

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2258 Disciplinary Docket No. 3
: :
Petitioner : No. 181 DB 2014
: :
: Attorney Registration No. 209192
v. : :
: (Philadelphia)
GINA YVONNE MOSLEY : :
: :
Respondent :

ORDER

PER CURIAM

AND NOW, this 18th day of May, 2016, upon consideration of the Report and Recommendations of the Disciplinary Board, Respondent Gina Yvonne Mosley is suspended from the Bar of this Commonwealth for a period of one year. The suspension is stayed, and Respondent is placed on Probation for a period of two years, subject to the following conditions:

1. Respondent shall establish treatment with a qualified mental healthcare professional, who is to direct and supervise her activities;
2. Respondent shall cooperate with the directions of the mental healthcare professional supervising her treatment, take medications as prescribed, and engage in therapy and counseling sessions as directed; and
3. Respondent shall file quarterly written reports with the Secretary of the Board and shall attach reports verifying the above counseling and treatment.

The expenses incurred in the investigation and prosecution of this matter are to be paid by Respondent. See Pa.R.D.E. 208(g)(1).

A True Copy Patricia Nicola
As Of 5/18/2016

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 181 DB 2014
Petitioner	:	
	:	
v.	:	Attorney Registration No. 209192
	:	
GINA YVONNE MOSLEY	:	
Respondent	:	(Philadelphia)

REPORT AND RECOMMENDATIONS OF
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board of the Supreme Court of Pennsylvania (“Board”) herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. HISTORY OF PROCEEDINGS

By Petition for Discipline filed on November 14, 2014, Office of Disciplinary Counsel charged Gina Yvonne Mosley with violations of the Rules of Professional Conduct and Rules of Disciplinary Enforcement arising out of her failure to appear for two informal admonitions and failure to diligently represent and communicate with her client. Respondent filed an Answer to Petition for Discipline on December 30, 2014.

A disciplinary hearing was held on March 17 and July 16, 2015, before a District I Hearing Committee comprised of Chair Ria C. Momblanco, Esquire and Members

Michele D. Hangle, Esquire and Amy M. Vanni, Esquire. Respondent was represented by Jennifer Ellis, Esquire. Petitioner introduced into evidence Joint Stipulations of Fact and Law and Exhibits ODC-1 through ODC-11. Respondent introduced Exhibits R-1 through R-5, presented the testimony of her expert Dr. Steven E. Samuel and testified on her own behalf.

Following the submission of a brief by Petitioner, the Hearing Committee filed a Report on October 20, 2015, concluding that Respondent violated the Rules as charged in the Petition for Discipline and recommending that a one year, stayed suspension be imposed with two years of probation with practice and mental health monitors.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on January 21, 2016.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, Office of Disciplinary Counsel, whose principal office is located at 601 Commonwealth Avenue, Suite 2700, Harrisburg, Pennsylvania, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and the duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules.

2. Respondent is Gina Yvonne Mosley. She was born in 1983 and was admitted to practice law in the Commonwealth in 2008. Her attorney registration address

is 1800 JFK Blvd., Suite 300, Philadelphia, PA 19103. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has no record of prior discipline in Pennsylvania.

4. By letter dated May 7, 2014, sent to Respondent by certified mail, return receipt requested and first class mail, Paul J. Killion, Chief Disciplinary Counsel notified Respondent, *inter alia*, that:

a. In connection with a complaint filed against her by Keith M. Younge, reviewing authorities had determined that Respondent should receive an informal admonition for having violated RPC 1.3, RPC 1.4(a)(3), RPC 1.4(a)(4), RPC 1.4(b), RPC 1.5(b) and RPC 1.16(d);

b. A condition was attached to the informal admonition, which required Respondent, not less than ten days prior to the date of the scheduled admonition, to provide documented proof to Office of Disciplinary Counsel that she had, *inter alia*, provided Mr. Younge with an itemized statement of services rendered and refunded any unearned fee to Mr. Younge;

c. Respondent had the option of deciding that she did not wish to receive the informal admonition and that she could have the question of her conduct decided by formal proceedings, in accordance with Pa.R.D.E. 208(a)(6);

d. If Respondent decided to have the matter handled by formal proceedings, within twenty days she had to provide written notification to Elaine M. Bixler, Secretary of the Board, with a copy to Office of Disciplinary

Counsel, advising that she did not wish to receive the informal admonition and that formal proceedings should be initiated; and

e. The failure to file such a request within twenty days of that Notice to Appear would result in the loss of her right to demand formal proceedings, pursuant to § 87.54(b) of the Disciplinary Board Rules.

5. Respondent received this letter. ODC-1.

6. Respondent did not notify Ms. Bixler that she did not wish to receive the informal admonition and that formal proceedings should be initiated.

7. By letter dated June 24, 2014, sent to Respondent by certified mail, return receipt requested, and first class mail, Chief Disciplinary Counsel notified Respondent, *inter alia*, that the informal admonition was scheduled for July 15, 2014, at 11:30 a.m. in the District I Office.

8. Respondent received this letter. ODC-2.

9. Respondent did not provide Chief Disciplinary Counsel with documentation showing that she had complied with the condition.

10. Respondent failed to appear for the informal admonition.

11. By letter dated July 22, 2014, sent to Respondent by certified mail, return receipt requested and first class mail, Chief Disciplinary Counsel notified Respondent, *inter alia*, that:

a. By letter dated June 24, 2014, she was advised of the hour and date that she was to appear in the District I Office for an informal admonition;

b. §87.52(b) of the Disciplinary Board Rules provides that “The neglect or refusal of the respondent-attorney to appear for the purpose of

informal admonition without good cause shall constitute an independent act of professional misconduct...” and

c. If she had any reason she wished to offer for not appearing at the scheduled informal admonition that might represent “good cause,” Respondent should advise Chief Disciplinary Counsel within 10 days from receipt of the letter.

12. Respondent received this letter. ODC-3.

13. Respondent contacted Chief Disciplinary Counsel and Office of Disciplinary Counsel to inquire about the rescheduling of the informal admonition.

14. By letter dated September 10, 2014, sent to Respondent by certified mail, return receipt requested, Chief Disciplinary Counsel notified Respondent, *inter alia*, that the informal admonition was rescheduled for September 18, 2014 at 11:00 a.m. in the District I Office.

15. Respondent received this letter. ODC-4.

16. Respondent failed to provide Chief Disciplinary Counsel with documentation showing that she had complied with the condition.

17. Respondent failed to appear for the informal admonition that had been rescheduled for September 18, 2014.

18. By letter dated September 19, 2014, sent to Respondent by certified mail, return receipt requested, and first class mail, Chief Disciplinary Counsel notified Respondent, *inter alia*, that:

a. By letter dated May 7, 2014, she was advised that an informal admonition was to be administered to her and that she was to provide

documentation that she had complied with the condition of the admonition at least 10 days prior to the informal admonition;

b. By letter dated June 24, 2014, she was advised to appear for the admonition;

c. She did not appear for the admonition and had not complied with the condition;

d. She was directed to appear on September 18, 2014 and again she failed to appear and failed to comply with the condition;

e. §87.52(b) of the Disciplinary Board Rules provides that “The neglect or refusal of the respondent-attorney to appear for the purposes of informal admonition without good cause shall constitute an independent act of professional misconduct...” and

f. If she had any reason she wanted to offer for not appearing at the scheduled informal admonition that might represent “good cause,” Respondent should advise Chief Disciplinary Counsel within 10 days from receipt of the letter.

19. Respondent received this letter. ODC-5.

20. On or about October 1, 2014, Respondent telephoned Petitioner and left a voicemail message.

21. On or about October 2, 2014, Petitioner telephoned Respondent and left a voicemail message.

22. Respondent did not respond to Petitioner’s voicemail message.

23. Respondent failed to contact Chief Disciplinary Counsel.

24. In or around July 2013, Respondent was retained by Andrea O'Neal to represent her in a breach of consulting agreement action against the Raheem Brock Foundation.

25. On August 1, 2013, Ms. O'Neal and Respondent entered into a Contingent Fee Contract. ODC-6.

26. By letter dated September 13, 2013, to Raheem Brock, Respondent, *inter alia*:

- a. Extended an offer to settle the matter on behalf of Ms. O'Neal;
- b. Requested that Mr. Brock respond to the offer on or before September 27, 2013; and
- c. Stated that if the matter was not settled that Respondent would initiate a civil complaint on behalf of Ms. O'Neal.

27. Thereafter, Respondent failed to take any significant steps to pursue Ms. O'Neal's matter.

28. By email dated November 6, 2013, to Respondent, Ms. O'Neal requested that Respondent provide a status update in regard to the settlement negotiations with Raheem Brock.

29. By email dated November 11, 2013, Respondent informed Ms. O'Neal that Respondent expected to hear from Mr. Brock that week.

30. By email dated December 4, 2013, to Respondent, Ms. O'Neal again requested that Respondent provide a status update on her matter.

31. Respondent received Ms. O'Neal's emails. ODC-8.

32. Respondent failed to respond to Ms. O'Neal's email.

33. By email dated January 6, 2014, to Respondent, Ms. O'Neal:

a. Expressed her frustration at Respondent's lack of communication;

b. Stated that this was her second attempt to obtain a status of her matter;

c. Inquired as to whether Respondent had filed a civil complaint in municipal court as Respondent had promised to do by January 1, 2014; and

d. Requested that Respondent confirm receipt of her message.

34. Respondent received Ms. O'Neal's January 6, 2014 email. ODC-8.

35. Respondent failed to respond to the email.

36. By email dated March 24, 2014, to Respondent, Ms. O'Neal:

a. Stated that she had not heard from Respondent in over four months;

b. Stated that it was her third email attempt to obtain a status update and that she had also left Respondent telephone messages;

c. Again inquired as to whether Respondent filed a civil complaint on her behalf;

d. Requested that Respondent confirm receipt of her email; and

e. Again requested a status update.

37. Respondent received Ms. O'Neal's email messages. ODC-8.

38. With the exception of Ms. O'Neal's November 6, 2013 email message, Respondent failed to respond to Ms. O'Neal's email messages.

39. Respondent failed to respond to Ms. O'Neal's telephone calls.

40. Petitioner mailed to Respondent a DB-7 Request for Statement of Respondent's Position dated May 16, 2014 in regard to Ms. O'Neal's allegations.

41. The DB-7 letter advised Respondent that she must respond to the allegations contained in the DB-7 within thirty days of the date of the letter.

42. On May 20, 2014, Respondent's agent signed for the DB-7 letter. ODC-9.

43. Respondent failed to submit a response within thirty days, as required by Rule 203(b)(7), Pa.R.D.E. and Disciplinary Board Rules §87.7(b)(2) and (d).

44. By letter dated July 15, 2014, Petitioner, *inter alia*:

a. Informed Respondent that she must submit an answer to the DB-7 letter;

b. Informed Respondent that if she did not respond, Petitioner would proceed to make its recommendation, in which case Petitioner might seek to impose discipline for the misconduct involving a violation of Pa.R.D.E. 203(b)(7), which Rule provides that the failure to respond to a DB-7 letter without good cause is grounds for discipline; and

c. Requested that Respondent submit her response by July 28, 2014.

ODC-10.

45. Respondent failed to respond to Petitioner's July 15, 2014 letter.

46. On October 27, 2014, Respondent left a voicemail message for Disciplinary Counsel in which Respondent indicated that she had sent a letter to Petitioner in regard to the O'Neal matter.

47. By letter dated October 30, 2014, Disciplinary Counsel informed Respondent that Petitioner was not in receipt of any letter. ODC-11.

48. Respondent received Petitioner's October 30, 2014 letter.

49. Respondent credibly testified about major stressors occurring in her life at the time of her misconduct, including financial, family and other life stressors. N.T. 12-13, 15.

50. Respondent further explained that at the time in question, she was being harassed by an individual who shared office space on the same floor where Respondent's office was located, which caused additional stress. N.T. 14-15.

51. These stressors impacted Respondent's ability to respond to clients and Petitioner.

52. In preparing for the disciplinary hearing, Respondent met with psychologist Dr. Steven V. Samuel, who provided an evaluation and an expert report.

53. Dr. Samuel diagnosed Respondent with Generalized Anxiety Disorder ("GAD") and opined that this disorder caused Respondent's misconduct. R-2; N.T. 81, 87.

54. Respondent exhibited symptoms of GAD including restlessness, fatigue, irritability, difficulty concentrating, and sleep disturbance. N.T. 83.

55. Dr. Samuel testified credibly that Respondent had panic attacks that paralyzed her, causing her to become unproductive. Respondent avoided opening letters from Petitioner and failed to respond in a timely manner to communications. N.T. 84.

56. Dr. Samuel recommended that Respondent seek treatment from a board certified psychiatrist. N.T. 96.

57. After the conclusion of his third session with Respondent on May 2, 2015, Dr. Samuel recommended to Respondent that she make an appointment "right away" with a board certified psychiatrist for counseling and medication assessment. N.T. 94-100.

58. Dr. Samuel also recommended that Respondent participate in weekly counseling sessions with a board certified psychiatrist for at least six months and at the conclusion of the six months Respondent should be evaluated to determine further treatment. N.T. 107.

59. Respondent has been searching for a psychiatrist but as of the date of the hearing, Respondent had not made an appointment. N.T. 43.

60. Because she was still in the midst of a search for a psychiatrist, Respondent decided to seek medical treatment for the GAD from her primary care physician, Dr. Mark Watkins. According to Respondent, Dr. Watkins prescribed a very low dose of Xanax, which Respondent has been taking on an as needed basis. N.T. 29–43.

61. As of the date of the disciplinary hearing, Respondent had one in-person counseling session and one telephonic counseling session with a licensed therapist, Crystal Small. N.T. 45, 104.

62. As of the date of the hearing, Respondent had not made her next appointment with her therapist, but planned to contact Ms. Small after the disciplinary hearing, as Ms. Small had requested. N.T. 48.

63. Respondent plans to counsel with her therapist as long as necessary. N.T. 48.

64. Respondent expressed sincere remorse for her misconduct. N.T. 12.

65. Respondent has taken steps to address the stressors in her life by eliminating certain expenses associated with her law practice, repairing personal relationships and removing herself from sharing office space with the individual who was bothering her. N.T. 13, 17.

66. Respondent rejoined the Philadelphia Bar Association to expand her resources and she reached out to several other lawyers for advice and mentoring. N.T. 18.

67. Respondent is willing to have her treatment monitored by the Disciplinary Board. N.T. 17.

III. CONCLUSIONS OF LAW

By her conduct as set forth above, Respondent violated the following Rules of Professional Conduct and Rules of Disciplinary Enforcement:

1. RPC 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client.

2. RPC 1.4(a)(3) - A lawyer shall keep a client reasonably informed about the status of a matter.

3. RPC 1.4(a)(4) – A lawyer shall promptly comply with reasonable requests for information.

4. RPC 1.4(b) – A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

5. RPC 1.5(b) – When a lawyer has not regularly represented a client, the basis or rate of the fee shall be communicated to the client in writing, before or within a reasonable time after commencing the representation.

6. RPC 1.16(d) – Upon termination of representation a lawyer shall refund any advance payment of fee or expenses that has not been earned or incurred.

7. Pa.R.D.E. 203(b)(2) – Willful failure to appear before Chief Disciplinary Counsel for informal admonition shall be grounds for discipline.

8. Pa.R.D.E. 203(b)(3) – Willful violation of any other provisions of the Enforcement Rules shall be grounds for discipline, via Pa.R.D.E. 204(b), which states that conditions may be attached to an informal admonition or private reprimand. Failure to comply with such conditions shall be grounds for reconsideration of the matter and prosecution of formal charges against the respondent-attorney.

9. Pa.R.D.E. 203(b)(7) – A lawyer who without good cause fails to respond to Disciplinary Counsel’s request or supplemental request under Disciplinary Board Rule §87.7(b) for a statement of the respondent-attorney’s position shall be subject to discipline.

10. Respondent has established by clear and convincing evidence that her mental disorder was a causal factor in the misconduct. *Office of Disciplinary Counsel v. Braun*, 553 A.2d 894 (Pa. 1989).

IV. DISCUSSION

Petitioner has the burden of proving ethical misconduct by a preponderance of evidence that is clear and satisfactory. *Office of Disciplinary Counsel v. Grigsby*, 425 A.2d 730 (Pa. 1981). The facts in this matter are not disputed. Petitioner’s evidence in the nature of the joint stipulations and exhibits proved the essential facts and circumstances of the violations charged in the Petition for Discipline. In addition, Respondent has admitted that she failed to diligently represent and communicate with her clients and that on two occasions she failed to appear for informal admonitions before Chief Disciplinary Counsel. The remaining issue before the Board is the discipline to be imposed.

In determining the appropriate level of discipline, we are mindful that the primary purpose of our system of lawyer discipline is to protect the public from unfit lawyers and to maintain the integrity of the legal system. *Office of Disciplinary Counsel v. Keller*, 506 A.2d 872 (Pa. 1986). We have a duty to weigh the totality of the circumstances of each case and to apply discipline in a consistent manner. *Office of Disciplinary Counsel v. Lucarini*, 472 A.2d 186 (Pa. 1983).

Respondent has admitted her misconduct and has requested that the Board consider evidence in mitigation of discipline. Pursuant to *Office of Disciplinary Counsel v. Braun*, 553 A.2d 894 (Pa. 1989), a psychiatric infirmity may be considered a mitigating factor in a disciplinary proceeding if the respondent established by clear and convincing evidence that the disorder “was a causal factor in producing the several elements of professional misconduct.” *Id.* at 895. Respondent’s evidence, in particular the expert testimony of Dr. Samuel, established that Respondent’s Generalized Anxiety Disorder (GAD) caused her to become “paralyzed” in her ability to properly respond to clients and Petitioner thereby causing her misconduct. Dr. Samuel recommended that Respondent receive mental health and medication treatment from a psychiatrist. He further recommended that Respondent engage in counseling, which Respondent has initiated. We conclude that Respondent has satisfied her burden under *Braun*.

Respondent herself offered evidence of compelling mitigating factors. Respondent offered credible testimony that during the time of the misconduct, she was experiencing financial and personal difficulties, including being harassed by an individual who shared office space on the floor where her office was located. Respondent has taken steps to address these personal issues. In addition, Respondent has made efforts to strengthen her legal practice by reaching out to fellow practitioners for advice and rejoining

the Philadelphia Bar Association to expand her resources and contacts. Respondent acknowledged her wrongdoing and exhibited genuine remorse for her misconduct. She indicated her willingness to have the treatment of her GAD monitored by the Disciplinary Board.

Although there is no per se rule for discipline in Pennsylvania, attorneys who have failed to appear for the imposition of private discipline and have engaged in client neglect have generally received discipline ranging from a short suspension to a suspension that would require the attorney to petition for reinstatement. *Office of Disciplinary Counsel v. Kathleen D. Dautrich*, No. 114 DB 2006 (Pa. 2007) (failure to appear for two informal admonitions; failure to comply with a condition; appeared at hearing and showed remorse; three month suspension); *Office of Disciplinary Counsel v. Michael A. Roselle*, No. 59 DB 2006 (2007) (failure to appear at two private reprimands, failure to comply with a condition; suspension for one year and one day); *In re Anonymous No. 77 DB 2001*, 69 Pa. D. & C. 4th 211 (2004) (failure to appear for a private reprimand; six month suspension stayed in its entirety and two years of probation with mental health monitoring).

After reviewing the parties' recommendations as well as the Committee's Report and recommendation, and after considering the nature and gravity of the misconduct as well as the presence of aggravating or mitigating factors, *Office of Disciplinary Counsel v. Gwendolyn Harmon*, 72 Pa. D. & C. 4th 115 (2004), we recommend that Respondent be suspended for a period of one year, with the suspension stayed in its entirety and Respondent placed on probation for two years with a mental health monitor. The implementation of treatment procedures to help prevent future ethical misconduct will take time and diligence. Respondent will be able to maintain her legal practice as she continues to address her mental health issues, with the full understanding that if she

violates her probation, she will be suspended. This recommendation serves the dual purpose of protecting the public while acknowledging the factors that caused Respondent's misconduct.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Gina Yvonne Mosley, be Suspended for a period of one year; that the suspension be stayed in its entirety and that she be placed on probation for a period of two years, subject the following conditions:

1. Respondent shall establish treatment with a qualified mental healthcare professional, who is to direct and supervise Respondent's activities.

2. Respondent shall cooperate with directions of the mental healthcare professional supervising her treatment, take medications as prescribed and engage in therapy and counseling sessions as directed.

3. Respondent shall file quarterly written reports with the Secretary of the Board and shall attach physician's reports verifying the above counseling and treatment.

The expenses incurred in the investigation and prosecution of this matter shall be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: 

David E. Schwager, Board Member

Date: March 17, 2016

Board Member Lewis did not participate.