATION, AND SANCTION

{¶72} Based upon the evidence presented the aggravating matters offered in this case were a pattern of neglect, multiple offenses, failure to fully acknowledge the nature of his misconduct, and the failure to make timely restitution.

{¶73} There is an absence of a prior disciplinary record, an absence of a dishonest or selfish motive, and a cooperative attitude toward proceedings.

{¶74} Relator has recommended that Respondent receive a two-year suspension.

{¶75} Respondent has requested a term suspension, with the entire suspension stayed. Respondent has also indicated that he would accept courses in law office management, a monitor, and restitution as conditions for a stayed or partially stayed suspension.

{¶76} Relator directed the panel to *Disciplinary Counsel v. Manning*, 111 Ohio St.3d 349, 2006-Ohio-5794 and *Cincinnati Bar Assn. v. Larson*, 124 Ohio St.3d 249, 2009-Ohio-6766, when considering the appropriate sanction in this matter.

{¶77} In *Manning*, the Court imposed a two-year term suspension for the attorney's failure to file a medical malpractice case on behalf of the clients and his lies to his clients and fabrications in concocting a phony settlement as a result of his neglect. Notwithstanding that a more severe sanction could have been imposed, the Court opted for the term sanction based upon the mitigating factors presented.

{¶78} In *Larson*, the Court imposed a two-year term suspension, with one year stayed on conditions, for the attorney's neglect of the legal matters of three clients, his failure to return unearned fees to all three clients and his failure to cooperate in two disciplinary investigations. The fact that the attorney offered evidence of a sleep disorder that interfered with his ability to practice at the time of his misconduct and the attorney's acknowledgement that poor office management contributed to his misconduct, with efforts to improve that deficit undertaken in his practice apparently contributed to the lesser sanction than was imposed in *Manning*.

{¶79} It is the opinion of the panel that, given Respondent's genuine remorse and his efforts to improve the management of his practice, the penalty should not be as severe as the sanctions imposed in *Manning* or *Larson*.

{¶80} For these reasons, the panel recommends that Respondent receive a two-year suspension from the practice of law, with the final 18 months stayed on the following conditions:

(1) prior to reinstatement to the practice of law, certify to the Supreme Court the completion of six hours of CLE credits in law office management and the payment of restitution in the amount of \$4,000 to Luigia Britta; and (2) at such time as Respondent is permitted to return to the active practice of law, Relator shall appoint a monitor for Respondent's practice for a period of two years.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 6, the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on December 7, 2012. The Board adopted the Findings of Fact, Conclusions of Law, and Recommendation of the panel and recommends that Respondent, John Joseph Gruttaduarlo, be suspended from the practice of law for two years, with the final 18 months stayed on conditions contained in ¶80 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