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STATEMENT OF FACTS

A panel hearing on Relator Toledo Bar Association's ("Relator") two count complaint against Respondent Robert DeMarco ("Respondent") was held on August 7, 2014. Relator's complaint was based upon the following ten lies told by Respondent to the tribunal and opposing counsel:

March, 2002, pretrial:

1. Mr. Tuschman: Do you have a copy [of the disc]?

Respondent: No, I never saw it. Panel Hearing transcript at 48 (hereinafter referred to as "Hearing Tr. at ___").

November 20, 2012, motion to compel/show cause hearing:

2. Judge Duhart: You have agreed to place that on the record, that there was no disk that was never delivered to you, either as an image disk or an extracted disc, and that as result of those discs never having been delivered to you, you're not aware of whether or not -- or you're not -- you don't have any knowledge, rather, that information that may or may not have been contained on those discs were ever disseminated to anyone outside of Mr. Plandowski and Mr. Harper.

Respondent: Based on that... Based on that, Your Honor, I will make those representations. Contempt Hearing Transcript at 50, 51 (hereinafter referred to as "Contempt Tr. at ___").

3. Mr. Tuschman: You heard Mr. Harper say today that he turned over the disc a disc that he had prepared in his office that was turned over to you at your request and that he indicated that you took it from there and he had

no further knowledge of what you did with that disk. Are those statements true to your knowledge and belief, sir?

Respondent: No. Contempt Tr. at 52.

4. Mr. Tuschman: Did you ever get a disc?

Respondent: I never received a disc, no. Contempt Tr. at 52.

5. Mr. Tuschman: Under no circumstances did you receive a disk from Mr. Harper?

Respondent: That's correct.. Contempt Tr. at 52.

6. Mr. Tuschman: Did you not represent to the Court that no one had looked at that disc?

Respondent: No. I had not looked at the disc. Contempt Tr. at 55.

7. Mr. Tuschman: You had represented -- it was my understanding that you had represented to the court that no information was taken off that disk. That was my understanding at the time. You deny that?

Respondent: I can't deny what your understanding was, Jim. What I am denying is that I intended to say that no information was taken off the disc. I never saw any information and I knew, according to what Harper told me, there was nothing on there I wanted to use. Contempt Tr. at 55.

8. Mr. Tuschman: Did you ever -- Mr. Harper sat on the stand and said that you talked to him on the telephone and said him that you lied to the court. Did you ever make that statement?

Respondent: He said that? I didn't hear him say that. If he did, I would like to go outside with him. I never lied to anybody, especially to a court. Contempt Tr. at 55.

9. Mr. Tuschman: You never made that statement, to your knowledge?

Respondent: No. Of course not. Contempt Tr. at 55.

10. Mr. Tuschman: So just to be clear, make sure the record is clear, you did not receive any disc whatsoever from Mr. Harper, your retained expert, in this case, true?

Respondent: True. Contempt Tr. at 55.

The Panel found by clear and convincing evidence that Respondent's conduct violated the following Rules:

Prof. Cond. Rule 3.3(a)(1): A lawyer shall not knowingly make a false statement of fact to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.

Prof. Cond. Rule 3.3(a)(3): A lawyer shall not offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, a lawyer shall take reasonable measures to remedy the situation, including, if necessary, disclosure to the tribunal.

Prof. Cond. Rule 8.4(c): A lawyer shall not engage in conduct that involves fraud, dishonesty, deceit, or misrepresentation.

The Panel also found that the following mitigating factors were present: Respondent

had no prior disciplinary record; Respondent displayed a cooperative attitude in the disciplinary proceedings; and Respondent provided letters from the bench and bar of Cuyahoga County, Ohio, attesting to his good character.

As an aggravating factor the Panel found that Respondent acted with a dishonest motive, and the Panel also found that Respondent failed to have any remorse after knowingly making several misrepresentations directly to the judge and to opposing counsel.

The Panel recommended that Respondent be suspended from the practice of law for a period of twelve months, with six months to be stayed upon conditions.

On October 6, 2014, the Board of Commissioners on Grievances and Discipline (“Board”) filed its Findings of Fact, Conclusions of Law, and Recommendation (“Findings”), and adopted the findings of fact and conclusions of law of the Panel. However, in light of Respondent’s repeated misrepresentations to the court and client, the potential for harm to the expert witness Harper, and Respondent’s failure to acknowledge or show remorse for his conduct until he was caught, the Board voted to amend the Panel’s recommended sanction and recommended that Respondent be suspended from the practice of law for a period of one year.

On December 2, 2014, Respondent filed his Objections to the Final Report of the Board of Commissioners on Grievances and Discipline (“Objections”). Respondent made no objection to the three disciplinary violations found by the Panel and Board, but argues that the aggravating factors are outweighed by the mitigating factors, the misconduct is an isolated instance in his career, and an actual suspension is not warranted.

Respondent’s objections are without merit, and for the reasons stated below, this Court should affirm the one year suspension recommended by the Board.

ARGUMENT

I. THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE APPROPRIATELY WEIGHED THE AGGRAVATING AND MITIGATING FACTORS, AND DID NOT ERR WHEN IT RECOMMENDED THAT RELATOR BE SUSPENDED FROM THE PRACTICE OF LAW FOR ONE YEAR.

Respondent claims that the aggravating factors are far outweighed by the mitigating factors, the misconduct is an isolated instance in a long-standing career, and that an actual suspension is not warranted.

In support of his position, Respondent claims that the Board “erroneously concluded” that there was a potential of harm to the expert, Jack Harper, due to his conduct. Objections at 1. This claim is without merit. Mr. Harper testified at a hearing held on a Motion to Compel Harper to turn over a disc, and a Motion to Show Cause Why Harper Should Not Be Held in Contempt. Contempt Tr. at 4. During the hearing Respondent repeatedly lied, and at one point, when told that Harper had testified that Respondent had admitted lying to the court, Respondent threatened Harper by saying that he would like to “go outside with him”. Contempt Tr. at 55. Had Harper not saved, and played for the court, the voicemail in which Respondent admitted his *first* lie, it is very likely that Harper would have been found in contempt or have been charged with perjury. The potential harm caused by Respondent’s lies was noted by the Panel: “the one and only thing that saved Mr. Harper from a contempt finding, and even possibly a charge of perjury, was the fact that [Harper] had the good fortune to have saved the damning voicemail confirming that Respondent had lied to the Court at the March 2012 pretrial”. Findings at para. 60(2). There is nothing erroneous about this statement.

Respondent next claims that the Panel failed to “completely explain” the mitigating evidence, and that as a result, the Board was unable to weigh the aggravating and mitigating factors and “arrive at a sanction recommendation consistent with all the evidence”.

Objections at 1. This claim, too, is without merit. In its report the Panel identified Respondent’s mitigation witnesses and acknowledged the letters attesting to Respondent’s good character. The record and the Panel members were available to the Board if additional information was needed. There is simply no requirement that the Panel “completely explain” the mitigation evidence, and Respondent cites no legal authority for such a requirement. Moreover, at no point in their reports did either the Panel or the Board take exception to anything said or written by Respondent’s supporters.

Respondent claims that both the Panel and the Board “failed to acknowledge the sincere remorse that was demonstrated by [him] and conveyed to Judge Duhart”. Objections at 2. This is not a true statement. Both the Panel and the Board acknowledged that Respondent was remorseful, but noted that by his own testimony (Hearing Tr. at 84-85) Respondent was not remorseful until he was caught in a series of lies. Findings at para. 55.

Finally, Respondent claims that the Panel “failed to appreciate the reason for the initial lie during the March 2012 pretrial”. Objections at 13. At the panel hearing, Respondent testified that he was “covering for” for Mr. Harper when he lied during the pretrial. Hearing Tr. at 43,44. He agreed with the characterization that he lied to the court to “protect Mr. Harper”. Hearing Tr. at 77. However, Respondent also conceded that had never earlier discussed that he lied to protect Mr. Harper. Hearing Tr. at 77.

Indeed, this notion of lying to protect Mr. Harper was never discussed nor ever mentioned at any time prior to Respondent taking the stand at the August 7, 2014, panel

hearing. On July 15, 2013, Counsel for Respondent sent a written response to Relator's investigator. Hearing Exhibit 2. In his affidavit, which accompanied the July 15, 2013, letter and was filed with the proposed Consent to Discipline that was ultimately rejected by the Board, Respondent stated:

“On my behalf, during the investigation of this matter by the Relator, my counsel provided a letter of explanation [Exhibit 2] which accurately sets forth the circumstances in which my misconduct took place. It accurately explains the circumstances in which the misrepresentations to the Court and counsel occurred during a hearing on November 27, 2012, and before that, at a Pretrial with the Court in May of 2012.”

Affidavit at para. 7. (Attached as Ex. C to Agreement of Relator and Respondent Regarding Consent to Discipline.)

Nowhere in the July 15, 2103, letter is there any mention that Respondent lied to either protect or cover for Harper. This new explanation appears to have been an 11th hour attempt by Respondent to somehow justify his misconduct and cast Harper as the villain, and reflects a disturbing lack of remorse and a disappointing failure to accept complete responsibility for his misconduct. Respondent claims the Panel “failed to appreciate” this new explanation, but quite probably the Panel either didn't believe it, or believed it but didn't think it excused or mitigated Respondent's unethical conduct.

CONCLUSION

Relator has no objection to the Board's recommendation that Respondent DeMarco be suspended from the practice of law for one year.

Relator also does not have any objection to Respondent's citation to Disciplinary Counsel v Ricketts, 128 Ohio St.3d 278, 2010-Ohio-6240, for the proposition that a violation of Prof.

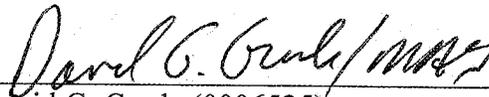
Cond. Rule 8.4(c) will typically result in an actual suspension from the practice of law unless significant mitigating factors that warrant a departure from that principle are present.

However, the requisite significant mitigating factors are not present in this case and therefore an actual suspension is warranted.

The Board's recommendation is more severe than that originally sought by Relator, but the Board's sound reasoning and Respondent's lack of remorse and attempt to shift blame at the panel hearing have caused Relator to change its recommendation.

Relator asks that this Court adopt the October 6, 2014, Findings of Fact, Conclusions of Law, and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio.

Respectfully submitted,



David G. Grude (0006525)
McKenny, Ernsberger & Grude LLC
4253 Monroe Street
Toledo, OH 43606
Phone: (419) 472-9774
E-mail: dgrude@gmail.com

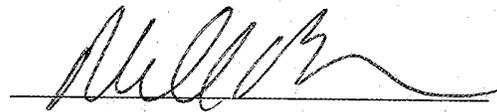


Michael A. Bonfiglio, Bar Counsel (0029478)
Toledo Bar Association
311 N. Superior St.
Toledo, OH 43604-1454
Telephone: (419) 242-4969
E-mail: mbonfiglio@toledobar.org

Counsel for Relator

CERTIFICATION

I hereby certify that a copy of the foregoing **RELATOR TOLEDO BAR ASSOCIATION'S ANSWER BRIEF TO RESPONDENT PAUL DEMARCO'S OBJECTIONS TO THE FINAL REPORT OF THE BOARD OF COMMISSIONERS ON GRIEVANCS AND DISCIPLINE** was sent by ordinary U.S. Mail to Richard C. Alkire, Esq., and Dean Nieding, Esq., Richard C. Alkire Co., L.P.A., 250 Spectrum Office Building, 6060 Rockside Woods Boulevard, Cleveland, Ohio, 44131-2335, this 31st day of December, 2014.

A handwritten signature in black ink, appearing to read "M. Alkire", is written over a horizontal line.

Counsel for Relator