

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

In re:	:	
Complaint against	:	Case No. 2013-040
Deborah Marie Marinelli Attorney Reg. No. 0074193	:	Findings of Fact, Conclusions of Law, and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio
Respondent	:	
Stark County Bar Association	:	
Relator	:	

14-0971

FILED
JUN 09 2014
CLERK OF COURT SUPREME COURT OF OHIO

OVERVIEW

{¶1} This matter was heard on May 2, 2014, in Columbus before a panel consisting of Martha Butler Clark, McKenzie Davis, and Paul De Marco, chair. None of the panel members resides in the 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} Charles J. Kettlewell appeared on behalf of Respondent. Richard S. Milligan appeared on behalf of Relator.

{¶3} The complaint in this case consists of 23 separate counts alleging Respondent's abandonment of numerous bankruptcy clients' matters in 2012. This abandonment occurred while she was in the throes of depression apparently triggered by her husband unexpectedly filing for divorce.

{¶4} Given that the parties stipulated to most of the alleged violations and that Relator withdrew the others, the hearing focused on the appropriate sanction for Respondent's abandonment of her clients' matters.

{¶5} For the reasons set below, the panel recommends that Respondent be suspended from the practice of law for two years, with the final year of the suspension stayed on conditions.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶6} Respondent was admitted to the practice of law in the state of Ohio on November 13, 2001 and since then has practiced bankruptcy law in Stark County, primarily representing debtors. Respondent is subject to the Rules of Professional Conduct and Rules for the Government of the Bar of Ohio.

{¶7} Respondent's general practice is to have bankruptcy clients sign a fee agreement requiring them to pay the full amount of fixed attorney fees plus bankruptcy court filing fees before she will file their bankruptcy petitions.

{¶8} Respondent does not have an IOLTA account. Instead, during the relevant period, she routinely deposited client funds in her business account as she received them and spent them.

{¶9} In late 2012, after her husband filed for divorce, Respondent stopped communicating with clients, going to her law office, and paying rent on it. Respondent's landlord served her with an eviction notice in March 2013.

{¶10} Respondent fell into a profound depression and abandoned many of her then-current clients' matters.

Client Abandonment

{¶11} This pattern of abandonment is clear from this litany of 20 client matters and the parties' stipulated violations regarding them.

Count 1—Brock Matter

{¶12} On October 27, 2010, Melinda K. Brock retained Respondent to represent her in connection with a Chapter 7 bankruptcy. Over time, Brock paid Respondent the entire fee of \$999 for filing a Chapter 7 bankruptcy, composed of \$700 for attorney fees and \$299 for bankruptcy court filing fees. Respondent never filed the petition for Brock.

Count 2—Evans Matter

{¶13} On February 17, 2010, Jenny Evans retained Respondent to represent her in connection with a Chapter 7 bankruptcy. On February 17, 2010, Evans paid Respondent \$400 of the \$1,000 retainer that Respondent required to file a Chapter 7 petition. By May 19, 2010, Evans had paid Respondent the entire \$1,000 required, plus \$150 (of the \$306 required) for filing fees (leaving \$156 in filing fees yet to be paid). Respondent never filed Evans's petition. Evans had to obtain separate counsel, who filed a petition for her on November 29, 2012.

Count 3—Young Matter

{¶14} On or about December 5, 2008, Eddie and Carmon Young retained Respondent to file a Chapter 7 bankruptcy, paying her \$200 that day. While the Youngs did not pay according to the agreed-upon three-month payment plan, by October 12, 2009 they had paid Respondent the remaining \$525 that Respondent required to file a Chapter 7 petition. In December 2011, without having filed the bankruptcy, Respondent required the Youngs to pay an additional \$100 to "update" their information for the bankruptcy filing. The Youngs also paid Respondent \$305 (of the \$306 required) for filing fees. Respondent never filed their bankruptcy petition.

Count 4—Lee/Ross Matter

{¶15} On September 22, 2010, Elizabeth Lee and Rickord Ross retained Respondent to handle a Chapter 7 bankruptcy. By July 24, 2012, they had paid her \$900 in attorney fees and

\$306 for filing fees. Sometime near the end of 2012, Lee and Ross signed the bankruptcy papers for filing with the court, but Respondent never filed them. In January 2013, Lee and Ross visited Respondent's office and were advised that she had not been there since November 2012.

Count 5—Hancock Matter

{¶16} On November 10, 2011, Miyia Hancock met with Respondent and agreed to pay her \$700 in attorney fees and \$306 for filing fees for a Chapter 7 bankruptcy. By February 2012, Hancock had paid Respondent the required \$700 in attorney fees and \$125 (of the \$306 required) for filing fees. Respondent never filed Hancock's bankruptcy petition.

Count 6—Beyler Matter

{¶17} On September 29, 2010, Vonnie L. Beyler retained Respondent to represent her in a bankruptcy proceeding and paid Respondent \$999, including \$700 for attorney fees and \$299 for filing fees. Respondent never fulfilled her obligations to Beyler.

Count 7—Simpson Matter

{¶18} On March 1, 2011, Deborah J. Simpson retained Respondent to represent her in a Chapter 7 bankruptcy proceeding. Simpson paid Respondent \$825 in attorney fees and \$306 for filing fees, for a total of \$1,131. Respondent never filed a bankruptcy petition for Simpson.

Count 8—Petty Matter

{¶19} On March 5, 2012, John T. Petty retained Respondent to represent him in connection with a Chapter 7 Bankruptcy. Petty paid her \$725 in attorney fees and \$366 for mandatory debtor credit counseling courses and bankruptcy court filing fees, for a total of \$1,091. Respondent did not file a Chapter 7 bankruptcy for Petty in 2012 because additional documents were needed from Petty. Respondent never filed a bankruptcy petition for Petty thereafter.

Count 9—Jarvis Matter

{¶20} On June 28, 2011, Johnny A. Jarvis retained Respondent to represent him in connection with a Chapter 7 bankruptcy proceeding. Jarvis paid \$850 in attorney's fees and \$300 (of the \$306 required) for filing fees, totaling \$1,150. Respondent never filed Jarvis's bankruptcy petition. On February 8, 2013, Jarvis visited Respondent's office and he, too, learned that she had not been there since November 2012.

Count 10—Walker Matter

{¶21} On January 10, 2011, James A. Walker III retained Respondent to represent him in his bankruptcy action. Walker met with Respondent on a number of occasions and provided her some of the documents needed to file his petition. Walker paid Respondent \$975 in attorney fees and \$306 for filing fees, totaling \$1,281. Respondent never filed the bankruptcy petition for Walker.

Count 12—Lechner Matter

{¶22} On October 31, 2011, George Lechner retained Respondent to represent him in a bankruptcy proceeding, paying her \$950 in attorney fees. Lechner owed a balance of \$150 in attorney fees and \$306 for filing fees. Respondent never filed a bankruptcy petition for Lechner.

Count 14—Sedon Matter

{¶23} On May 20, 2011, Steve and Joanne Sedon retained Respondent to represent them in connection with a bankruptcy filing. Over the ensuing months, the Sedons provided Respondent with their personal information and payments toward the required attorney fee. By March 2012, the Sedons had paid Respondent \$1,000 in attorney fees and \$306 for filing fees. Respondent did not complete a bankruptcy filing for the Sedons.

Count 16—Goebler Matter

{¶24} On February 15, 2011, William and Dawn Goebler retained Respondent to file a bankruptcy on their behalf. On July 26, 2011, they paid her \$1,100 in attorney fees and \$300 for filing fees. Despite repeated requests from Respondent, the Goeblers never provided the documents needed to file their Chapter 7 bankruptcy. Respondent has never contacted the Goeblers to complete their bankruptcy filing.

Count 17—Thomas Matter

{¶25} On July 15, 2010, Valerie E. Thomas retained Respondent to file a Chapter 7 bankruptcy. Respondent told Thomas she could make installment payments totaling \$1,149 over four months. Thomas was not able to pay the entire amount of attorney fees and filing fees until April 8, 2011. And Thomas did not provide all the information necessary to complete her Chapter 7 filing or respond to Respondent's requests for documents until May 2012. Respondent never filed Thomas's bankruptcy petition. By letter dated February 2, 2013, Thomas asked for a full refund, but Respondent never responded.

Count 18—Ingram Matter

{¶26} On June 6, 2011, Tamara E. Ingram retained Respondent to represent her in a bankruptcy proceeding. Ingram signed a contract for Chapter 7 services, agreeing to pay \$800 in attorney fees and \$306 for filing fees prior to the filing of her bankruptcy. Ingram agreed to a four-month payment plan for the attorney fees. Ingram did not complete payment of her attorney fees until February 7, 2012. As a matter of standard office procedure, Ingram was provided with an instructional letter explaining the process to complete her filing. Respondent's standard "paid in full" letter reminded clients of the \$306 court filing fees due at the time of the petition signing.

Ingram has never paid any portion of the \$306 filing fees. Respondent never filed a bankruptcy petition for Ingram.

Count 19—Tracy Matter

{¶27} In June 2011, Dominick and Kristy Tracy retained Respondent to represent them in a bankruptcy matter. The Tracys paid Respondent \$1,200 in attorney fees to file their petition. The Tracys never remitted the court filing fees of \$306. Respondent never filed a bankruptcy petition for the Tracys.

Count 20—Cooper Matter

{¶28} On March 29, 2012, Brian and Amanda Cooper retained Respondent to represent them in a bankruptcy proceeding. The Coopers paid Respondent \$800 in attorney fees and \$300 (of the \$306 required) for filing fees, totaling \$1,100. Respondent's office immediately began preparing the Coopers' petition and informed them of the remaining documents needed to complete the petition. Respondent received no communications or additional documents from the Coopers through August 2, 2012. On August 2, 2012, they sent an email to Respondent, to which Respondent promptly replied. On January 15, 2013, the Coopers sent another email to Respondent, but received no response. After leaving messages for Respondent from January 14, 2013 through May 6, 2013 and receiving no return calls, Brian Cooper stopped at the office address of Respondent and was told that she had been evicted.

Count 21—Rakes Matter

{¶29} On or about August 22, 2011, James A. Rakes retained Respondent to file a bankruptcy petition. On December 7, 2011, Rakes paid her \$1,000 in attorney fees and was told he would soon receive a court date. On January 12, 2012, Rakes paid Respondent \$306 for filing fees. Although Rakes heard from Respondent's paralegal, since early 2012 his repeated efforts

to communicate with Respondent have been unsuccessful. Respondent never filed Rakes's petition.

Count 22—Sokol Matter

{¶30} On or about July 2, 2009, John and Regina Sokol retained Respondent to file a bankruptcy petition and paid her \$950 in attorney fees. Respondent never filed a bankruptcy petition for the Sokols.

Count 23—Willaman Matter

{¶31} In or about May 2008, Foster R. Willaman, Sr., retained Respondent to file a bankruptcy petition, paying her \$1,505 in attorney fees for a Chapter 13 bankruptcy. Willaman did not pay any portion of the \$274 filing fees. Since 2008, Willaman failed to provide documents necessary to complete a bankruptcy petition. Willaman also experienced some changes in circumstances that were relevant to evaluating the type of bankruptcy that was his best option. Respondent never filed a bankruptcy petition on Williman's behalf.

Other Misconduct Allegations

{¶32} In addition to the foregoing 20 client matters abandoned by Respondent, the parties entered into stipulations addressing three other client matters handled by her.

Count 11—Life Matter

{¶33} On September 9, 2010, Lawrence L. Life, Jr., retained Respondent to represent him in a Chapter 7 bankruptcy. Life did not complete payment of his \$1,100 in attorney fees until July 27, 2012. Life did not pay the \$306 for filing fees until October 2012. Respondent filed Life's Chapter 7 bankruptcy petition on November 2, 2012. Thereafter, Respondent responded to Life's many phone messages and emails. Life was aware Respondent did not have her usual staff after July 2012, and he was instructed to schedule appointments or use a secure

drop box if he needed to provide documents. Respondent provided Life with her personal cell phone number and as such he was able to communicate with her even after she was no longer in her office in late 2012. Respondent responded to numerous requests for information from the panel trustee and the U.S. Trustee's office regarding Life's income and expenses. Respondent filed requests for amendments required by the bankruptcy court. While Life's bankruptcy was reviewed for possible excess income, his Chapter 7 discharge was granted. Life paid Respondent Marinelli a total of \$1,100. Respondent did not respond to Life's grievance as requested by Relator in March and April 2013, a period during which Respondent was in the process of moving from her marital home and she did not consistently receive her mail.

Count 13—Snyder Matter

{¶34} On May 5, 2009, Charles E. Snyder retained Respondent to represent him in connection with a Chapter 7 bankruptcy filing. By July 21, 2009, Snyder had paid Respondent \$1,100 in attorney fees and \$299 for filing fees. Snyder's Chapter 7 case was filed on August 10, 2009. Because of excess income, the case was converted to a Chapter 13 bankruptcy on January 19, 2010. Respondent allowed Snyder to pay the additional \$1,500 in attorney fees for the Chapter 13 bankruptcy in the Chapter 13 Plan. Respondent has not received any additional payment from Snyder since July 2009. Snyder has not completed his Chapter 13 plan. As such, the Trustee did not distribute the balance of attorney fees to Respondent. Respondent will not receive these fees if she is no longer counsel of record.

Count 15—Elliot Matter

{¶35} In November 2009, Katherine Elliot retained Respondent to represent her in a Chapter 13 bankruptcy filing. Respondent filed the bankruptcy and for a time was active in representing Elliot in the proceeding. Respondent actively represented Elliot in her Chapter 13

bankruptcy from 2009 through 2012. Elliot's total Chapter 13 attorney fees were \$2,000, of which \$500 were paid by Elliot in November 2009. Elliot also paid \$274 for filing fees in November 2009. The balance of Elliot's attorney fees were to be paid in her Chapter 13 plan. The Chapter 13 Trustee has paid Respondent a total of \$1,000 to date. Respondent has not received the remaining \$500 balance of attorney fees, as this is typically paid at the conclusion of a Chapter 13 plan. Respondent will not receive any additional fees if she is no longer attorney of record. As a result of Respondent's failure to communicate with Elliott, the grievant has been required to seek new counsel for the bankruptcy proceeding.

{¶36} Respondent's landlord served her with an eviction notice in March 2013. Prior to the eviction, and pursuant to Gov. Bar R. V, Section 8(F), Relator took possession of Respondent's client files.

{¶37} Relator requested that Respondent respond to the Lee/Ross, Beyler, Simpson, Petty, Jarvis, Life, Lechner, Sedon, Elliott, Goebeler, Ingram, Tracy, Cooper, Rakes, Sokol, and Willaman grievances, but Respondent failed to respond.

{¶38} On her own, Respondent registered as inactive on October 23, 2013.

{¶39} Despite abandoning her clients' cases, Respondent did not refund any fees to them prior to the hearing in this matter. Instead, she produced at the May 2, 2014 hearing copies of cashier's checks dated April 30, 2014 in varying amounts, which she intended to transmit following the hearing to the clients owed refunds, with the help of the Clients' Security Fund. The checks were in the following amounts: Brock, \$999; Evans, \$1,150; Young, \$1,130; Lee and Ross, \$1,206; Hancock, \$825; Beyler, \$999; Simpson, \$1,131; Petty, \$1,091; Jarvis, \$1,150; Walker, \$1281; Lechner, \$950; Sedon, \$1,306; Goebler, \$1,400; Thomas, \$1,149; Ingram, \$800;

Tracy, \$1,200; Cooper, \$1,100; Rakes, \$1,306; Sokol, \$950; and Willaman, \$1,505. These checks amounted to full refunds for all of the grievants except Life, Snyder, and Elliott.

{¶40} The parties stipulated to certain violations alleged in the 23 counts.

{¶41} With respect to the Brock, Evans, Young, Lee/Ross, Hancock, Beyler, Simpson, Petty, Jarvis, Walker, Lechner, Sedon, Goebler, Thomas, Ingram, Tracy, Cooper, Rakes, Sokol, and Willaman matters, the parties stipulated that Respondent violated Prof. Cond. R. 1.1 [competence]; Prof. Cond. R. 1.3 [diligence]; Prof. Cond. R. 1.4(a)(3) [keep the client reasonably informed about the status of the matter]; and Prof. Cond. R. 1.15(d) [deliver property that a client is entitled to receive]. The panel accepts the parties' stipulations as to these grievances and finds that these alleged violations have been established by clear and convincing evidence.

{¶42} With respect to the Brock, Evans, Young, Lee/Ross, Hancock, Beyler, Simpson, Petty, Jarvis, Walker, Lechner, Sedon, Goebler, Thomas, Ingram, Tracy, Cooper, Rakes, Sokol, and Willaman matters, the parties stipulated that Respondent violated Prof. Cond. R. 1.4(a)(4) [comply as soon as practicable with reasonable requests for information from the client]. The panel accepts the parties' stipulations as to the Thomas, Cooper, and Rakes grievances and finds that the alleged violation has been established by clear and convincing evidence. The panel rejects the parties' stipulations as to the Brock, Evans, Young, Lee/Ross, Hancock, Beyler, Simpson, Petty, Jarvis, Walker, Lechner, Sedon, Goebler, Ingram, Tracy, Sokol, and Willaman grievances, finds that the alleged violation has not been established by clear and convincing evidence, and recommends dismissal of that alleged violation with respect to these grievances.

{¶43} With respect to the Lee/Ross, Hancock, Beyler, Simpson, Petty, Jarvis, Life, Lechner, Sedon, Elliott, Goebler, Ingram, Tracy, Cooper, Rakes, Sokol,¹ and Willaman

¹ The parties erroneously stipulated to Relator's withdrawal of this alleged violation as to the Sokol grievance, but corrected this mistake at the hearing. Hearing Tr. 12-13.

grievances, the parties stipulated that Respondent violated Prof. Cond. R. 8.1(b) [knowingly fail to respond to a demand for information by a disciplinary authority during the investigation of a grievance]. The panel accepts the parties' stipulations as to these grievances, finds that the alleged violation has not been established by clear and convincing evidence, and recommends dismissal of that alleged violation with respect to these grievances.

{¶44} With respect to the Life, Snyder, and Elliott grievances, the parties stipulated that Respondent violated Prof. Cond. R. 1.3 [diligence]; Prof. Cond. R. 1.4(a)(3) [keep the client reasonably informed about the status of the matter]; and Prof. Cond. R. 1.4(a)(4) [comply as soon as practicable with reasonable requests for information from the client]. The panel rejects the parties' stipulations as to these grievances, finds that the alleged violations have not been established by clear and convincing evidence, and recommends dismissal of those alleged violations with respect to these grievances.

{¶45} With respect to the Life and Snyder grievances, the parties stipulated that Respondent violated Prof. Cond. R. 1.1 [competence]. The panel rejects the parties' stipulations as to these grievances, finds that the alleged violation has not been established by clear and convincing evidence, and recommends dismissal of that alleged violation with respect to these grievances.

{¶46} In addition to stipulating to violations alleged in all 23 counts, the parties also stipulated to Relator's withdrawal of a number of other alleged violations:

{¶47} With respect to the Brock, Evans, Young, Lee/Ross, Hancock, Beyler, Simpson, Petty, Jarvis, Walker, Life, Lechner, Snyder, Sedon, Goebler, Thomas, Ingram, Tracy, Cooper, Rakes, Sokol, and Willaman grievances, the parties stipulated to Relator's withdrawal of the allegation that Respondent violated Prof. Cond. R. 1.15(a) [place property of the client in an

IOLTA account]. The panel accepts the parties' stipulations as to these grievances and recommends dismissal of the alleged violation thus withdrawn by Relator.

{¶48} With respect to the Life and Snyder grievances, the parties stipulated to Relator's withdrawal of the allegation that Respondent violated Prof. Cond. R. 1.15(d) [deliver property that a client is entitled to receive]. The panel accepts the parties' stipulations as to these grievances and recommends dismissal of the alleged violation thus withdrawn by Relator.

{¶49} With respect to the Walker, Snyder, and Thomas grievances, the parties stipulated to Relator's withdrawal of the allegation that Respondent violated Prof. Cond. R. 8.1(b) [knowingly fail to respond to a demand for information by a disciplinary authority during the investigation of a grievance]. The panel accepts the parties' stipulations as to these grievances and recommends dismissal of the alleged violation thus withdrawn by Relator.

{¶50} With respect to the Brock, Evans, Young, Petty, Jarvis, Walker, Life, Lechner, Snyder, Sedon, Goebler, Thomas, Ingram, Tracy, Cooper, Rakes, Sokol, and Willaman grievances, the parties stipulated to Relator's withdrawal of the allegation that Respondent violated Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation]. The panel accepts the parties' stipulations as to these grievances and recommends dismissal of the alleged violation thus withdrawn by Relator.

{¶51} With respect to the Life grievance, the parties stipulated to Relator's withdrawal of the allegation that Respondent violated Prof. Cond. R. 8.4(d) [conduct that is prejudicial to the administration of justice]. The panel accepts the parties' stipulation as to this grievance and recommends dismissal of the alleged violation thus withdrawn by Relator.

{¶52} With respect to the Lee/Ross, Hancock, Beyler, Simpson, Petty, Jarvis, Walker, Life, Lechner, Snyder, Sedon, Elliott, Goebler, Thomas, Ingram, Tracy, Cooper, Rakes, Sokol,

and Willaman grievances, the parties stipulated to Relator's withdrawal of the allegation that Respondent violated Prof. Cond. R. 8.4(h) [engage in conduct that adversely reflects on the lawyer's fitness to practice law]. The panel accepts the parties' stipulations as to these grievances and recommends dismissal of the alleged violation thus withdrawn by Relator.

{¶53} In sum, the panel has found by clear and convincing evidence multiple violations of Prof. Cond. R. 1.1; Prof. Cond. R. 1.3; Prof. Cond. R. 1.4(a)(3); Prof. Cond. R. 1.4(a)(4); Prof. Cond. R. 1.15(d); and Prof. Cond. R. 8.1(b).

AGGRAVATION, MITIGATION, AND SANCTION

{¶54} Relator recommends that Respondent be suspended from the practice of law for two years. Respondent recommends a two-year suspension with either the final 18 months or the final year stayed. For the reasons set forth below, the panel recommends a two-year suspension with the final year stayed, on conditions.

{¶55} Arriving at the appropriate sanction requires consideration of the duties violated, the injuries caused, the attorney's mental state, and the sanctions imposed in similar cases. *Cleveland Bar Assn. v. McMahon*, 114 Ohio St.3d 331, 2007-Ohio-3673, ¶ 24. Before recommending a sanction, we also weigh the aggravating and mitigating factors in the case, including not only those set forth in BCGD Proc. Reg. 10 but all factors relevant to the case. *Cincinnati Bar Assn. v. Mullaney*, 119 Ohio St.3d 412, 2008-Ohio-4541, ¶ 40.

{¶56} By abandoning her bankruptcy clients' matters, albeit during a period of profound depression, Respondent violated several duties she owed them, including her duties to represent them competently, to act with reasonable diligence and promptness in representing them, to keep them reasonably informed about the status of their matters, and to deliver their property (*i.e.*, unearned attorney fees and unspent filing fee money) to them promptly. Respondent's violations

of these duties caused particular harm to almost two dozen vulnerable bankruptcy clients, all of whom needed and deserved prompt attention to their matters and none of whom was in any position to wait for relief from their debts or to pay Respondent significant sums without receiving any legal benefit in return.

{¶57} Relator and Respondent stipulated to a number of aggravating and mitigating factors. Aggravating factors include: (a) a pattern of misconduct; (b) multiple offenses; (c) lack of cooperation in the disciplinary process; and (d) vulnerability of and resulting harm to victims of the misconduct. Mitigating factors include: (a) absence of a prior disciplinary record; (b) absence of a dishonest or selfish motive; (c) timely good faith effort to make restitution or to rectify the consequences of her misconduct; (d) full and free disclosure to the Board or a cooperative attitude toward these proceedings; (e) character or reputation; and (f) other interim rehabilitation.

{¶58} At the hearing, however, Relator withdrew its stipulation as to the last mitigating factor after learning shortly before the hearing that Respondent had not yet begun counseling. Hearing Tr. 192.

{¶59} The panel agrees with the parties' stipulated aggravating factors, but declines to credit Respondent, as mitigating factors, with a timely effort to make restitution, a cooperative attitude toward the proceedings, or other interim rehabilitation. While the panel welcomes Respondent's delivery of full refund checks to the Clients' Security Fund for transmittal to the clients in 20 of the matters, we note that she did not do so until the day of the hearing. Given that she had retained those clients' money for several years up to that point without providing any significant legal service to them, we are unwilling to credit those refunds as timely. Moreover, while the panel recognizes Respondent's forthrightness and cooperation in the

disciplinary process since obtaining counsel, Relator's investigation was also part of the process, and her disregard for Relator's requests for responses to numerous grievances filed against her makes it untenable to credit it her with any particular cooperativeness overall. Finally, because Respondent's physician Dr. Susan Hake disclosed in a letter to her counsel shortly before the hearing that Respondent actually had not yet begun counseling for her depression and is still suffering from it (Respondent Ex. 3), the panel declines to credit her with any interim rehabilitation.

{¶60} At the hearing, Respondent's counsel conceded that her depression does not qualify as a mitigating factor under the four-pronged test laid out in BCGD Proc. Reg. 10(B)(2)(g). Given Dr. Hake's opinion (offered by Respondent) that Respondent continues to suffer from depression, that it has been uncontrolled for some time, and that she still needs counseling and medication to overcome it (Respondent Ex. 3), Respondent cannot establish clearly and convincingly two requirements of BCGD Proc. Reg. 10(B)(2)(g)(iii) and (iv)—that she has undergone a sustained period of successful treatment for her depression, and that she has a reliable prognosis from a qualified health care professional that Respondent will be capable of returning to the competent, ethical practice of law under specified conditions.

{¶61} Still, there can be no doubt that Respondent's misconduct occurred during a time when depression brought on by her marital problems and eventual divorce left her overwhelmed and unable to attend to her work – indeed unable even to leave her house for what seem like prolonged stretches.

{¶62} The panel takes note of the cases (including those cited by both Respondent and Relator) that suggest the Supreme Court has imposed two-year suspensions (most often partially or completely stayed), as opposed to indefinite suspensions, in instances where the attorney

committed misconduct while in the throes of incapacity (whether due to mental illness or substance abuse). See, e.g., *Columbus Bar Assn. v. DiAlbert*, 120 Ohio St.3d 37, 2008-Ohio-5218, ¶¶ 9-11; *Disciplinary Counsel v. Blair*, 128 Ohio St.3d 384, 2011-Ohio-767, ¶ 21; *Columbus Bar Assn. v. Ellis*, 120 Ohio St.3d 89, 2008-Ohio-5278, ¶ 13; *Disciplinary Counsel v. Bowman*, 110 Ohio St.3d 480, 2006-Ohio-4333, ¶ 39; *Disciplinary Counsel v. Travis*, 101 Ohio St.3d 322, 2004-Ohio-785, ¶ 13; *Disciplinary Counsel v. Kelley*, 93 Ohio St.3d 409, 2001-Ohio-1317; and *Erie-Huron Grievance Commt. v. Stoll*, 127 Ohio St.3d 290, 2010-Ohio-5985, ¶¶ 12-14. Based on the sheer number of violations that occurred when Respondent abandoned her clients' matters and the fact that she has only taken the initial steps toward rehabilitation, the panel believes this case most resembles the situations in *Stoll* (a case cited by Relator), *Travis* (a case cited by Respondent), and *Kelley* – all cases in which the Supreme Court imposed two-year suspensions with the final year stayed on conditions.

{¶63} Although not cited by Respondent or Relator, the panel takes note of *Mahoning Cty. Bar Assn. v. Pritchard*, 131 Ohio St.3d 97, 2012-Ohio-44, which involved an attorney who, like Respondent, suffered deep depression triggered by an unexpected divorce, and who abandoned about the same number of client matters involved here. In that case, the Board recommended and the Court imposed an indefinite suspension. The panel finds *Pritchard* factually distinguishable in that the Court found that some of the attorney's misconduct predated his depression, he continued accepting money from clients (without providing services) months into his personal crisis, he acted with a dishonest or selfish motive, and he had made no attempts at restitution.

{¶64} The Supreme Court consistently has reminded us “that the primary purpose of the disciplinary process is not to punish the offender but to protect the public from lawyers who are

unworthy of the trust and confidence essential to the attorney-client relationship.” *Cleveland Metro. Bar Assn. v. Lockshin*, 125 Ohio St.3d 529, 2010-Ohio-2207, ¶ 42. The panel finds that if Respondent receives a two-year suspension with the final year stayed on stringent conditions, the public would be adequately protected.

{¶65} In light of Respondent’s misconduct, the duties violated and the injuries caused, the presence of multiple aggravating factors, and the sanctions imposed in similar cases, the panel recommends that Respondent be suspended from the practice of law for two years, with the final year of the suspension stayed upon Respondent providing proof of compliance with all the following conditions: (1) she must obtain counseling for her depression, must enter into an OLAP contract, and must be in compliance with all recommendations of her counselor and requirements of the OLAP contract; (2) she must provide a recommendation from her counselor, OLAP, or both that she is fully competent to return to the practice of law; (3) she must establish an IOLTA account; (4) she must comply with any and all mandatory CLE requirements imposed by the Supreme Court; (5) she must pay the costs of this action as required by the Supreme Court; and (6) she shall not commit any further misconduct.

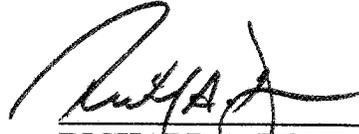
{¶66} Upon reinstatement, Respondent shall serve a two-year period of monitored probation, during which she must (1) continue to comply with recommendations of her counselor and the requirements of any OLAP contract, and (2) permit Relator to monitor her IOLTA.

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 June 6, 2014. The Board adopted the findings of fact and conclusions of law of the panel, including the recommended dismissal of the specific rule violations set forth in ¶¶42-45 and ¶¶47-52 of this report. The

Board adopted the recommendation of the panel and recommends that Respondent, Deborah Marie Marinelli, be suspended from the practice of law in Ohio for two years with the second year stayed on the conditions set forth in ¶65 of this report and with the requirement that Respondent serve a two-year period of monitored probation upon reinstatement as set forth in ¶66 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