Supreme Court of Ohio Clerk of Court - Filed September 26, 2016 - Case No. 2014-1737

IN THE SUPREME COURT OF OHIO

Cincinnati Bar Association,	:	
	:	
Relator,	:	Case No. 2014-1737
	:	
v.	:	
	:	
Rodger William Moore,	:	
	:	
Respondent.	:	

RESPONDENT'S MEMORANDUM IN OPPOSITION TO RELATOR'S MOTION TO HOLD RESPONDENT IN CONTEMPT

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Counsel for Respondent

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MEMORANDUM IN OPPOSITION

I. INTRODUCTION

Respondent, Rodger William Moore, intending to pursue *pro se* collection of legal fees owed by a former client, should have been more careful in following trial and appellate court procedures to ensure he fully complied with the spirit and the letter of this Court's June 25, 2015 Order that he refrain from practicing law during his 2-year suspension (with one year stayed). Nonetheless, Relator's Motion for Contempt is an extreme measure, given the relative gravity of Respondent's infraction.

Respondent was eligible to petition for reinstatement of his law license on June 25, 2016, but even if he were to file his Petition for Reinstatement in October, 2016, a hearing and decision on his Petition will likely be delayed by at least six months. Thus, no further consequence against Respondent is warranted. Accordingly, Respondent requests that Relator's Motion be denied.

II. **PROCEDURAL HISTORY AND BACKGROUND**

Respondent does not disagree with Relator's recitation of the case history regarding his June 25, 2015 license suspension for 2 years with one year stayed, and the conditions relating to Respondent's suspension, including the requirement of his filing a petition for reinstatement. Nor does Respondent dispute that he received this Court's June 25, 2015 Order.

Respondent does, however, respectfully disagree with Relator's mischaracterization of his conduct in the case of the *Moore Law Firm v. Manjinder Singh*, which was filed by Respondent on August 6, 2012, long before to his suspension, for the collection of legal fees in the Butler County Area 3 Court. Affidavit of Rodger Moore, Appendix A. The Singh case was heard by Judge Daniel Haughey and tried to a jury in March of 2015, prior to this Court's decision suspending Respondent's law license. The jury awarded a verdict against Mr. Singh in the amount of $5,800.00. Thereafter, before and after his June 25, 2015 license suspension, Respondent continued to seek recovery of payment from Mr. Singh. Nothing was improper about Respondent pursuing collection from Mr. Singh prior to his license suspension.

The trouble for Respondent arose after his June 25, 2015 license suspension. Respondent made a mistake of *personally* continuing to file papers in the Singh matter, even though he changed his designation from "Trial Attorney for Plaintiff" to "Rodger W. Moore (pro se)."

As Relator has correctly suggested, Respondent should have fully documented to the Court how his role changed in the *Singh* case to avoid any misunderstanding by the trial court and the Butler County Court of Appeals. Respondent could have specifically avoided the Court's findings that Respondent was not legally able to represent The Moore Law Firm.

Nonetheless, Respondent believes he could have changed some of the conclusions made in the Court of Appeals Decision, if he had been given "an opportunity to be heard" and respond to the court's concerns before the Court of Appeals issued its ruling. Respondent would have liked

to explain to the Court of Appeals that Respondent has received an assignment from his prior law firm to personally receive the funds that he had earned in the Singh case. Relator is aware of this fact, but failed to mention it in its Motion for Contempt. Thus, Respondent was the "real party in interest," even though The Moore Law Firm was the named party in the case. *See* copy of Assignment, attached to Moore Affidavit as Exhibit 1.

III. LAW AND ARGUMENT

Respondent understands that the Butler County Court of Appeals decision, itself, reflects that he did not do everything he should have done to meet the requirement of a *pro se* litigant, so he could continue to collect the legal fees, earned prior to the suspension of his law license, properly assigned to him, and which he was rightfully owed. However, Respondent does not believe that his actions warrant a finding of contempt of court. Indeed, this Courts' legal precedent does not reflect that contempt is warranted in a situation where Respondent's conduct is of this magnitude. For example, in the case of *Bar Ass'n of Greater Cleveland v. Rubinstein*, 37 Ohio St.3d 602 (1988), the respondent was held in contempt of court because, after failing to follow the court's order suspending his law license, he resumed practicing law without filing an application for reinstatement, and never responded to the order to show cause. In fining Respondent and holding him in contempt, the court noted:

> The cause came on to be heard upon the motion of the Certified Grievance Committee of the Cleveland Bar Association for respondent, Walter H. Rubinstein, to show cause why he should not be held in contempt of this court for his failure to comply with this court's order dated March 12, 1986 and for continuing alleged violations of the Disciplinary Rules, and for sanctions. On May 23, 1988, this court issued an order to show cause, ordering Walter H. Rubinstein, on or before June 13, 1988, to respond to relator's motion or show cause why he should not be held in contempt of this court for his failure to comply with this court's order dated March 12, 1986. No response has been forthcoming

Id. Here, in contrast to the *Rubinstein* case, Respondent did not ignore this court's suspension order and order to show case like Rubinstein did. Instead, apart from his mistake on the *Singh*

matter where he was collecting on a judgment owed to him personally, there is no evidence that Respondent set out to ignore this Court's Order and wrongfully hold himself out as a practicing lawyer during his 2-year (one year stayed) license suspension.

Similarly, in the case of *Disciplinary Counsel v. Bancsi*, 79 Ohio St.3d 392, 1997-Ohio-378, the panel of the Board and this Court found that respondent represented multiple of his existing clients for over a month's period, during the period of his license suspension:

> Specifically, on September 28 and October 6, he appeared in pre-hearing settlement conferences for one of his clients. On October 2, he filed an application for an extension of time to file assignments of error on appeal for a second client, and on October 31, he entered into a settlement agreement in that case. On October 11, he filed a pretrial statement for a third client, and on October 27, he filed a notice of withdrawal in that case. On October 18, he appeared at a pretrial conference for a fourth client and withdrew from the case on October 27. On October 23, he signed a settlement agreement in a domestic relations case for a fifth client. At the time of these actions, respondent alleges that he anticipated that his reinstatement would take place within two weeks at the most.

Id. Given the limited nature of that respondent's infractions, the *Bancsi* Court suspended the Respondent's license for one year for six months stayed.

Similarly, here, rather than holding Respondent in contempt of court, Respondent's conduct in the *Singh* case may be considered, along with all of the other evidence presented with Respondent's planned Petition for Reinstatement. Pursuant to Gov. Bar Rule V, Respondent will have to prove by clear and convincing evidence that he is presently fit to practice law, and all evidence of his activities may be considered by the Board of Professional Conduct and this Court during Respondent's Petition for Reinstatement. For these reasons, Relator's filing of a Motion for Contempt in this circumstance is extreme and unwarranted. Respondent was eligible to petition for reinstatement in June of 2016. Even if he were to file his Petition in October 2016, a hearing and decision on his Petition will likely be delayed by six months. No further consequence is warranted. The facts do not justify holding him in contempt.

Accordingly, Respondent urges the Court to deny Relator's Motion.

Respectfully submitted,

/s/ Alvin E. Mathews, Jr.
Alvin E. Mathews, Jr. (0038660)
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115 W. Main Street, Fourth Floor
Columbus, OH 43215
Telephone: (614) 460-1619
Facsimile: (614) 469-1134
Email: amathews@arnlaw.com

Counsel for Respondent Rodger William Moore

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Respondent Rodger William Moore's Response to Motion was served upon the following via U.S. mail, postage prepaid, this 26th day of September, 2016.

Laura A. Abrams Esq.
365 Wood Street
Batavia, Ohio 45103

Edwin W. Patterson III, Esq.
General Counsel
Cincinnati Bar Association
225 East Sixth Street, 2nd Floor
Cincinnati, Ohio 45202

_/s/ Alvin E. Mathews, Jr._____
Alvin E. Mathews, Jr.

APPENDIX A

IN THE SUPREME COURT OF OHIO

Cincinnati Bar Association,	:	
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Relator,	:	Case No. 2014-1737
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Rodger William Moore,	:	
	:	
Respondent.	:	

In the County of ~~Kentucky~~ Campbell

State of Kentucky

AFFIDAVIT OF RODGER WILLIAM MOORE

Rodger William Moore, after being duly cautioned and sworn, states the following of his personal knowledge:

1. I am a suspended attorney at law, by virtue of this Court's Order of June 25, 2015, suspending my license to practice law for two years, with one year stayed on conditions. I have reviewed Relator's contempt motion and I appreciate there are problems with the way I approached the Manjinder Singh collection case in the Butler County Courts.
2. I filed my Affidavit of Compliance related to this court's suspension order on August 19, 2015.

3. My Affidavit of Compliance did not include mention of the *Singh* case because the Singh case is an ongoing collections case involving attorney's fees, earned by me before my license suspension, which are owed to me personally by Mr. Singh. I did not believe it was a matter on which I was representing a client. In retrospect, I should have included the Singh case in my Affidavit of Compliance, and, as explained below, I might have taken other steps to avoid the adverse ruling against me of the Butler County Court of Appeals, which includes my loss of entitlement to the attorney's fees the jury had awarded me against Mr. Singh.
4. I thought I could handle matter against Mr. Singh as I did because I received an assignment of the attorney's fees claim from my former law firm, awarded by a jury, and personally owed to me by Mr. Singh. See, attached as Exhibit 1. I wish the Butler County Court of Appeals had allowed me to be heard before it issued its ruling, so I could explain my position.
5. I understand that I might have pursued a number of different alternatives to avoid the problems which lead to the Court of Appeal's Decision and Relator's instant Motion, and which has delayed my Petition for Reinstatement by three months to date. The problem is that the named party was "The Moore Law Firm," and that needed to be changed for me to proceed with *pro se* representation. For example, I might have filed a *pro se* motion to intervene in the Singh case. Alternatively, I might have hired an attorney to file a motion to substitute me as a party.
6. Despite the problems in the Singh case, I did not set out to represent any former clients of mine nor new clients, during the course of my suspension now 15-month suspension.

7. I would like to file my Petition for Reinstatement as soon as the Court will permit me to do so. I request that the court not find me in contempt based on this isolated case in which I was collection a previously earned legal fee, assigned to me personally.

FURTHER AFFIANT SAYETH NAUGHT.

Rodger William Moore

Sworn to and subscribed before me this 26 day of September 2016.

#553645

Notary Public

OFFICIAL SEAL
JEREMY SMITH
NOTARY PUBLIC - KENTUCKY
STATE-AT-LARGE
My Comm. Expires 4/2/2020
ID # 553645

EXHIBIT
1

ASSIGNMENT

Whereas, Rodger Moore was the primary attorney for the matters, for value received, **Gatherwright Freeman and Associates, PSC** sells, assigns, transfers, and conveys to **Rodger W. Moore, Esq**, the following accounts receivables:

1. Shelley Shearer
2. Bud and Mary Anne Sanders
3. Brent Van Lieu
4. Jennifer Walker
5. Michelle Roberts
6. Brewsaugh
7. Katelyn Graves
8. Lodd
9. Singh
10. McCain Mengel
11. McCain/KY
12. McCain/IN
13. Pam McCain
14. McCain Gen'l
15. McCain/Condon
16. Whalen
17. Bruce Rowe

IN WITNESS WHEREOF, the undersigned has executed this Assignment on the 14th day of December, 2012.

Jennifer Gatherwright, President

EXHIBIT
A