

IN THE SUPREME COURT OF PENNSYLVANIA

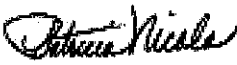
OFFICE OF DISCIPLINARY COUNSEL, : No. 2654 Disciplinary Docket No. 3
: :
Petitioner : No. 207 DB 2016
: :
v. : Attorney Registration No. 65917
: :
HOLLY C. DOBROSKY, : (Bucks County)
: :
Respondent :

ORDER

PER CURIAM

AND NOW, this 13th day of January, 2020, having failed to answer this Court's Rule to Show Cause, and upon consideration of the Office of Disciplinary Counsel's response, Holly C. Dobrosky is suspended from the Bar of this Commonwealth for a period of three years. Respondent shall comply with all the provisions of Pa.R.D.E. 217 and pay costs to the Disciplinary Board. See Pa.R.D.E. 208(g).

A True Copy Patricia Nicola:
As Of 01/13/2020

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 207 DB 2016
Petitioner	:	
	:	
v.	:	Attorney Registration No. 65917
	:	
HOLLY C. DOBROSKY	:	
Respondent	:	(Bucks County)

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 December 15, 2016, Office of Disciplinary Counsel ("Petitioner") charged Respondent, Holly C. Dobrosky, with violation of the Rules of Professional Conduct ("RPC") in seven separate matters.¹ Respondent filed an Answer to Petition on June 1, 2017.

¹ For the purposes of this matter, the Board's review is restricted to Charges I through V of the Petition for Discipline. Petitioner did not pursue Charges VI and VII.

By Board Order dated August 10, 2018, the Petition was assigned to a District I Hearing Committee ("Committee").² The Committee Chair held a prehearing conference on September 13, 2018. Respondent failed to appear on that date. The Committee conducted a disciplinary hearing on October 30, 2018. Respondent appeared for the hearing. Petitioner introduced Administrative Exhibits 1-4 and Petitioner's Exhibits 1-19, which were admitted into evidence. Petitioner offered the testimony of three witnesses. Respondent introduced Respondent's Exhibits 1-2, which were admitted into evidence. Respondent testified on her own behalf. At the conclusion of the hearing, the Committee held open the record for three weeks to permit Respondent to submit additional documents and information. Respondent did not submit any additional documents or information.

On January 7, 2019 Petitioner filed a Brief to the Committee and requested that the Committee recommend to the Board that Respondent be suspended for a period of no less than three years.

Respondent did not file a brief.

On March 29, 2019, the Committee filed a Report, wherein it concluded that Petitioner met its burden of proving that Respondent violated the rules charged in the Petition for Discipline at Charges I, II, IV and V. The Committee recommended that Respondent be suspended for a period of three years.

² This matter was originally heard by a different hearing committee on July 11, 2017. That committee filed a report with the Board on November 21, 2017. By Order dated April 13, 2018, the Board remanded the matter for a *de novo* hearing before a new hearing committee. By Order dated May 18, 2018, the Board granted Petitioner's request for a 60-day deferral of the appointment of a hearing committee to allow Petitioner to file a Petition for Discipline at No. 84 DB 2018, based on Respondent's June 19, 2017 criminal conviction. The Petition at No.84 DB 2018 was consolidated with the instant petition; however, by Order dated December 21, 2018, the Board granted Petitioner's motion for severance of the two petitions. Action on No. 84 DB 2018 is deferred pending resolution of Respondent's criminal matters.

The parties did not take exception to the Committee's Report and recommendation.

The Board adjudicated this matter at the meeting on July 19, 2019.

II. FINDINGS OF FACT

The Board makes the following findings.

1. Petitioner, whose principal office is located at the Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, Pennsylvania, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and 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 provisions of said rules.

2. Respondent is Holly C. Dobrosky, born in 1967 and admitted to practice law in the Commonwealth in 1992. Her attorney registration public address is 8 Tulip Tree Road, Levittown, PA 19056. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent was placed on administrative suspension by Order of the Supreme Court of Pennsylvania effective July 18, 2016, for failure to comply with Pennsylvania Rules of Continuing Legal Education.

4. Respondent has no prior history of discipline.

Brandon Williams Matter

5. In November 2014, Brandon Williams retained Respondent to represent him in having a criminal detainer lifted. PE 1, PE 2, PE 3.

6. Although Respondent had not regularly represented Mr. Williams, she failed to communicate to him, in writing, the basis or rate of the fee before or within a reasonable time after commencing the representation, and received fee payments totaling \$2,500. PE 1, PE 2, PE 3; N.T. 164, 170 -171.

7. Respondent failed to take reasonable steps to have the detainer lifted. PE 1, PE 2, PE 3.

8. Respondent failed to communicate with her client and his family upon requests for updates on the status of the representation. PE 1, PE 2, PE 3.

9. Although Respondent indicated by email to her client's family dated April 27, 2015, that she would return the unearned fee, Respondent failed to return the unearned \$2,500 retainer fee she received for her representation of Mr. Williams. PE 1, PE 2, PE 3.

10. By letter dated September 14, 2018, the Pennsylvania Lawyers Fund for Client Security notified Respondent that it had approved Mr. Williams' claim for \$2,500. PE 20; N.T. 69.

11. Respondent admitted at the disciplinary hearing that she does not dispute Petitioner's charges in the Williams matter. N.T. 171-172.

Rosa Vasquez and Antonio Escobar Matter

12. In 2013, Rosa Vazquez and Antonio Escobar retained Respondent to defend them in a lawsuit brought by Alan Fisagar and Carolyn Fisagar, captioned

Fisagar v. Vazquez et al., Philadelphia Court of Common Pleas, December Term, 2012, No. 03412. PE 1, PE 2, PE 4.

13. Respondent entered into a fee agreement with Ms. Vazquez and Mr. Escobar for her representation, which consisted of a “nonrefundable” \$5,000 retainer to be drawn upon at an hourly rate of \$250. PE 2, PE 4, PE 5.

14. Ms. Vazquez and Mr. Escobar paid Respondent a total of \$5,000 for the representation. PE 2, PE 5.

15. Respondent provided her clients with receipts for payments made on April 11, 2013 (\$1,000); July 16, 2013 (\$1,000); and March 25, 2014 (\$1,500). Respondent could not provide proof of having given her clients a receipt for payment they made on January 4, 2013. PE 2, PE 5.

16. Respondent entered her appearance on behalf of her clients on April 9, 2013. PE 2, PE 6.

17. Ms. Vazquez and Mr. Escobar had valid defenses to the claims raised against them in the lawsuit. PE 1, PE 2, PE 6; N.T. 73 -76.

18. Respondent failed to file an answer and new matter raising the expiration of the applicable statute of limitations, failed to file a motion for summary judgment seeking the dismissal of all claims against her clients in the lawsuit, and failed to conduct discovery on behalf of her clients. PE 1, PE 2, PE 6; N.T. 194 -197.

19. Respondent failed to attend two court-scheduled mandatory settlement conferences on behalf of her clients. PE 1, PE 2, PE 6, PE 7.

20. After missing the two settlement conferences, Respondent appeared on behalf of her clients at a settlement conference on April 17, 2014. PE 1, PE 2, PE 6, PE 7.

21. On January 8, 2015, the court held a show-cause hearing to determine whether sanction should be imposed against Respondent for her failure to appear at the two settlement conferences. During the hearing, Respondent made false representations to the Honorable Jacqueline Allen of the Court of Common Pleas of Philadelphia that her file had been stolen by Guy R. Sciolla, Esquire, a lawyer with offices in the same building as Respondent. PE 1, PE 2, PE 7, PE 8; N.T. 133 -138, 141-142.

22. Judge Allen did not sanction Respondent as a result of the show-cause hearing. PE 7.

23. Respondent abandoned her representation of her clients, requiring them to retain new counsel to defend them in the lawsuit. PE 1, PE 2; N.T. 72-81.

24. Respondent did not invoice her clients for any work she claimed to have performed on their behalf and did not earn the \$5,000 fee for which she had been paid in advance. PE 1, PE 2; N.T. 72-81; 181-197.

25. Respondent admitted at the hearing that she does not dispute Petitioner's charges in the Vazquez/Escobar matter. N.T. 191-192.

Leanne Litwin, Esquire Matter

26. On May 31, 2011, Matthew John Smith retained Respondent to represent him in a personal injury matter against "The Roxxy," a Philadelphia nightclub. PE 1, PE 2.

27. Respondent filed a lawsuit on Mr. Smith's behalf in 2013. N.T. 89-90.

28. In March 2014, Respondent determined she did not have the expertise or the resources to properly prosecute the Smith case and sought the assistance of Leanne Litwin, Esquire as co-counsel on the case. Respondent and Ms.

Litwin agreed to serve as co-counsel for Mr. Smith and split any fee evenly. PE 1, PE 2; N.T. 87-91.

29. As co-counsel, Ms. Litwin agreed to handle hiring, managing and financing the experts required for the lawsuit. N.T. 91-93.

30. On March 30, 2015, Respondent and Ms. Litwin won a verdict on behalf of Mr. Smith. PE 1, PE 2; N.T. 100.

31. After post-trial motions were filed by the defendant, Respondent informed Ms. Litwin that she could no longer assist on the case due to personal issues. PE 1, PE 2; N.T. 101-103.

32. There is a dispute between Respondent and Ms. Litwin as to the division of labor in their joint representation and the extent to which the work performed was shared.

33. There is no evidence that the client was harmed or in any way prejudiced as a result of this dispute.

Javier Soto/Guy Sciolla, Esquire Matter

34. On May 16, 2012, Respondent entered into a written fee agreement with Javier Soto to represent him in a claim for breach of contract against his insurer, HUB International. PE 1, PE 2, PE 9.

35. Mr. Soto paid a retainer of \$5,000 to Respondent in two installments of \$2,500 by checks dated May 16, 2012 and June 1, 2012. PE 1, PE 2, PE 9, PE 10.

36. Respondent agreed to draw upon the retainer at the rate of \$200 per hour as she performed work. PE 1, PE 2, PE 9, PE 10.

37. Respondent failed to deposit the advance into a trust account to be drawn upon as earned. PE 1, PE 2, PE 10.

38. Respondent failed to perform work on behalf of Mr. Soto sufficient to earn the \$5,000 fee. N.T. 207-212.

39. Respondent failed to return the unearned fee. N.T. 207-212.

40. Respondent admitted at the hearing that she does not dispute Petitioner's charges in the Javier Soto matter. N.T. 207-212.

Anthony Fierro Matter

41. In September 2015, Respondent represented Anthony Fierro at his preliminary hearing and arraignment for charges filed against Mr. Fierro in Centre County. PE 1, PE 2.

42. In September 2015, Respondent consulted with Mr. Fierro about representing Mr. Fierro for post-arraignment and trial. PE 1, PE 2, PE 12.

43. On January 21, 2016, Respondent entered into a written fee agreement with Mr. Fierro for the "non-refundable" flat fee of \$5,000 to defend him in his criminal case. PE 1, PE 2.

44. Mr. Fierro's criminal trial was scheduled for April 4, 2016. Respondent failed to instruct her client to appear for the trial. Respondent failed to obtain a continuance of the April 4, 2016 trial. PE 1, PE 2.

45. Neither Mr. Fierro nor Respondent appeared for the criminal trial on April 4, 2016. PE 1, PE 2; N.T. 220.

46. After the April 4, 2016 criminal trial date, Respondent attempted to seek a continuance of the trial date on April 5, 2016 and April 11, 2016, despite the fact that the criminal trial date had already passed. PE 12, PE 13, PE 14; N.T. 215 -218.

47. On or about April 18, 2016, a bench warrant was issued for Mr. Fierro's arrest for his failure to appear for his criminal trial on April 4, 2016. PE 12.

48. Respondent failed to refund the \$5,000 fee she was paid to represent Mr. Fierro, but which she did not earn. PE 1, PE 2.

Additional Findings

49. Respondent credibly testified at the disciplinary hearing.

50. During the time frame of the misconduct, Respondent endured personal turmoil that impacted her professional activities. N.T. 167-169.

51. Respondent testified that she realizes that the better course of action would have been to take a leave of absence from work in order to address her personal situation. N.T. 220-221.

52. Respondent expressed genuine remorse and embarrassment for her misconduct. N.T. 221-222, 244.

53. Respondent testified that she intends to make restitution to her clients; however, there is no evidence that she has done so. N.T. 162, 211.

54. At the end of the hearing, the Committee left the record open to permit Respondent to supplement the record with documentation discussed during the hearing. Respondent failed to submit any documentation to the Committee. N.T. 236, 239, 251.

III. CONCLUSIONS OF LAW

By her conduct as set forth above in the matters of *Williams, Vazquez/Escobar, Soto/Sciolla*, and *Fierro*, Respondent violated the following rules:

1. RPC 1.1 – A lawyer shall provide competent representation to a client;
2. RPC 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client;
3. RPC 1.4(a)(3) – A lawyer shall keep the client reasonably informed about the status of the matter;
4. RPC 1.4(a)(4) – A lawyer shall promptly comply with reasonable requests for information;
5. RPC 1.5(b) – When the lawyer has not regularly represented the 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 1.15(b) – A lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded;
7. RPC 1.15(e) – A lawyer shall promptly deliver to the client or third person any property, including but not limited to Rule 1.15 Funds, that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding the property;
8. RPC 1.15(i) – A lawyer shall deposit into a Trust Account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees

are earned or expenses incurred, unless the client gives informed consent, confirmed in writing, to the handling of fees and expenses in a different manner;

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

10. RPC 3.3(a)(1) – A lawyer shall not knowingly make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

11. RPC 8.4(c) – It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation; and

12. RPC 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

We conclude that Respondent did not commit ethical misconduct in the *Litwin* matter.

IV. DISCUSSION

Petitioner has charged Respondent with ethical misconduct in five separate matters. Petitioner bears the burden of proving ethical misconduct by a preponderance of clear and satisfactory evidence. *Office of Disciplinary Counsel v. John T. Grigsby, III*, 425 A.2d 730, 732 (Pa. 1981). Upon review, the Board concludes that the evidence of record demonstrates that Respondent violated RPC 1.1, 1.3, 1.4(a)(3), 1.4(a)(4), 1.5(b), 1.15(b), 1.15(e), 1.15(i), 1.16(d), 3.3(a)(1), 8.4(c) and 8.4(d) in the *Williams, Vazquez/Escobar, Soto/Sciolla* and *Fierro* matters. As to the *Litwin* matter, we conclude that Petitioner did not meet its burden. The facts are in the nature of a dispute between co-counsel, with no harm caused to the client.

The evidence demonstrates that Respondent engaged in a pattern of repeated professional misconduct spanning approximately four years in four separate client matters. Respondent not only neglected her clients, she mishandled the fees these clients advanced to her for her work. In each matter, Respondent either failed to deposit the advance retainer fees into a trust account or converted the fees for her own use, without performing the requisite work. There is no evidence of record that Respondent has made restitution of the unearned fees to her clients.

Although Respondent filed an Answer to Petition for Discipline and appeared and testified at the disciplinary hearing, she did not appear at the prehearing conference, did not supplement the record with additional documentation as instructed by the Committee at the close of the hearing, and did not file a brief to the Committee. Respondent's participation in this matter has been inconsistent and evidences a lack of recognition of the seriousness of this matter.

At the hearing, Respondent appeared genuinely remorseful and admitted to the majority of the misconduct alleged in the Petition for Discipline and acknowledged her responsibility for the harm caused to her clients. Respondent has been a licensed attorney in the Commonwealth since 1992 and has no prior professional discipline. Her explanation for her misconduct is that she endured a difficult time in her personal life, which affected her professional performance. Respondent belatedly realized that she should have taken a leave of absence from her employment to address her personal problems, instead of attempting to manage these difficulties at the same time. Respondent testified that she intends to make restitution to her clients, but has not yet done so.

Having concluded that Respondent engaged in professional misconduct, this matter is ripe for the determination of discipline. It is well-established that in evaluating professional discipline, each case must be decided individually on its own unique facts and circumstances. ***Office of Disciplinary Counsel v. Robert Lucarini***, 427 A.2d 186 (Pa. 1983). In order to “strive for consistency so that similar misconduct is not punished in radically different ways,” ***Office of Disciplinary Counsel v Anthony Cappuccio***, 48 A.3d 1231, 1238 (Pa. 2012) (quoting ***Lucarini***, 473 A.2d at 190), the Board is guided by precedent for the purpose of measuring “the respondent’s conduct against other similar transgressions

The Committee has recommended a suspension for three years, which is the same recommendation made by Petitioner. We conclude that a suspension is necessary to address Respondent’s misconduct; however, we further conclude that the decisional law supports a less severe term of suspension.

The goals of the attorney disciplinary system include protecting the public from unfit attorneys, maintaining the integrity of the bar, and upholding respect for the legal system. ***Office of Disciplinary Counsel v. John Keller***, 506 A.2d 872, 875 (Pa. 1986). To protect the public, the profession and the courts, attorneys who have engaged in multiple instances of neglect and failure to communicate with their clients have received suspensions of one year and one day, which required the attorneys to undergo a reinstatement hearing to determine fitness to resume the practice of law. See ***Office of Disciplinary Counsel v. Douglas Andrew Grannan***, 197 DB 2016 (D. Bd. Rpt. 4/3/2019) (S. Ct. Order 7/9/2019) (suspended for one year and one day for misconduct in seven separate client matters including lack of competence, lack of diligence, failure to communicate, failure to return client files, conduct prejudicial to the administration of justice; no prior discipline); ***Office of Disciplinary Counsel v. Michael Elias Stosic***, No. 65 DB 2015 (D. Bd. Rpt. 6/23/2016) (S. Ct. Order 9/14/2016) (suspended for one year and one day for neglect of five client matters; held in criminal contempt on three occasions for failing to appear for court dates; no history of discipline); ***Office of Disciplinary Counsel v. Sterling Artist***, No. 153 DB 2005 (D. Bd. Rpt. 4/27/2007) (S. Ct. Order 7/18/2007) (suspended for one year and one day for neglecting three client matters; admitted wrongdoing; no record of discipline); ***Office of Disciplinary Counsel v. Howard Goldman***, No. 157 DB 2003 (D. Bd. Rpt. 5/20/2005) (S. Ct. Order 8/30/2005) (suspended for one year and one day for neglecting four client matters; admitted misconduct; no record of discipline). See also, ***Office of Disciplinary Counsel v. Kevin Mark Wray***, No. 19 DB 2017 (S. Ct. Order 7/6/2017) (suspended for one year and one day on consent for neglect, failure to communicate and retention of unearned fees in six matters; criminal contempt in one client matter); ***Office of Disciplinary Counsel v. Ann-Marie***

MacDonald Pahides, No. 171 DB 2009 (S. Ct. Order 12/21/2010) (suspended for one year and one day on consent for lack of competence, neglect, lack of communication and failure to return unearned fees and documents in five client matters; prior Informal Admonition).

The totality of the facts and circumstances of this record prove that Respondent is not fit to practice law. The established precedent and the goals of the disciplinary system warrant Respondent's suspension from practice for one year and one day.

Vi. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Holly C. Dobrosky, be Suspended for one year and one day from the practice of law in this Commonwealth.

It is further recommended that the expenses incurred in the investigation and prosecution of this matter are to be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: S/John P. Goodrich
John P. Goodrich, Member

Date: September 12, 2019