Supreme Court of Ohio Clerk of Court - Filed February 18, 2015 - Case No. 2013-1253

BEFORE THE BOARD OF PROFESSIONAL CONDUCT
OF THE SUPREME COURT OF OHIO

In Re:	:	
		BPC Case No. 2013-035
Complaint against	:	**SCO Case No. 2013-1253**
Deneen Marie Marrelli **Attorney Reg. No. 0043728**	:	**Findings and Recommendation of the Board of Professional Conduct of the Supreme Court of Ohio**
Respondent	:	
Mahoning County Bar Association	:	
Relator	:	

OVERVIEW

{¶1} This matter was heard on December 15, 2014, in Mansfield before a panel consisting of Judge John Willamowski, Lawrence Sutter, and David E. Tschantz, 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 former Gov. Bar R. V, Section 6(D)(1).[1]

{¶2} Respondent appeared pro se and, with the permission of the panel chair, participated in the hearing by telephone. Ron Slipski appeared on behalf of Relator.

{¶3} Respondent was charged in the complaint filed by Relator with, and pursuant to her default is deemed to have committed, violations of the following: Prof. Cond. R. 1.5(a) [clearly excessive fee]; Prof. Cond. R. 1.5(e)(2) [failing to obtain written client consent to divide fees with lawyers outside of her firm]; Prof. Cond. R. 1.15(a) [failing to safeguard client funds]; Prof. Cond. R. 8.1(b) [failure to cooperate]; Prof. Cond. R. 8.4(c) [failure to notify client of the engagement of other lawyers]; Gov. Bar R. V, Section 4(G) [failure to cooperate]; and Gov. Bar

[1] Effective January 1, 2015, the Supreme Court amended Gov. Bar R. V and the Board's Procedural Regulations. This report distinguishes between the former and current versions of Gov. Bar R. V and the Procedural Regulations, as appropriate.

R. VI, Section 1(D) [failure to keep the Office of Attorney Services apprised of her residence and office addresses].

{¶4} This case was originally presented to the Supreme Court on August 8, 2013 as a certification of default pursuant to former Gov. Bar R. V, Section 6a. When Respondent failed to respond to a show cause order, the Supreme Court imposed an interim default suspension on September 23, 2013. *Mahoning Cty. Bar Assn. v. Marrelli*, 136 Ohio St.3d 1268, 2013-Ohio-4081. On May 9, 2014, Respondent filed objections to a second show cause order issued by the Supreme Court and, on June 18, 2014, the Court remanded this matter to the Board for consideration of mitigation evidence only. *Mahoning Cty. Bar Assn. v. Marrelli*, 139 Ohio St.3d 1423, 2014-Ohio-2626.

{¶5} Pursuant to the Court's remand order, the hearing proceeded solely for the purpose of the presentation by Respondent of evidence in mitigation.

MITIGATION AND SANCTION

{¶6} With regard to the factors in mitigation that may be considered in favor of less severe sanctions for professional misconduct listed in former BCGD Proc. Reg. 10(B)(2), the panel finds by clear and convincing evidence, based on the evidence presented at the hearing, that the mitigating factor of the absence of a dishonest or selfish motive is present in this matter. Hearing Tr. 31, 34-37.

{¶7} With respect to former BCGD Proc. Reg. 10(B)(2), the parties differed as to whether or not restitution should be made and what actions had been, or should be, taken to rectify the consequences of Respondent's misconduct. While the effort to make restitution or to rectify the consequences of misconduct are stated as a criterion that may be considered in favor of recommending a less severe sanction, the panel and Board are free to exercise discretion in the

consideration of other mitigating factors that may be present even though they are not listed in Gov. Bar R. V.

{¶8} Based on the evidence produced at the hearing, the panel finds by clear and convincing evidence that no restitution is owed to Respondent's clients and no other action need be taken to rectify the consequences of Respondent's misconduct, and further finds this to be a mitigating factor particularly in regard to the violations of Prof. Cond. R. 1.5(a) and Prof. Cond. R. 1.15(a).

{¶9} As to the issue of restitution, the testimony at hearing indicated that the client (Robinson) paid Respondent $2,000 and later received a refund of $1,100 from Paris & Paris, the law firm that served as co-counsel with Respondent. Respondent testified as to the nature of the legal work she performed for Robinson, that she spent between 18 and 20 hours on the case but billed only for eight, and that the rate for her services was $150 per hour. Hearing Tr. 30-37. Respondent further testified that she prepared to go forward on the client's case on two occasions, and the client did not appear for hearings. Hearing Tr. 39. This testimony indicates that Respondent was entitled to some compensation for the legal services she provided to the client and forms the basis of the panel's finding that no restitution should be ordered as a condition of reinstatement.

{¶10} At the hearing, the parties jointly recommended an indefinite suspension, with credit for time served from the date of the interim default suspension but, as stated *supra*, differed on whether or not restitution should be made to Respondent's clients.

{¶11} Based on the evidence submitted at the hearing, the panel unanimously recommends that the Board recommend and that the Court impose the agreed sanction of an

indefinite suspension with credit for time served from the date of the date of imposition of the interim default suspension, and that no restitution be ordered.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct of the Supreme Court of Ohio considered this matter on February 13, 2015. The Board adopted the findings and recommendation of the panel and recommends that Respondent, Deneen Marie Marrelli, be indefinitely suspended from the practice of law, with credit for time served under the September 23, 2013 interim default suspension, and ordered to pay the costs of these proceedings.

Pursuant to the order of the Board of Professional Conduct of the Supreme Court of Ohio, I hereby certify the foregoing findings and recommendation as those of the Board.

RICHARD A. DOVE, Director