

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

DOCKET NO. 12-0228

**LAWYER DISCIPLINARY
BOARD**

Complainant

No. 12-0228

V.)

DANIEL R. GRINDO

Respondent

Respondent's Brief

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STATEMENT OF THE CASE

A. NATURE OF PROCEEDINGS

Respondent concurs with the Board's description of the proceedings.

B. STIPULATED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondent has reviewed and concurs with the Stipulated Findings of Fact and Conclusions of Law as enumerated in the Board's Brief. Respondent would refer to them as if restated herein.

SUMMARY OF ARGUMENT

That the Respondent readily admits the deficiencies in his performance related to the relevant cases. That the Respondent asserts that these deficiencies are not representative of his entire practice and that he has taken sufficient remedial steps to avoid any such problems in the future.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

The Court has already set the matter for Oral Argument.

ARGUMENT

A. STANDARD OF PROOF

The Respondent agrees with the Board's interpretation that a *de novo* standard of review applies in this case. The respondent further asserts that he is in no way denying or disputing any of the findings of the Board as enumerated in the Stipulated Findings of Fact and Conclusions of Law. Further, the Respondent concurs with the Board's recommendations but fully recognizes this Court's role as the final arbiter of formal legal

ethic charges and that it must make the ultimate decision regarding what sanctions should be imposed. Syl. Pt. 3, Committee on Legal Ethics v. Blair, 174 W.Va. 494, 327 S.E.2d 671 (1984); Syl. Pt. 7, Committee on Legal Ethics v. Karl, 192 W.Va. 23, 449 S.E.2d 277 (1994).

B. RULE 3.16 of the Rules of Lawyer Disciplinary Procedure

The Respondent agrees with the Board's interpretation of Rule 3.16 and its application to the facts of this case. Respondent does not, and never has denied any of the circumstances of this case and that he failed in his duties and that some form of sanction is warranted.

C. SANCTIONS

The Respondent again acknowledges the shortcomings he exhibited in the relevant cases and would again note his embarrassment related to those shortcomings. Respondent agrees with the relevant case law as set forth by the Board in its Brief. He further acknowledges that there have been mitigating and aggravating factors relating to this case. As the respondent has previously testified and submitted in his responses, he was experiencing a combination of personal troubles and a significant increase in the case load of his practice. While this is meant in no way to be an excuse, the Respondent offers this as an explanation as to why the violations occurred. Respondent would assert that for a significant period of time, he was simply stretched too thin to accomplish everything that he needed to and keep up with his significant Court schedule and related travel time. Respondent has taken all of these things to heart and was extremely receptive to the recommendation of a process audit which was performed by Affinity Consulting Group. Respondent asserts that he was unaware of any such service and once they were engaged, Respondent learned a great deal about how his processes could be improved. He would also note the considerable expense incurred for those services.

To that end, Respondent has implemented many of the recommendations of Affinity. He would assert that he has upgraded his computer system to a cloud-based system which allows him to access the system from remote locations, thereby eliminating a

considerable amount of down time related to waiting in court. The utilization of a computerized and self-updating calendar system has significantly cut down on scheduling conflicts and double-booking/over-booking. The Respondent has also implemented a system wherein tasks, messages, and other notices are centrally housed so that all counsel and staff can monitor and ensure the timely completion of projects. This process has been coupled with a tickler/calendaring procedure which endeavors to make sure that deadlines are not missed.

Perhaps the most significant remedial step has been that the Respondent has added additional staff to his office, being an additional attorney and two additional staff persons. Respondent is also looking into expansion into an additional office with the hope of hiring another attorney to cover the continued increase in work volume presently being experienced by this office. The Respondent would note that he has gone back to Affinity for various questions regarding systems and processes during the pendency of this case and is scheduled for additional follow up on April 9 to review the process and equipment modifications. The respondent also did take additional CLE regarding office management for the 2012 reporting period and intends to take additional CLE regarding office management in the current reporting period. Also, respondent has ongoing discussions with his technical support and practice management software provider as well as office meetings to discuss how to further refine processes.

In a further effort to relieve the time constraints experienced by the Respondent, he has delegated many of the office management and technical support duties to internal staff as well as to external contractors.

The Respondent strongly desires to convey to the Court that the deficiencies exhibited in these cases is not representative of the quality of work produced by the Respondent. The Respondent has a strong track record of successful outcomes of cases and has been successful in several appeals before this Court. He presently has a heavy case load with numerous cases, both large and small, in various stages of litigation. The Respondent wants nothing more than to faithfully represent the interests of his clients and continue to grow his business.

The Respondent would acknowledge that his failures in these cases go to heart of what attorneys are to do for their clients. He acknowledges that the delays he caused,

although ultimately successful, in the Skidmore case, caused unnecessary stress and anxiety to his client. This is made all the more painful to the Respondent in that Mr. Skidmore is a close friend of the Respondent who the respondent let down.

As the respondent has previously stated in regards to the Dobbins matter, the respondent should have taken steps to either affirmatively prosecute the appeal, or taken some other step to withdraw the same. The respondent readily acknowledges that it was his inaction that has led to the present situation.

For these reasons, the Respondent believes that the circumstances set forth in Lawyer Disciplinary Board v. Bent E. Beveridge, 194 W.Va. at 162, 459 S.E.2d at 550 (1995) most closely follow the circumstances of the instant case. In that case the Court noted that the root causes of Mr. Beveridge's problems are "deficiencies in the organization and management of the Respondent's law practice" and decided that suspension was not necessary. This respondent readily admits that the problems experienced that gave rise to this complaint center solely around time management and organizational issues and not in any way to simple laziness or a lack of competency.

The Board cited numerous cases wherein the court dealt with similar concerns in different manners. Respondent argues that given the circumstances that Respondent was dealing with on a personal level along with unexpected level of growth of his practice coupled with the aggressive restructuring of office systems and procedures, that this case is not appropriate for suspension.

CONCLUSION

The Respondent concurs wholeheartedly with the recommendations and argument of the Board. The Respondent agrees with Syllabus Point 3 of Committee on Legal Ethics v. Walker, 178 W.Va. 150, 358 S.E.2d 234 (1987) indicating that the Court should not only punish but should impose discipline to deter further conduct and to restore public confidence. Respondent would in no way deny that his conduct warrants sanction but would argue the point made in Lawyer Disciplinary Board v. Brown, 223 W.Va. 554, 678 S.E. 2d 60 (2009) that it is important to "mix a little mercy with justice."

Respondent argues that suspension would not only be crippling to himself and his family on a personal level, but would destroy all of the progress made in the development of his practice and would seriously impact the lives of the four families supported by the practice and the harm that would be done to the numerous clients that are presently relying on the Respondent.

As a result of these proceedings, the Respondent has taken a serious look at the deficiencies in his procedures and how he approaches the practice of law. The Respondent has experienced a fundamental shift in that approach, thanks to the review of systems and realigning of priorities, undertaken as a result of this case. The respondent asserts that his practice is stronger now than ever and the level of service provided to clients is very high.

The Respondent wishes to apologize to this Court for the disrespect he showed it and the disservice he did these two clients and asks simply that the Court permit him to continue to provide his services as a professional member of this Bar.

Signed: _____



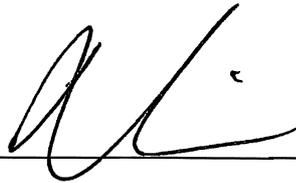
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Counsel of Record for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of March, 2013 true and accurate copies of the foregoing **Petitioner's Brief** were deposited in the U.S. Mail, contained in postage-paid envelope addressed to counsel for all other parties to this appeal as follows:

Rachael L. Fletcher Cipoletti
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City Center East, Suite 1200C
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Charleston, WV 25304

Signed: _____

A handwritten signature in black ink, appearing to read 'D. Grindo', written over a horizontal line.

Daniel R. Grindo (WV Bar # 9131)
Counsel of Record for Petitioner