

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

In re: : 13-0222
Complaint against : Case No. 12-048
Vincent Ferdinand Gonzalez, Sr. : Findings of Fact,
Attorney Reg. No. 0008558 : 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
FEB 04 2013
CLERK OF COURT
SUPREME COURT OF OHIO

OVERVIEW

{¶1} A formal hearing was held in this matter on November 20, 2012 in Columbus, Ohio before a panel consisting of Judge Matthew W. McFarland, Martha Butler Clark, and Judge Lee H. Hildebrandt, chair. None of the panel members is from the appellate district from which the complaint arose or served as a member of a probable cause panel that reviewed the complaint pursuant to Gov. Bar R. V, Section 6(D)(1).

{¶2} Relator was represented by Phillip A. King, Assistant Disciplinary Counsel. Respondent proceeded pro se.

{¶3} On May 25, 2012, Relator filed a four-count complaint against Respondent. Respondent filed his answer on July 23, 2012.

{¶4} On September 29, 2012, Relator filed a seven-count amended complaint against Respondent. In the first count, Relator alleges that Respondent had failed to notify clients that he had not maintained professional-liability insurance. In the second and fourth counts, Relator

alleges that Respondent had engaged in improprieties with respect to his IOLTA. In the third, fifth, and sixth counts, Relator alleges that Respondent had engaged in misconduct in his representation of Fernando Perez, Ramon Colon, and Maria Samame. In the seventh and final count, Relator alleges that Respondent had failed to cooperate in disciplinary proceedings.

{¶5} Respondent filed his answer to the amended complaint on October 8, 2012. On November 13, 2012, Relator and Respondent filed a document styled “agreed stipulations and contested material.” At the hearing, Respondent reiterated his agreement with the stipulated materials. Based on its review of this matter, the panel recommends the sanction of an indefinite suspension.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶6} Respondent is an attorney who has been licensed to practice law in Ohio since 1974, and is registered with the Supreme Court of Ohio.

{¶7} On August 16, 2000, Respondent was publicly reprimanded for undignified or discourteous conduct that was degrading to a tribunal. *Cuyahoga Cty. Bar Assn. v. Gonzalez*, 89 Ohio St.3d 470, 2000-Ohio-221.

Count One—Professional-Liability Insurance

{¶8} Relator alleges that Respondent violated Prof. Cond. R. 1.4(c) [failing to notify a client that the attorney does not maintain professional liability insurance].

{¶9} The parties stipulated to the following facts: Respondent has been a sole practitioner since 2000, practicing in the areas of domestic relations, criminal defense, civil litigation, real estate law, and personal injury litigation. Respondent has not maintained professional-liability insurance since February 1, 2007 and he has not advised any of his clients that he did not carry malpractice insurance in writing on a separate form signed by his clients.

¶10} Based upon the stipulations and the evidence, the panel finds by clear and convincing evidence that Respondent has violated Prof. Cond. R. 1.4(c).

Count Two-Commingling Funds

¶11} Relator alleges that Respondent violated the following rules: Prof. Cond. R. 1.15(a) [failing to keep client funds in the lawyer's possession separate from the lawyer's funds]; and Prof. Cond. R. 8.4(h) [conduct that adversely reflects in his fitness to practice law].

¶12} The parties stipulated to the following facts: Since July 19, 2002, Respondent has maintained an IOLTA account and is the only person with signatory authority on the account.

¶13} On March 27, 2006, attorney Wes Dumas filed a personal injury suit on behalf of Respondent and Respondent's wife, Rita Chahda-Gonzalez. On March 11, 2009, a jury awarded Respondent's wife \$120,000. Respondent received a favorable verdict from the jury but was awarded no damages.

¶14} On July 17, 2009, the defendant's insurer issued a check to Dumas in the amount of \$122,169.86, which represented the damage award and accrued interest. Dumas and Chahda-Gonzalez endorsed the check to Respondent, who deposited the check into his IOLTA account on July 21, 2009.

¶15} Between July 2009 and August 2009, Respondent disbursed \$38,065 from the IOLTA account to cover attorney fees and litigation expenses.

¶16} During the same time, Respondent disbursed an additional \$50,500 to himself, to Chahda-Gonzalez, and to Julio Castro to repay a personal loan.

¶17} Respondent left the remaining sum of \$33,604.86 of Chahda-Gonzalez's personal funds in his IOLTA account and made 25 disbursements between July 2009 and January 2010 to pay marital expenses.

¶18} During the time that Respondent had Chahda-Gonzalez's funds in his IOLTA account, he also had funds in the account belonging to another client, Red Masters.

¶19} Based on the stipulations and the evidence, the panel finds by clear and convincing evidence that Respondent violated Prof. Cond. R. 1.15(a). But the funds disbursed for personal use were owned by his wife and went toward expenditures made for the benefit of both Respondent and Chahda-Gonzalez. Relator did not establish by clear and convincing evidence that funds owned by Masters were misappropriated or otherwise mishandled. Accordingly, the panel finds that a violation of Prof. Cond. R. 8.4(h) has not been proven by clear and convincing evidence, and the panel recommends dismissal of that allegation.

Count Three-Perez Matter

¶20} Relator alleges misconduct with respect to Respondent's representation of Fernando Perez in a case before the Cuyahoga Court of Common Pleas.

¶21} Relator alleges that Respondent violated the following rules: Prof. Cond. R. 1.15(a)(2) [failing to maintain a record for each client on whose behalf funds are held]; Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation]; and Prof. Cond. R. 8.4(h).

¶22} The parties stipulated the following facts: In 2010, Respondent represented Perez in a case against Cory W. Finding. On October 21, 2010, Respondent deposited a settlement check for \$20,000 into his IOLTA account on behalf of Perez.

¶23} In October and November 2010, Respondent disbursed \$18,697.73 of the \$20,000. The disbursements were in the form of three checks written on the IOLTA account: \$6,000 to Respondent for attorney fees; \$5,000 to an expert in Perez's case; and \$7,697.73 to Perez. At the hearing, the evidence indicated that there were no records to reflect that the

remaining \$1,302.27 of the \$20,000 settlement had been disbursed to Perez or on behalf of Perez.

{¶24} On January 5, 2011, Respondent disbursed \$125 from the IOLTA account made payable to “Clerk, Court of Appeals,” reducing the balance of the account to \$1,661.39. Respondent has no record of who owned the funds disbursed with that check.

{¶25} On March 22, 2011, Respondent wrote three checks on the IOLTA account as follows: a check for \$1,000 to himself; a check for \$500 on behalf of client Ramon Colon; and a check written for “cash” on behalf of Colon. When Respondent wrote the checks on behalf of Colon, he had no funds in the IOLTA account belonging to Colon. After Respondent had written these three checks, his IOLTA account reflected a negative balance of \$21.89.

{¶26} At the hearing, Respondent admitted that he had not maintained client ledgers for Perez’s funds in the IOLTA account and that he had not provided any records to Relator to indicate that Perez had received his entire share of the settlement. But Respondent contended that Relator had the ability to contact Perez and inquire about the disbursement of the funds. Thus, Respondent maintained that Relator had not met its burden of demonstrating that he had misappropriated the funds.

{¶27} The panel finds no merit in Respondent’s argument. As Relator correctly noted at the hearing, it is Respondent’s duty to produce records establishing the proper disbursement of funds where there is a discrepancy in an IOLTA account. *Disciplinary Counsel v. Weiss*, 133 Ohio St.3d 236, 2012-Ohio-4564, motion for reconsideration granted in part and cause remanded for consideration of restitution, *12/06/2012 Case Announcements*, 2012-Ohio-5693. Here, Respondent did not produce any documentation of the disbursements and could not account for

the missing \$1,302.27. Thus, the panel finds by clear and convincing evidence that Respondent has committed the violations alleged.

Count Four-IOLTA Recordkeeping

{¶28} Relator alleges that Respondent violated the following rules: Prof. Cond. R. 1.15(a)(2); and Prof. Cond. R. 1.15(a)(5) [failing to perform and retain a monthly reconciliation of his trust account].

{¶29} The parties stipulated that since February 1, 2007, Respondent has not maintained ledgers for any of the client funds deposited in his IOLTA account. During the same time, Respondent did not reconcile his IOLTA account and did not maintain the records required for reconciling the account.

{¶30} Based upon these stipulations and the evidence, the panel finds by clear and convincing evidence that Respondent violated Prof. Cond. R. 1.15(a)(2) and Prof. Cond. R. 1.15(a)(5).

Count Five-Colon Matter

{¶31} Relator alleges that Respondent violated the following rules: Prof. Cond. R. 1.15(a)(2); and Prof. Cond. R. 1.15(c) [failing to deposit into a client trust account legal fees and expenses that have been paid in advance].

{¶32} The parties stipulated to the following facts: In March 2011, Respondent represented Colon. On March 8, 2011 Colon gave Respondent \$400 in cash to retain an expert. Respondent did not place the money in his IOLTA account; instead, he placed the cash in Colon's client file. Respondent disbursed funds from his IOLTA account on behalf of Colon without depositing Colon's funds in that account. Moreover, Respondent did not maintain client ledgers of Colon's funds as required by Prof. Cond. R. 1.15(a)(2).

{¶33} Based upon these stipulations and the evidence, the panel finds by clear and convincing evidence that Respondent violated the above-listed rules. Nonetheless, we note that the violation of Prof. Cond. R. 1.15(a)(2) is effectively subsumed under the general allegations of the same conduct set forth in Count Four of the amended complaint.

Count Six- Samame Matter

{¶34} Relator alleges that Respondent engaged in misconduct with respect to his representation of Maria Samame, a Venezuelan native, in a divorce action. Relator alleges that Respondent violated the following rules: Prof. Cond. R. 1.2(a) [intentionally failing to seek the lawful objectives of his client]; Prof. Cond. R. 1.3 [diligence]; Prof. Cond. R. 1.6(c) [withdrawing from representation without a tribunal's permission when permission is required by the tribunal]; Prof. Cond. R. 8.4(d) [conduct that is prejudicial to the administration of justice]; and Prof. Cond. R. 8.4(h).

{¶35} The parties stipulated that on October 6, 2009, Samame's husband, through attorney Marshall Wolf, filed a complaint for divorce in the Cuyahoga County Domestic Relations Court. Samame hired Respondent to represent her for an hourly fee. Samame paid Respondent an initial retainer and was to pay the balance of the fee at the conclusion of the case.

{¶36} The case proceeded to trial beginning on January 25, 2011, before Magistrate Lawrence Loeb. On January 31, 2011, the fourth day of the trial, Respondent appeared with Samame.

{¶37} Respondent contests what happened at this point of the trial, but the transcript of the proceedings reflects the following: The trial had been adjourned during the cross-examination Samame's husband. At the beginning of the proceedings on January 31, 2011, Respondent stated in open court that Samame had discharged him, that he was withdrawing from

representation because he believed the court would not award him attorney fees and because he, in his words, “won’t work for free.” Loeb refused to allow Respondent to withdraw from the case and ordered Respondent to proceed with the trial.

{¶38} Despite Loeb’s order, Respondent refused to continue his cross-examination of Samame’s husband. Respondent also withdrew two previously marked trial exhibits, ignoring Loeb’s admonition that his actions were resulting in prejudice to Samame.

{¶39} The parties stipulated to the following facts: After Samame’s husband had left the witness stand, Wolf testified in support for his motion for attorney fees. Respondent did not cross-examine Wolf.

{¶40} After Wolf had rested his case-in-chief, Respondent did not call any witnesses on Samame’s behalf and instead informed the court that Samame wished to address the court in narrative fashion. Samame took the stand, and Respondent asked her if she had anything to say. Samame made a brief statement and left the stand without Respondent asking any further questions. Respondent did not call any other witnesses in Samame’s case-in-chief.

{¶41} At the end of the trial, Loeb instructed Respondent to make a closing argument. Respondent made a 30-second closing argument, and the trial concluded.

{¶42} On April 27, 2011, Loeb issued a decision granting the divorce and recommending that Samame’s husband be ordered to pay Respondent \$1,754.05 in attorney fees. On May 19, 2011, Judge Cheryl Karner adopted Loeb’s recommendations and entered judgment accordingly.

{¶43} At the hearing, Wolf and Loeb essentially corroborated Relator’s contention that Respondent had failed to take the necessary measures to protect Samame’s interests, with Loeb

testifying that the applicable local rules required permission of the court to withdraw from representation.

{¶44} At his deposition and again at the hearing before the panel, Respondent maintained that he was simply carrying out Samame's demands when he ceased actively advocating on her behalf. According to Respondent, Samame no longer wanted him to represent her, and he merely acceded to her wishes. Respondent further contended that his failure to cross-examine Wolf and Samame's husband, his withdrawal of the exhibits, and his other alleged failings did not prejudice Samame because Loeb had determined the merits of the case from the inception of the proceedings.

{¶45} The panel finds no merit in Respondent's contentions. The record reflects that Respondent's conduct was motivated by financial considerations and not by the wishes or needs of Samame. This was demonstrated by Respondent's statement that he would not "work for free," despite his agreement to defer collecting his fee until the close of the divorce. And there is nothing in the record to suggest that Loeb had made any determination of the merits of the case at the time that Respondent effectively abandoned Samame. Accordingly, the panel finds by clear and convincing evidence that Respondent violated the rules alleged.

Count Seven-Failure to Cooperate in Disciplinary Proceedings

{¶46} Relator alleges that Respondent violated the following rules: Prof. Cond. R. 8.1(b) [failing to disclose a material fact or knowingly failing to respond to a demand for information from a disciplinary authority]; and Prof. Cond. R. 8.4(h).

{¶47} The parties stipulated to the following facts: On October 24, 2011, Relator received a grievance against Respondent concerning his alleged misconduct in the Samame matter. On November 22, 2011, Relator sent Respondent a certified letter of inquiry regarding

the grievance to Respondent's business address. Respondent confirmed receipt of the letter on November 28, 2011, but he never responded to it.

{¶48} On December 13, 2011, Relator sent Respondent a second letter of inquiry by certified mail regarding the Samame matter. Respondent did not receive or claim the second letter, and it was returned to Relator.

{¶49} On January 13, 2012, Relator delivered a subpoena to Respondent requiring him to attend a deposition on January 24, 2012. During the deposition, Respondent acknowledged receipt of the letters as well as his failure to respond. When questioned about his lack of response, Respondent stated that the Samame complaint and letters of inquiry from Relator were "of no consequence."

{¶50} On May 17, 2012, Relator sent Respondent a letter requesting a copy of Samame's client file. As of September 10, 2012, Respondent had not objected to the request or responded to the letter.

{¶51} On May 29, 2012, Relator sent Respondent a letter requesting a copy of the client files of Perez, Colon, and Masters. As of September 10, 2012, Respondent had not objected to the request or responded to the letter.

{¶52} Based on the stipulations and the evidence, the panel finds by clear and convincing evidence that Respondent violated Prof. Cond. R. 8.1(b). And in light of his explicit contempt for the disciplinary process and his complete lack of response to the reasonable demands made by Relator, the panel finds by clear and convincing evidence that Respondent also violated Prof. Cond. R. 8.4(h).

AGGRAVATION, MITIGATION, AND SANCTION

{¶53} Relator and Respondent stipulated to the presence of the following aggravating factors under BCGD Proc. Reg. 10(B)(1): Respondent has been previously disciplined and failed to cooperate in the disciplinary proceedings.

{¶54} Although not part of the stipulated aggravating factors, the panel also finds that Respondent committed multiple offenses within the meaning of BCGD Proc. Reg. 10(B)(1)(d) and refused to acknowledge the wrongfulness of his conduct under BCGD Proc. Reg. 10(B)(g).

{¶55} The panel finds no mitigating factors to be present in the case.

{¶56} Relator recommends that Respondent be indefinitely suspended from the practice of law. At the hearing, Respondent asked for dismissal of all counts in the amended complaint or, in the alternative, that he receive a public reprimand.

{¶57} Based upon the stipulations of the parties and the evidence, the Panel concludes that an indefinite suspension is a just resolution of this case.

{¶58} In recommending an indefinite suspension, Relator cites, among other cases, *Weiss, supra*. The panel finds that decision to be instructive in this case.

{¶59} In *Weiss*, the respondent was retained in a personal-injury case and procured a settlement of \$100,000. *Weiss* at ¶5. The respondent placed the funds in his IOLTA account. *Id.* When the respondent did not respond to the client's calls about his one-third share of the settlement, the client contacted another attorney to collect the settlement. *Id.* at ¶6. Ultimately, the respondent was located at an address in Florida. *Id.*

{¶60} Disciplinary Counsel became involved in the case, but the respondent did not produce the requested bank records and responded to only two of Disciplinary Counsel's numerous letters. *Id.* at ¶7. Subpoenaed bank records reflected that the respondent had written

numerous checks from the IOLTA account to parties other than the personal-injury client. *Id.* at ¶9. The records also indicated that the balance of the IOLTA account had routinely fallen below the amount owed to the client. *Id.* The respondent did not answer the relator's complaint and did not appear in the action. *Id.* at ¶10.

{¶61} The master commissioner and Board found that the respondent had "used his client trust account as a personal account." *Id.* at ¶9. The Supreme Court of Ohio agreed, holding that Weiss had violated Prof. Cond. R. 1.15(d), Prof. Cond. R. 1.4 (a)(4), Prof. Cond. R. 8.1(b), Prof. Cond. R. 8.4(c), Prof. Cond. R. 8.4(h), and Gov. Bar R. V, Section (4)(G). *Id.* at ¶11.

{¶62} In imposing an indefinite suspension, the Supreme Court emphasized Weiss's failure to return the funds to the client, his deceit in retaining the funds, his failure to make restitution, and his failure to cooperate in the proceedings. *Id.* at ¶13. But the Court noted that Weiss had been in practice for more than 40 years without a disciplinary record, and the Court therefore refrained from disbaring him. *Id.* at ¶15, citing *Disciplinary Counsel v. Smith*, 101 Ohio St.3d 27, 2003-Ohio-6623 (indefinite suspension, rather than disbarment, for an attorney who, after more than 40 years in practice, had misappropriated client funds, failed to make restitution, and failed to cooperate in disciplinary proceedings).

{¶63} In this case, the panel is mindful that Respondent, in addition to failing to account for client funds and failing to cooperate with the instant proceedings, has also engaged in serious misconduct with respect to the Samame matter. In addition, Respondent has been the subject of previous disciplinary proceedings. Nonetheless, Respondent's misconduct with respect to the Perez matter was less egregious than the misconduct in *Weiss*, where the attorney had essentially gone into hiding to avoid paying his client.

{¶64} The misconduct in this case was comparable to a number of other cases in which the Supreme Court has levied an indefinite suspension. *See Cleveland Metro. Bar Assn. v. Gottehrer*, 124 Ohio St.3d 519, 2010-Ohio-929 (indefinite suspension for accepting retainers and failing to perform services, failing to return retainers, failing to respond to communications from clients, and failing to cooperate with disciplinary proceedings); *Columbus Bar Assn. v. Clovis*, 125 Ohio St.3d 434, 2010-Ohio-1859 (indefinite suspension for failure to do work, failure to return documents and a retainer, charging an excessive fee, engaging in conduct adversely reflecting on his fitness to practice law, and failing to cooperate in disciplinary proceedings); *Columbus Bar Assn. v. Van Sickle*, 128 Ohio St.3d 376, 2011-Ohio-774 (indefinite suspension for practicing under a suspended license, failing to register with the Supreme Court, failing to complete work, failing to respond to requests for return of funds and documentation, and failing to cooperate in disciplinary proceedings); and *Cuyahoga Cty. Bar Assn. v. Wagner*, 113 Ohio St.3d 158, 2007-Ohio-1253 (indefinite suspension for failing to deliver funds to which a client was entitled and failing to cooperate in disciplinary proceedings).

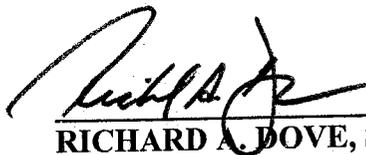
{¶65} Guided by the sanctions imposed in these prior cases, the panel recommends that Respondent be indefinitely suspended from the practice of law, with reinstatement conditioned upon payment of restitution to Perez in the amount of \$1,302.27.

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 February 1, 2013. The Board adopted the Findings of Fact, Conclusions of Law, and Recommendation of the panel and recommends that Respondent, Vincent Ferdinand Gonzalez, Sr., be indefinitely suspended from the practice of law in Ohio with reinstatement subject to the condition of restitution as set forth

in ¶65 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", is written over a horizontal line.

RICHARD A. DOVE, Secretary