Supreme Court of Ohio Clerk of Court - Filed June 06, 2016 - Case No. 2016-0845

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

In re:

Complaint against

Matthew Joseph King
Attorney Reg. No. 0067189

Respondent

Cleveland Metropolitan Bar Association

Relator

Case No. 2015-046

Findings of Fact, Conclusions of Law and Recommendation of the Board of Professional Conduct of the Supreme Court of Ohio

OVERVIEW

{¶1} This matter was heard on March 31, 2016 in Columbus before a panel consisting of McKenzie K. Davis, David L. Dingwell, and Hon. John R. Willamowski, 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 11.

{¶2} Respondent appeared *pro se*. Brian J. Green, Heather M. Zirke, and Kari L. Burns appeared on behalf of Relator.

{¶3} This case involved failure to make the required disclosure regarding lack of malpractice insurance (two counts) and failure to cooperate in the investigation (three counts).

{¶4} As a preliminary matter, the parties agreed to proceed on Relator's first amended complaint, with Relator dismissing or withdrawing the violations of Prof. Cond. R. 1.1 and Prof. Cond. R. 1.4(c) violations in Count Three thereof, specifically at ¶19. These alleged violations were dismissed by separate entry dated March 31, 2016. Relator did not dismiss the charge of failure to cooperate as it related to the Rogers matter.

{¶5} Based upon the parties' stipulations and evidence presented at the hearing, the panel finds, by clear and convincing evidence, that Respondent engaged in professional misconduct, as outlined below. Upon consideration of the applicable aggravating and mitigating factors and case precedents, the panel recommends that Respondent be suspended from the practice of law for a period of six months, all stayed, on the conditions that Respondent maintain an OLAP contract and follow OLAP's recommendations, take six hours of continuing legal education in law office practice management, and work with a mentor, as selected by Relator.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶6} Respondent was admitted to the practice of law in the state of Ohio on November 12, 1996 and is subject to the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

{¶7} The parties entered into the following stipulations of fact.

{¶8} This matter was certified to the Board on August 7, 2015.

{¶9} Relator then filed a motion for leave to file first amended complaint instanter along with the first amended complaint on March 10, 2016.

{¶10} Respondent stipulated to the filing of the first amended complaint so that this matter can proceed on all of the alleged misconduct.

{¶11} On March 19, 2015, Respondent signed a three-year OLAP contract. Respondent admits that he is currently not in compliance.

Count I—Simms Matter

{¶12} In August 2014, Brian Simms retained Respondent to represent him in a criminal drug trafficking and possession matter.

{¶13} On August 19, 2014, Respondent and Simms signed a fee agreement.

{¶14} Respondent's fee agreement did not inform Simms that Respondent did not maintain professional liability insurance of at least $100,000 per occurrence and $300,000 in the aggregate as required by Prof. Cond. R. 1.4(c).

Count II—Ackles Matter

{¶15} Respondent appeared in court with Edward Ackles on August 12, 2014.

{¶16} On August 12, 2014, Ackles paid Respondent $300 of a $1,000 fee.

{¶17} Respondent did not present Ackles with a fee agreement, give him a receipt for the $300, or notify him in writing that he did not maintain professional liability insurance.

Count III—Rogers Matter

{¶18} There were no stipulations as to Count III, the rule violations having been dismissed or withdrawn by Relator at the commencement of the hearing, with the exception of the failure to cooperate charge contained in Count IV.

Count IV—Failure to Cooperate

{¶19} In November and December 2014, Relator sent a total of four letters to Respondent at the address listed for him with the Office of Attorney Services requesting his written response to the grievances filed by Simms and Ackles.

{¶20} Respondent did not respond to any of those letters.

{¶21} In January 2015, Relator sent letters to Respondent's home address, which is also the address for Respondent's parents, but Respondent did not respond.

{¶22} On March 27, 2015, during a telephone call with Relator, Respondent acknowledged that he had received copies of the grievances that had been sent to his parents' house.

{¶23} Respondent was asked to provide documentation and written responses to the grievances during the week of April 13, 2015. Respondent did not provide a written response.

{¶24} In August, September, and November 2015, Relator sent a total of three letters to Respondent requesting his written response to the grievance filed by Frank Rogers.

{¶25} Respondent called Relator on December 2, 2015 to acknowledge that he did not respond to Rogers's grievance, but said he would e-mail his response that day. Relator never received a response.

{¶26} On December 7, 2015, Respondent met with Relator to discuss the Ackles and Simms grievances. At that time, he said he would provide a written response to the Rogers grievance. Respondent did not provide a written response to the Rogers grievance, but he did provide, for the first time, a copy of his OLAP contract which he signed on March 19, 2015.

{¶27} The parties entered into the following relevant stipulations as to rule violations:

{¶28} In his representation of Ackles and Simms, Respondent stipulates that he violated Prof. Cond. R. 1.4(c) for failing to make the required disclosure about malpractice insurance.

{¶29} Respondent stipulates that he did not respond to the November and December 2014 letters from Relator requesting a response to the grievances filed by Ackles and Simms. Respondent further stipulates that he was unresponsive to Relator's requests from November 2014 to December 2015. Finally, Respondent stipulates that he is currently not in compliance with his OLAP contract. Accordingly, Respondent stipulates that he violated Prof. Cond. R. 8.1(b) and Gov. Bar R. V, Section 9(G) for failing to cooperate.

{¶30} Based upon the foregoing stipulations, and after hearing all evidence, the panel finds that Relator proved, by clear and convincing evidence, the following violations: (1) in Count I of the first amended complaint, that Respondent violated Prof. Cond. R. 1.4(c); (2) in Count II

of the first amended complaint, that Respondent violated Prof. Cond. R. 1.4(c); (3) in Count IV of the first amended complaint, that Respondent violated Prof. Cond. R. 8.1(b) and Gov. Bar R. V, Section 9(G) as to the Simms, Ackles, and Rogers investigations.

MITIGATION, AGGRAVATION, AND SANCTION

{¶31} Among the factors that have been considered by the panel in making its recommended sanctions are the ethical duties violated, the injuries caused by the misconduct, the mental state of Respondent at the time of the misconduct, the aggravating and mitigating factors, the sanctions imposed by the Supreme Court in similar cases, and the overall goal of protecting the public. The parties entered into the following stipulations as to aggravating and mitigating factors.

{¶32} Aggravating factors: multiple offenses and lack of cooperation in the disciplinary process.

{¶33} Mitigating factor: the absence of a prior disciplinary record.

{¶34} The panel notes that, as to aggravation, this is not a case where there exists a dishonest or selfish motive; the submission of false evidence, false statements, or other deceptive practices during the disciplinary process; a refusal to acknowledge the wrongful nature of the conduct; any resulting harm to victims of the misconduct [as regards Simms, Ackles, and Rogers]; or any need for restitution.

{¶35} The panel further notes that, as to mitigation, in addition to the absence of any prior disciplinary record, there is the absence of a dishonest or selfish motive; apparent good character or reputation; service to court-appointed clients that was frequently done *pro bono*; and importantly, a very frank, candid, and contrite acknowledgment of the wrongful nature of the conduct. In addition, as to the Prof. Cond. R. 1.4(c) violation in Count I [Simms matter],

Respondent attempted to comply with the rule requirements in that he did disclose to the client, by paragraph contained in his fee agreement, that he carried no malpractice insurance, but this did not technically comply with the requirements of the rule.

{¶36} The panel further notes, by way of background information, when these rule violations occurred, Respondent was being divorced by his wife, who cleaned out his home and bank accounts and moved back to Ireland; he lost his home and had to live with others; he felt compelled to relocate his law practice (the panel feels Respondent can use some guidance concerning improving his office practices); and his father had repeated heart attacks and died approximately two weeks prior to the hearing on this matter. Respondent self-medicated during this period with alcohol, but has realized the error in that and entered into an OLAP contract, with which he fell behind on complying.

{¶37} In *Disciplinary Counsel v. Turner*, 140 Ohio St.3d 109, 2014-Ohio-3158, Turner failed to cooperate, but also deposited personal funds into his client trust account and used that account for personal and business expenses. Turner received a two-year suspension all stayed on the condition that he commit no further misconduct. Turner had a prior disciplinary record.

{¶38} In *Dayton Bar Assn. v. Scaccia*, 143 Ohio St.3d 144, 2015-Ohio-2487, Scaccia failed to inform the client in writing that he did not maintain professional liability insurance, but also failed to maintain records of trust account funds disbursed on behalf of a client, failed to promptly distribute all portions of the client funds, failed to deposit client funds in a client trust account, and failed to communicate effectively with the client. Scaccia received a one-year suspension, with six months stayed on conditions that he complete 12 hours of continuing legal education, submit to monitored probation, and commit no further misconduct. Scaccia had a prior disciplinary record.

{¶39} In *Akron Bar Assn. v. Binger*, 139 Ohio St.3d 186, 2014-Ohio-2114, Binger lead his client to believe that he was self-insured, despite being uninsured, for a significant period of time, but also improperly notarized documents for clients that were signed outside of his presence. Binger received an eighteen-month suspension, all stayed, on the condition that he commit no further misconduct. Binger had no prior disciplinary record.

{¶40} In *Disciplinary Counsel v. Simpson*, 138 Ohio St.3d 94, 2014-Ohio-54, Simpson failed to cooperate in the disciplinary process, but also failed to respond to a client's requests for information and failed to deliver funds to a client. Simpson received a one-year suspension, all stayed, on conditions. Simpson had no prior disciplinary record.

{¶41} In *Disciplinary Counsel v. Daniell*, 140 Ohio St.3d 67, 2014-Ohio-3161, Daniell failed to cooperate in the investigation, but also failed to properly prepare and maintain records of his client trust account. Daniell received a one-year suspension, all stayed, on conditions that he comply with the treatment contract of OLAP, continue counseling, comply with all medication-therapy recommendations, comply with all trust account requirements, complete one year of monitored probation, complete professionally mandated legal-education requirements, and commit no further misconduct. Daniell had no prior disciplinary record.

{¶42} In *Disciplinary Counsel v. Gorby*, 142 Ohio St.3d 35, 2015-Ohio-476, Gorby failed to advise her clients that she did not carry professional liability insurance, but also deposited client funds into her office business account rather than into a client trust account and misappropriated funds. Gorby received a one-year suspension, all stayed, on the conditions that she engage in no further misconduct and submit to a one-year period of monitored probation. Gorby had no prior disciplinary record.

{¶43} In *Columbus Bar Assn. v. Roy*, 143 Ohio St.3d 60, 2015-Ohio-1190, Roy failed to inform her client that she did not maintain professional liability insurance. Roy received a public reprimand. Roy had no prior disciplinary record.

{¶44} In *Lorain Cty. Bar Assn. v. Nelson*, 144 Ohio St.3d 414, 2015-Ohio-4337, Nelson failed to inform his client that he does not maintain professional liability insurance and failed to respond to a demand for information by a disciplinary authority during an investigation, but also failed to provide competent representation, failed to act with reasonable diligence, failed to inform the client of decisions that require the client's informed consent, failed to keep the client informed about the status of the client's matter, failed to respond to reasonable requests for information from the client, and failed to deliver the client's papers and property. Nelson received a public reprimand. Nelson had no prior disciplinary record.

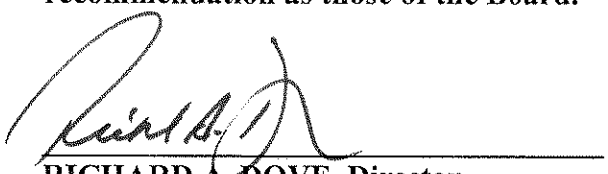
{¶45} The presumptive penalty for failing to comply with Prof. Cond. R. 1.4(c) appears to be a public reprimand. In this case, however, we have a failure to cooperate in violation of Prof. Cond. R. 8.1(b) and Gov. Bar R. V, Section 9(G), as well, due to turmoil in the life of Respondent. The matters set forth in ¶¶34-36 of this report also factored into our recommendation. While Respondent appears to be gaining control over the recent past turmoil in his life, the panel believes that a term suspension, all stayed on conditions, is the best way to ensure that Respondent gets back on his legal feet and does not cause harm to the public.

{¶46} Based upon the foregoing, the panel recommends that Respondent be suspended from the practice of law for a period of six months, all stayed, on the conditions that Respondent (1) maintain an OLAP contract and follow OLAP's recommendations, (2) take six hours of continuing legal education in law office practice management, and (3) work with a mentor, as selected by Relator.

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 June 3, 2016. The Board adopted the findings of fact, conclusions of law, and recommendation of the panel and recommends that Respondent, Matthew Joseph King, be suspended from the practice of law in Ohio for six months, with the suspension stayed in its entirety on the conditions set forth in ¶46 of this report, 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 of fact, conclusions of law, and recommendation as those of the Board.



RICHARD A. DOVE, Director