

ORIGINAL

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

In re: : 13-1308
Complaint against : Case No. 12-077
David Edmund Stenson : Findings of Fact,
Attorney Reg. No. 0042671 : Conclusions of Law, and
Respondent : Recommendation of the
Dayton Bar Association : Board of Commissioners on
Relator : Grievances and Discipline of
 : the Supreme Court of Ohio
 :

OVERVIEW

{¶1} This matter was heard on March 22, 2013 in Columbus before a panel consisting of Judge Ashley Pike, Janica Pierce Tucker, and Bernard K. Bauer, chair. None of the panel members resides in the district from which the complaint arose or served as a member of the probable cause panel that reviewed the complaint pursuant to Gov. Bar R. V, Section 6(D)(1).

{¶2} Relator was represented by David P. Mesaros. Respondent was represented by David P. Williamson and was present at the hearing.

{¶3} Relator proceeded on its six-count complaint alleging misconduct in the handling of legal matters on behalf of two clients—Huger and BSI.

{¶4} Initially Relator alleged that Respondent in his representation of Huger violated Prof. Cond. R. 1.2, Prof. Cond. R. 3.1, and Prof. Cond. R. 8.4(c) and in his representation of BSI violated Prof. Cond. R. 1.3 and Prof. Cond. R. 8.4(c).

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SUPREME COURT OF OHIO

{¶5} In their stipulations and at the hearing of this matter, the parties agreed to dismiss the violation of Prof. Cond. R. 3.1 as contained in Count II of the complaint and amend the violation contained in Count III of the complaint to reflect a violation of Prof. Cond. R. 8.4(a) instead of Prof. Cond. R. 8.4(c), as originally charged, as it related to the Huger matter.

{¶6} Further, in their stipulations and at the hearing of this matter the parties agreed to dismiss the violation of Prof. Cond. R. 8.4(c) as contained in Count IV of the complaint as it related to the BSI matter.

{¶7} The panel unanimously accepted the dismissal of Counts II and IV of the complaint and the amendment of Count III to reflect a violation of Prof. Cond. R. 8.4(a).

{¶8} For the reasons that follow, the panel recommends Respondent be found to have violated Prof. Cond. R. 1.2(a) and Prof. Cond. R. 8.4(a) in his representation of Huger and Prof. Cond. R. 1.3 in his representation of BSI and, based upon such conclusions, recommends that Respondent receive a six-month suspension, stayed on condition that he refund \$2,500 of the fees he received from Huger within 90 days of the final determination of the Supreme Court.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶9} 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.

{¶10} 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.

Representation of India R. Huger

{¶11} India R. Huger retained Respondent to represent her in a dispute with a civic organization on May 20, 2008.

{¶12} Huger had been disciplined in her voluntary position with the lodge for purportedly violating the internal rules and procedures of the association.

{¶13} On July 7, 2008, Respondent advised Huger to resolve her differences with the lodge before filing suit because he believed that the court would not accord her the relief she was seeking. Joint Ex. 1, Ex. 1.

{¶14} Respondent wrote several letters on Huger's behalf in an attempt to resolve the matter, but was unsuccessful.

{¶15} Huger continued to request Respondent's assistance in her dispute with the lodge.

{¶16} Respondent forwarded a letter to Huger on February 17, 2009, with a proposed pro se complaint and advised Huger that, "After thoroughly reviewing your causes of action, my office at this time is unable to go any further in representation of you with regard to your issues with the aforementioned. I've provided you with the research showing that your action has slim chance of being successful. My office cannot go forward based on this research." *Id.* at Ex. 3.

{¶17} Nonetheless, on February 24, 2009, Respondent provided changes to the pro se complaint, as requested by Huger.

{¶18} Finally, on March 10, 2009, Respondent filed a pro se complaint with the Montgomery County Common Pleas Court on Huger's behalf, even though it did not comport with Huger's wishes. *Id.* at Ex. 6.

{¶19} As a result of the suit being categorized as a pro se action, Huger received an answer and scheduling order setting a telephone conference. *Id.* at Ex. 7.

{¶20} Respondent, while not entering an appearance, participated in the telephone conference on Huger's behalf and continued to correspond, advise and meet with Huger, primarily addressing discovery issues, over the next several months.

{¶21} On September 24, 2009, the lodge filed motions for summary judgment and for sanction for frivolous conduct. Respondent continued to represent Huger.

{¶22} Respondent, without first obtaining the permission of Huger, entered a voluntary dismissal on November 9, 2009 [*Id.* at Ex. 9] that rendered the motion for summary judgment moot, but not the motion for sanctions.

{¶23} Respondent continued to represent Huger on the motion for sanctions which were granted on February 22, 2010. In his decision, the trial judge stated that, "To file a lawsuit under these circumstances is unjustified. This conduct is designed to harass the defendants. It lacks evidentiary support." *Id.* at Ex. 10, p. 6.

{¶24} Huger was sanctioned in the amount of \$10,400 by the trial court. *Id.*

{¶25} Respondent received about \$5,000 for his representation of Huger.

{¶26} Respondent admits that when he signed and filed the pro se complaint on Huger's behalf, without filing a notice of appearance, and then later represented her in the case, that he failed to fully communicate or confirm in writing to his client the limits on or the scope and nature of his representation.

{¶27} While Respondent believed that there was a strategic advantage to involuntarily dismissing the suit before the trial court ruled on the motion for summary judgment, he admits that Huger did not approve of this strategy and that he signed and filed the voluntary dismissal without her consent, and thereby failed to abide by his client's decisions concerning the objectives of the representation and whether to settle the matter.

Representation of Tyronne Bonner and BSI

{¶28} In 2009, Tyronne Bonner was the principal of a security company known as BSI Security Services located in Dayton.

{¶29} On February 6, 2009, Bonner received a notice of intent to revoke or suspend license from the Ohio Department of Public Safety, Homeland Security Division, for failure of BSI to register or renew the registration of certain employees. The notice contained a right to a hearing which required BSI to be received within 30 days of the date of the notice. *Id.* at Ex. 13.

{¶30} BSI hired Respondent to represent the company with regard to the notice and provided him with a copy of the notice.

{¶31} While Respondent requested information about the matter from ODPS, he did not request a hearing within 30 days of the notice.

{¶32} On May 12, 2009, ODPS issued an order revoking BSI's license, which specifically indicated that BSI, "acting through its attorney David Stenson, did not request a hearing within the thirty (30) days allowed by Ohio Revised Code Section 119.07." *Id.* at Ex. 14.

{¶33} Appeals from the administrative order were unsuccessful because Respondent failed to timely request a hearing. *Id.* at Ex. 13-14.

{¶34} Respondent admits that he was mistaken in his belief that his requests for information to ODPS extended the time for filing BSI's administrative appeal and, therefore, failed to act with reasonable diligence and promptness in his representation of BSI. Stipulations at ¶27.

{¶35} As to Count I, the parties agree that as a result of the foregoing facts, Respondent violated Prof. Cond. R. 1.2 [failure to abide by the client’s decisions concerning the objectives of the representation and the means by which they were to be pursued].

{¶36} Based upon clear and convincing evidence, the panel concludes that Respondent by his actions violated Prof. Cond. R. 1.2(a).

{¶37} As to Count III, the parties agree that as a result of the foregoing facts, Respondent violated Prof. Cond. R. 8.4(a) [violating or attempting to violate ORPC by knowingly assisting another to do so].

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

{¶39} As to Count IV, the parties agree that as a result of the foregoing facts, Respondent violated Prof. Cond. R. 1.3 [diligence].

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

{¶41} Based upon the agreement of the parties, the panel unanimously dismisses Counts II and V.

AGGRAVATION, MITIGATION, AND SANCTION

{¶42} In aggravation, the parties have stipulated that there were multiple instances of misconduct.

{¶43} The parties have stipulated certain matters in mitigation: Respondent has no prior disciplinary record; Respondent lacked a dishonest motive; Respondent has exhibited a cooperative attitude toward these proceedings. In addition and based upon the parties’ stipulations and the testimony of Jonathan Hollingsworth and Judge John Pickrel, Respondent

has a good character and enjoys a good reputation within the Dayton legal community apart from the charged misconduct.

{¶44} Relator has recommended that Respondent receive a stayed suspension.

Respondent has recommended a public reprimand. The parties have not offered any legal authority for their recommendations.

{¶45} Rule 1.2(a) is charged infrequently and the cases that have been charged under that rule involve other charged rule violations far more serious than those charged in this case.

{¶46} Rule 1.3 is charged more frequently and is similar to Rule 1.2(a).

{¶47} Cases with conduct similar to the violations found in this case are *Cleveland Metro. Bar Assn. v. Sherman*, 126 Ohio St.3d 20, 2010-Ohio-2469 [stayed nine-month suspension for dismissal without client notification, failure to appear at case management conference, and failure to provide notice of lack of malpractice insurance]; *Cuyahoga Cty. Bar Assn. v. Drain*, 120 Ohio St.3d 288, 2008-Ohio-6141 [stayed six-month suspension for neglect, dismissal without client notification, and failure to provide notice of lack of malpractice insurance]; *Cleveland Metro. Bar Assn. v. Thomas*, 125 Ohio St.3d 24, 2010-Ohio-1031 [stayed six-month suspension, conditioned on client restitution, for dismissal without client notification and filing misleading document with the court]; and *Disciplinary Counsel v. Shuler*, 129 Ohio St.3d 509, 2011-Ohio-4198 [stayed six-month suspension for neglecting two client matters and failure to cooperate].

{¶48} The panel recommends that Respondent receive a six-month suspension, stayed on condition that he refund \$2,500 of the fees he received from Huger within 90 days of the final determination of the Supreme Court.

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 August 2, 2013. The Board adopted the Findings of Fact, Conclusions of Law, and Recommendation of the panel and recommends that Respondent, David Edmund Stenson, be suspended from the practice of law for a period of six months, with the suspension stayed in its entirety on the condition set forth in ¶48 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