

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

In re:	SCO No. 2015-0243
Complaint against	BPC Case No. 2014-094
Holly Lynn Bednarski Attorney Reg. No. 0077231	Findings of Fact, Conclusions of Law, and Recommendation of the Board of Professional Conduct of the Supreme Court of Ohio
Respondent	
Akron Bar Association	
Relator	

OVERVIEW

{¶1} This matter was heard on June 10, 2016 in Columbus before a panel consisting of Judge Karen Lawson, Robert B. Fitzgerald, and Charles J. Faruki, 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*. Thomas P. Kot, Karen D. Adinolfi, and Richard P. Kutuchief appeared on behalf of Relator.

{¶3} This matter came before the panel following a remand from the Supreme Court of Ohio for consideration of mitigation evidence only.

{¶4} At the June 10, 2016 hearing, which was limited to the issues of restitution, mitigation, and sanction, Respondent testified as did a witness that she called with regard to mitigation. In addition, at the hearing, the parties presented stipulations as to restitution, aggravating and mitigating factors, and recommended sanction. Thus, the recommendation of the panel is based upon the parties' stipulations and the evidence taken at the hearing.

{¶5} Upon consideration of the applicable aggravating and mitigating factors, and pertinent case law, the panel recommends that Respondent be suspended from the practice of law for a period of two years, with no credit for time served for the interim default suspension ordered on March 15, 2016, and with six months of the suspension stayed on conditions.

FACTUAL BACKGROUND AND HEARING TESTIMONY

{¶6} Respondent was admitted to the practice of law in the state of Ohio on April 21, 2004 and is subject to the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

Brief Overview of the Complaint to Which No Answer was Filed

{¶7} On December 15, 2014, Relator filed a complaint alleging two counts of professional misconduct.

{¶8} Count One involved a former client, David Jones, Jr., who had retained Respondent to represent him in an appeal to the Fifth District Court of Appeals of a criminal conviction. The appeal of Jones was dismissed for lack of prosecution, the stay relative to his sentence was lifted, and he was ordered to report to the adult parole authority to begin his sentence. In addition, Count One alleged that Respondent did not carry professional liability insurance, that Jones paid Respondent \$1,500 as a flat fee to file the appeal, but that Respondent did not have an IOLTA account, there was no written fee agreement, and therefore no written statement that if the lawyer does not complete the representation for any reason, the client may be entitled to a refund of all or part of the fee as required by Prof. Cond. R. 1.5(d)(3).

{¶9} With respect to Count One, the complaint alleged that Respondent violated the following: Prof. Cond. R. 1.1 (competence); Prof. Cond. R. 1.3 (diligence); Prof. Cond. R. 1.4 (communication); Prof. Cond. R. 1.5 (fees and expenses); and Prof. Cond. R. 1.15 (safekeeping funds and property).

{¶10} Count Two of the complaint involved a former client named Kacee Rae Moser who retained Respondent to represent her on a charge of felony child endangering, and then on a misdemeanor charge that was brought against Moser while she was released on bond to house arrest, but was charged with menacing a children services board worker. The complaint alleged that there was no written fee agreement, that Moser paid Respondent \$1,360, that Respondent did not have an IOLTA account, did not carry professional insurance, and did not have Moser sign the appropriate Prof. Cond. R. 1.4(c) notice and acknowledgment. After a date was set for a jury trial, Respondent indicated that she was preparing a motion to withdraw, but never filed a motion to withdraw.

{¶11} With respect to Count Two, the complaint alleged that Respondent violated Prof. Cond. R. 1.4 and Prof. Cond. R. 1.15.

{¶12} Respondent did not file an answer to the complaint. On March 13, 2015, upon certification of default from the Board, the Supreme Court of Ohio imposed an interim default suspension against Respondent pursuant to Gov. Bar R. V, Section 14(B). *Akron Bar Assn. v. Bednarski*, 2015-Ohio-876.

{¶13} By entry filed March 16, 2015, further proceedings before the Board were stayed pending subsequent order of the Court. On September 15, 2015, Respondent was ordered to show cause why the interim default judgment suspension should not be converted into an indefinite suspension.

{¶14} After Respondent filed amended objections, the Court entered an order on November 24, 2015 remanding the case to the Board for the consideration of mitigation evidence only. *Akron Bar Assn. v. Bednarski*, 2015-Ohio-4800.

{¶15} As no answer to Relator’s complaint was filed, Respondent understands that all of the allegations have been deemed admitted. Hearing Tr. 21, 58. The allegations are true. Hearing Tr. 58-60. In her closing statement she admitted “I did commit the offenses.” Hearing Tr. 80.

Prehearing Conferences with the Panel Chair

{¶16} The panel chair conducted a prehearing conference in the case on February 23, 2016 by telephone. Three counsel for Relator appeared, but Respondent did not dial into the call. Hearing Tr. 24.

{¶17} Consequently, the panel chair entered an order that was filed on February 24, 2016. Respondent’s lack of cooperation in the disciplinary proceedings continued, as she did not comply with paragraphs one and two of the February 24, 2016 order.

{¶18} Respondent did participate in the subsequent prehearing telephone conference on April 27, 2016. On April 28, 2016, an entry was filed memorializing the prehearing conference and order governing further proceedings. Among other points, that entry and order recounts Respondent’s unhelpful behavior with regard to this disciplinary proceeding.

Evidentiary Hearing

{¶19} The stipulations were admitted into evidence. Hearing Tr. 64. Paragraph one of the stipulations reads in full: “Restitution owed is \$1,515.10.”

{¶20} A summary of key points from testimony, other than on the subject of drinking that is discussed separately below, is as follows.

{¶21} Respondent obtained her J.D. in 2004 from the University of Akron. Hearing Tr. 39.

{¶22} For a number of years starting in 2005, Respondent practiced with her husband, but their practice ceased when they obtained a divorce following which time a series of problems and adverse events in her personal life occurred. Hearing Tr. 30-37.

{¶23} Respondent is currently employed in a nonlegal position at Sterling BackCheck, nka Sterling Accounting Solutions, making \$14 an hour. Hearing Tr. 13-14.

{¶24} Respondent has not made restitution of the \$1,515.10 and although she testified at her January 2016 deposition that she would try to make restitution, she has not done so. Hearing Tr. 12-13.

{¶25} Respondent practiced for approximately ten years starting in 2005. The first period of five years through 2009 until she was divorced from her husband. Hearing Tr. 30. In the following five years, she said “I could not quite manage to do it by myself.” *Id.* Respondent’s husband had been the primary person that handled the accounting and the books and they had had a secretary as well. Hearing Tr. 30, 41.

{¶26} On her own, Respondent got an IOLTA account, but approximately a week and a half after she got that IOLTA account, the bank canceled it and thereafter she did not have an IOLTA account. Hearing Tr. 31.

{¶27} Respondent’s husband was sued for malpractice in a case that went to trial and punitive damages were awarded. Hearing Tr. 34-35.

{¶28} Respondent was unable to make enough money to live and although she owned the home, the utilities were shut off so she could not stay there. At the time of her divorce “I was not taking care of my accounting properly.” Hearing Tr. 35.

{¶29} Respondent described a “snowball effect” of attempting to practice on her own, the distraction of the malpractice case, not getting paid by clients, going through a divorce, “and I

couldn't even live in my house anymore and I did stay in my car a lot * * *." Hearing Tr. 36. See also Hearing Tr. 20 ("At one point I was living out of my car").

{¶30} Respondent's office had been in her house, but she was not living in her house because the utilities were shut off. Hearing Tr. 36-37. Therefore, Respondent was not getting mail for part of the time that she was living outside of her house (her office was in her house so for a year she was not getting her mail) and living in her car. *Id.* Respondent also stayed at friends' places for several months in 2014. Hearing Tr. 31.

{¶31} On the subject of drinking, her testimony was that after the divorce and during the period of time that she was still practicing, she was drinking every day. Hearing Tr. 50. Even when she and her husband were still together, they "would go out after work every day and probably have 4 or 5 drinks where we went." Hearing Tr. 51. Respondent said that "we were drinking every day; and I probably still did that through the time period when she was in the hospital." That type of drinking was more or less continuous at least from the divorce in 2009 until she was hospitalized in 2015. Hearing Tr. 51-52. About a year ago, she was hospitalized for pancreatitis "because I was drinking too much." Hearing Tr. 26. Respondent was drinking hard liquor, usually whiskey and ginger ale. Hearing Tr. 55. Respondent has not had diagnosis or treatment for any addiction or mental health condition. Hearing Tr. 14-15. Respondent agreed with Relator to contact the Ohio Lawyers' Assistance Program, but she did not do so because she wanted to do it (handle the drinking) by herself. Hearing Tr. 17-19. Respondent admitted that she has a drinking problem which needs professional treatment, but she has not yet done anything about it. Hearing Tr. 52.

{¶32} The only other witness at the hearing was Michelle Manchester Olbrysh, a bailiff in common pleas court, who has known Respondent for about 15 years. Olbrysh testified that she

has seen Respondent make positive changes over the last two years, namely that she has gotten healthy, has gotten her finances under control, is working, and has a stable residence. Hearing Tr. 66-68. On cross examination, Olbrysh said that she knew that Respondent previously had financial difficulties and was “barely having enough money to survive. She couldn’t even pay her utilities.” Hearing Tr. 69. Olbrysh expressed the opinion that her disciplinary problems were a matter of her focus on “survival.” Hearing Tr. 69-70.

{¶33} Respondent’s demeanor as a witness, as well as her responses to the extensive questions from Relator and members of the panel, showed that she is not ready to resume the practice of law.

{¶34} As one purpose of Ohio’s disciplinary machinery for lawyers is the protection of the public. The evidence here showed that certain requirements are warranted before Respondent should be allowed to resume the practice of law. The components of the sanction recommended in this report are designed to allow Respondent to resume the privilege of the practice of law once the appropriate steps have been taken and to protect the members of the public.

AGGRAVATION, MITIGATION, AND SANCTION

{¶35} The parties stipulated to and the panel finds the following aggravating factors: (1) a pattern of misconduct; (2) multiple offenses; (3) a lack of cooperation in the disciplinary process; (4) the vulnerability of and resulting harm to victim of misconduct; and (5) a failure to make restitution.

{¶36} In mitigation, the parties stipulated to and the panel finds that Respondent has no prior disciplinary record and the absence of a dishonest or selfish motive.

{¶37} The panel reviewed the parties’ recommendations in light of the testimony at the hearing and pertinent precedent from the Supreme Court of Ohio.

{¶38} Relator cited three cases to the panel. The case that Relator asserted to be most on point is *Toledo Bar Assn. v. Stewart*, 135 Ohio St.3d 316, 2013-Ohio-795. The respondent in that case was charged with professional misconduct in his handling of five separate client matters. “The alleged misconduct consisted mainly of accepting retainers from clients and then failing to perform the contracted work, failing to reasonably communicate with the clients, failing to return client files and the unearned portion of their fees on termination of his representation, and failing to cooperate in several of the resulting disciplinary investigations.” *Id.* at ¶1. The aggravating factors in *Stewart* included “a pattern of misconduct involving multiple offenses, failure to cooperate in the disciplinary process in three of the four counts of misconduct, and failure to acknowledge the wrongful nature of the conduct.” *Id.* at ¶25. The Court agreed with the Board’s recommendation that the attorney be suspended for two years, with the second year stayed “on the conditions that he engage in no further misconduct, complete six hours of continuing legal education in law-office management and practice by a sole practitioner, * * * and serve one year of monitored probation in accordance with Gov. Bar R. V, Section 9.” *Id.* at ¶28.

{¶39} The other two cases cited at the hearing by Relator were *Disciplinary Counsel v. Quinn*, 144 Ohio St.3d 336, 2015-Ohio-3687, and *Akron Bar Assn. v. DeLoach*, 143 Ohio St.3d 39, 2015-Ohio-494. *Quinn* involved violations of Prof. Cond. R. 1.15(c) [a lawyer must deposit into a client trust account legal fees and expenses that have been paid in advance], Prof. Cond. R. 1.15(d) [upon request a lawyer must promptly render a full accounting of funds or property in which a client or third party has an interest], and Prof. Cond. R. 8.1(b) [prohibiting a lawyer from knowingly failing to respond to a demand for information by a disciplinary authority during an investigation]. *Quinn*, 2015-Ohio-3687, at ¶10. The aggravating factors included engagement in multiple offenses and an initial failure to cooperate in the relator’s investigation. *Id.* at ¶12.

Mitigating factors included “the absence of a prior disciplinary record, the absence of a dishonest or selfish motive, * * * payment of full restitution to the ex-client, and * * * cooperation in the disciplinary process after the relator filed the formal complaint.” *Id.* The Court suspended the attorney for six months, and ordered that “upon his reinstatement to the practice of law, he serve one year of monitored probation focused primarily on his law-office management and compliance with client-trust-account regulations.” *Id.* at ¶15.

{¶40} *DeLoach* involved violations of Prof. Cond. R. 1.3 [diligence], Prof. Cond. R. 1.5(a) [charging or collecting a clearly excessive fee], Prof. Cond. R. 1.15(a)(2) [IOLTA record-keeping], and Prof. Cond. R. 1.15(c) [deposit of legal fees and expenses]. *DeLoach*, 2015-Ohio-494, at ¶6, 9, 10. The attorney had had a previous suspension, and the Court found that “her ability to practice law is in doubt and that an actual suspension is warranted.” *Id.* at ¶19. The aggravating factors included “prior discipline, multiple offenses, * * * failure to make restitution, and delay in refunding an ex-client’s money.” *Id.* at ¶12. The mitigating factors included “absence of a dishonest or selfish motive, full and free disclosure to the disciplinary board, * * * a cooperative attitude toward the proceedings, and evidence of good character and reputation.” *Id.* at ¶17.

{¶41} Despite seeking and being given the opportunity to file a post-hearing sanction brief (Hearing Tr. 81; Order dated June 10, 2016), Respondent did not file a brief.

{¶42} Independent research shows that the panel’s recommended sanction of a two-year suspension, with six months stayed appears at first study to be more severe than sanctions imposed in cases with somewhat similar fact patterns and misconduct. However, the record in this case is different because of the prolonged history of problem drinking and because Respondent appears to be far from ready to resume the practice of law.

{¶43} For reference and completeness; however, the cases from that independent research that seem most pertinent are *Columbus Bar Assn. v. Williams*, 129 Ohio St.3d 603, 2011-Ohio-4381 (two year stayed suspension on conditions); *Stark Cty. Bar Assn. v. Marinelli*, 144 Ohio St.3d 341, 2015-Ohio-2570 (two-year suspension, with one year stayed on conditions); and *Disciplinary Counsel v. Talikka*, 135 Ohio St.3d 323, 2013-Ohio-1012 (two-year suspension, with one year stayed on conditions). With regard to whether credit should be given for time served under the interim default suspension, *Columbus Bar Assn. v. McCord*, 2016-Ohio-3298 (suspension stayed in its entirety, so no need for credit for time served); *Disciplinary Counsel v. Rammelsberg*, 143 Ohio St.3d 381, 2015-Ohio-2024 (the Board recommended credit for time served under interim default suspension, but the Court without explanation declined to grant credit for time served under interim default suspension); and *with Mahoning Cty. Bar Assn. v. Marrelli*, 2015-Ohio-4614 (the Court issued indefinite suspension with credit for time served under interim default suspension). The panel's view is that the record in this case does not warrant credit for the interim default suspension.

{¶44} The panel is concerned about Respondent's readiness to resume the practice of law, and believes that she is far from ready to do so. The reasons for that concern include:

- The history of problem drinking and no treatment for it, as described above;
- Respondent spent the last year and a half trying to get her life together (Hearing Tr. 11, 25);
- The financial and management aspects of law practice are weak areas for Respondent and are tough for her (Hearing Tr. 48, 61-62). Indeed she admitted that if she were to resume practice, she would have to "ask for help and actually be organized. That was my biggest problem, I had no organization whatsoever" (Hearing Tr. 42);
- Relator offered free CLEs to Respondent, but she did not avail herself of them (Hearing Tr. 16-17);

- Respondent admitted that she did not cooperate fully in the disciplinary process, and though she attributed it to problems in her life and maintained that she is desirous of resuming practice, there were problems even after this panel was appointed to consider the matter, and by the fact that at the conclusion of the hearing she said that she would like to file a post-hearing brief (Hearing Tr. 81-82), she agreed that two weeks was sufficient to do so (Hearing Tr. 82), but then she failed to file a brief; and
- Respondent's testimony about her support of family, colleagues, and friends showed that currently she still appears to be relatively isolated. Hearing Tr. 49-50, 57-58.

{¶45} The panel believes the appropriate sanction is somewhat different from the parties' recommended sanction. The reasons for the panel's decision with regard to sanction and for its differences from the sanction recommended by the parties are as follows. The panel is concerned with: (1) Respondent's pattern of behavior that includes inattention to requirements of the disciplinary process; (2) by the fact that Respondent was offered free CLE courses by Relator, but up until the time of the hearing had not availed herself of the opportunity to take any of them (Hearing Tr. 18-19); (3) that Relator had spoken with Respondent concerning OLAP and had provided contact information for OLAP, but Respondent had not, as of the time of the hearing, even contacted OLAP for an evaluation (Hearing Tr. 18-19); (4) Respondent asserted and seems to believe that her drinking is under control although she admits that she still drinks wine (Hearing Tr. 55); and (5) that if Respondent were to reenter the practice of law, following the suspension period, as a solo practitioner, law-office organization, accounting, and financial management [admittedly her weaknesses (Hearing Tr. 35, 42, 48)] could, and in the view of the panel would, overwhelm her.

{¶46} The panel believes that the parties' recommended sanction of one year of monitored probation focused on law-office management is not long enough, especially as she admittedly has not followed through on her announced intentions to pursue the free CLE courses offered by

Relator and to contact OLAP. Respondent also failed to file a post-hearing brief although she stated at the hearing that she would like to do so. As Respondent candidly admitted, “I have done very little. All I can say in my defense is I have spent pretty much the last year and a half just trying to get my life together.” Hearing Tr. 11. See also Hearing Tr. 25-26 (“It was not my intention to not focus on this, [the disciplinary proceeding] but that’s kind of what happened.”); she knew that she was not cooperating. Hearing Tr. 26. Respondent admitted stating in her January deposition that she would try to get the restitution paid by the time of the hearing, but has not done so. Hearing Tr. 13. There is an absence of follow-through that troubles the panel.

{¶47} The restitution to be paid is for Respondent’s former client Jones. As shown in Count Two of the complaint, Respondent did perform services for the other former client Moser; indeed she obtained a not guilty verdict for Moser on the menacing charge. Given that Respondent performed significant services for Moser, no restitution is to be paid to him.

{¶48} Based upon the foregoing, the panel recommends that Respondent be suspended from the practice of law for a period of two years, with no credit for time served under the interim default suspension ordered on March 13, 2015, and with six months of the suspension stayed on the following conditions:

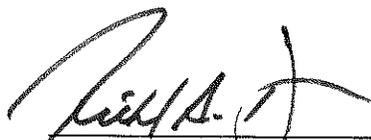
- Within 30 days of the Court’s issuance of a disciplinary order, Respondent shall contact OLAP for an evaluation and, if recommended by OLAP, enter into a contract on the terms suggested by OLAP, and comply with the OLAP contract and treatment plan.
- Respondent shall pay to Relator \$100 per month toward restitution until the restitution is paid in full. The amount of restitution to be paid is \$1,515.10 to be paid by Relator to Respondent’s former client Jones.
- In addition to the requirements for a suspended attorney imposed by Gov. Bar R. X, Section 13, Respondent shall complete 12 hours of CLE on law office management.
- Respondent shall commit no further misconduct.

{¶49} Upon reinstatement to the practice of law, Respondent shall serve two years of monitored probation focused on law-office management. The monitored probation will be supervised by Relator, and Respondent shall cooperate with Relator to make the monitored probation effective.

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 August 5, 2016. The Board adopted the recommendation of the panel and recommends that Respondent, Holly Lynn Bednarski, be suspended from the practice of law in Ohio for two years, with six months stayed on the conditions set forth in ¶48 of this report. The Board further recommends that Respondent be given no credit for time served under the interim default suspension and ordered to pay the costs of these proceedings. The Board recommends that upon reinstatement, Respondent shall be required to serve a two-year period of monitored probation as set forth in paragraph ¶49 of this report.

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