

In re Sean Michael Liles
Attorney-Respondent

Commission No. 2020PR00022

Synopsis of Hearing Board Report and Recommendation
(July 2021)

The Administrator filed a two-count Complaint against Respondent. Count I charged that Respondent, in connection with representing an incarcerated client in a post-conviction matter, failed to take action in the matter and failed to communicate with his client in violation of Rules 1.3 and 1.4(a)(3). Count II charged that, in connection with the ARDC's investigation of the conduct in Count I, Respondent made false statements and provided false documents to the ARDC and thereby engaging in dishonest conduct in violation of Rule 8.4(c).

Respondent admitted the factual allegations and charges of misconduct.

The Hearing Board found all charges against Respondent were proved. After considering the misconduct as well as aggravating and mitigating factors, which included evidence regarding Respondent's alcohol addiction and his efforts to address his addiction, the Board recommended a suspension of one-year until further order of Court, with the suspension stayed after 6 months by a two-year period of probation with conditions.

**BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION**

FILED

July 21, 2021

ARDC CLERK

In the Matter of:

SEAN MICHAEL LILES,

Attorney-Respondent,

No. 6284975.

Commission No. 2020PR00022

REPORT AND RECOMMENDATION OF THE HEARING BOARD

SUMMARY OF THE REPORT

Count I of the Administrator's Complaint alleged that Respondent neglected a client's case and failed to communicate with the client. Count II alleged that he made false statements and provided false documents to the ARDC. We find the misconduct was proved and recommend that Respondent be suspended for one year until further order of Court, with the suspension stayed after six months by a two-year period of probation, with conditions.

INTRODUCTION

The hearing in this matter was held on April 7, 2021 by video conference before a panel consisting of Janaki Nair, Martha M. Ferdinand, and Claude A. Robinson. Rachel Miller represented the Administrator of the Attorney Registration and Disciplinary Commission ("ARDC"). Respondent appeared personally and was represented by Michael Costello.

PLEADINGS AND MISCONDUCT ALLEGED

On March 23, 2020, the Administrator filed a two-count Complaint against Respondent charging him with 1) failing to act with reasonable diligence in violation of Rule 1.3; 2) failing to keep the client reasonably informed about the status of a matter in violation of Rule 1.4(a)(3); and

3) conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c). Respondent admitted the factual allegations and charges of the Complaint.

EVIDENCE

The Administrator called Respondent as an adverse witness. Respondent testified on his own behalf, called one witness, and presented the evidence deposition transcripts of six additional witnesses. Administrator's exhibits 1 and 2 and Respondent's exhibits 1 through 9 were admitted into evidence without objection.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In attorney disciplinary proceedings the Administrator has the burden of proving the charges of misconduct by clear and convincing evidence. In re Winthrop, 219 Ill 2d 526, 542, 848 N.E.2d 961 (2006). Clear and convincing evidence constitutes a high level of certainty, which is greater than a preponderance of the evidence but less than proof beyond a reasonable doubt. People v. Williams, 143 Ill 2d 477, 577 N.E.2d 762 (1991).

I. In Count I, Respondent is charged with failing to diligently represent his client Raymond McBride in a post-conviction matter and failing to keep McBride reasonably informed about the status of his matter in violation of Rules 1.3 and 1.4(a)(3).

A. Summary

Based on Respondent's admissions and the evidence presented, we find Respondent engaged in the misconduct charged in Count I.

B. Admitted Facts and Evidence Considered

On December 13, 2016, Raymond McBride pled guilty to a murder charge brought by the Sangamon County State's Attorney and was sentenced to 20 years in prison, with credit for 590 days served. On January 3, 2017, McBride filed a post-conviction motion. (Ans. at par. 1-3).

Respondent, an attorney in private practice who received appointments to represent indigent criminal defendants, was appointed to represent McBride on matters related to the motion.

Pursuant to Illinois Supreme Court Rule 604(d), Respondent was required to file a certificate stating he consulted with his client, examined the trial court file and proceedings, and made any amendments to the motion necessary for adequate presentation. (Ans. at par. 3; Tr. 13-15).

Between January 2017 and July 2019, McBride periodically requested updates and information on the status of his case from Respondent. At no time between January 2017 and January 24, 2020, when Judge John Madonia discharged Respondent from the matter, did Respondent file an amended motion, provide updates or otherwise communicate with McBride regarding the merits of the matter, or file a Rule 604(d) certificate. Respondent admitted he neglected McBride's case and did not communicate effectively with him. Respondent further stated that he did not realize he had neglected McBride's case until the ARDC became involved. (Ans. at par. 4-6; Tr. 15, 39, 68).

C. Analysis and Findings

Respondent's admissions, as well as the evidence at hearing, clearly establish that he did not file an amended motion or other pleadings on behalf of his client, nor did he respond to his client's requests for information or communicate with his client regarding the status of the matter. We find, therefore, that Respondent failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3 and failed to keep his client reasonably informed about the status of a matter in violation of Rule 1.4(a)(3).

II. In Count II, Respondent is charged with providing false information to the ARDC in violation of Rule 8.4(c).

A. Summary

Based on Respondent's admissions and the evidence presented, we find Respondent engaged in the misconduct charged in Count II.

B. Admitted Facts and Evidence Considered

Respondent's written response to ARDC

On July 12, 2019, the Administrator docketed an investigation of Respondent after receiving Raymond McBride's request for investigation regarding the events in Count I. On July 23, 2019, Counsel for the Administrator sent Respondent a copy of McBride's request and asked for a response, to which Respondent did not reply. After a second request was made, Respondent provided a written response stating he had two telephone calls with McBride and had responded to correspondence from McBride. Respondent's statements were false, and he knew at the time he provided them that they were false. (Ans. at par. 8-13).

Respondent's submission of letters to ARDC

On February 14, 2020, Respondent appeared at the ARDC offices to make a sworn statement. Prior to commencing the statement, he provided Counsel for the Administrator with fifteen letters, bearing dates from January 2017 to June 2019, which he represented he had mailed to McBride. The initial letter advised McBride of Respondent's appointment, and the remaining letters purported to be responses to letters received from McBride. The latter letters referred to specific communications from McBride, provided answers to questions, requested information, and repeatedly stated Respondent's intention to set up a phone conference. Respondent testified at hearing that he mailed the initial letter but admitted he had not mailed the other letters and, in fact, created them after the date reflected in the letters for the purpose of submitting them to the ARDC. In his Answer to the Complaint, he admitted he had not mailed any of the letters to McBride. (Ans. at par. 14-15; Jt. Stip. at par. 1; Tr. 15-21; Adm. Ex. 1).

Respondent testified he prepared the fabricated letters a day or two prior to his sworn statement when he reviewed McBride's file and saw all the correspondence from McBride that he had not answered. He admitted he generated the letters to mislead the Administrator into thinking

he was communicating with McBride about his case, and he knew at the time he provided the letters that they were false. (Ans. at par. 16-17; Tr. 17-21, 39, 42).

Respondent's testimony during his sworn statement

During Respondent's sworn statement on February 14, 2020, he represented that he had mailed the letters to McBride and did not know why McBride was not getting the letters. Respondent's statements were false because he had not sent the letters and had generated them at a later date to mislead the Administrator. He knew at the time that his statements were false. (Ans. at par. 18-23; Tr. 25, 31-32).

C. Analysis and Findings

We find that Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) by knowingly making false statements to Counsel for the Administrator in a written communication and during his sworn statement, and by creating and presenting numerous false letters to Counsel for the Administrator.

EVIDENCE IN MITIGATION AND AGGRAVATION

Respondent testified in August 2019, after Raymond McBride contacted the ARDC, he had two cordial discussions with McBride and prepared a document regarding the issues in McBride's case. He believed McBride was pleased with the work product. Respondent was discharged from the case by the court. (Tr. 28-31, 43-44).

Respondent testified during the time of the events in the Complaint, he was in the process of an ugly divorce, he was mis-diagnosed with a life-shortening condition, and his father was diagnosed with cancer and subsequently died. Due to the stresses in his personal life, his use of alcohol, which had begun in high school, escalated in 2018 until he was drinking a six pack of beer and a pint of vodka every evening. He denied that work was a factor in his drinking, and felt it

kept him sane. In November 2018, he began working part-time at the public defender's office, and was doing well there. (Tr. 27-28, 61-64, 67-68).

With respect to the false letters provided to the ARDC, Respondent testified he prepared them while he was intoxicated and trying to protect himself. He acknowledged he was not intoxicated when he appeared for his sworn statement and gave false testimony, but he believes alcohol changes a person's perception even when the person is not intoxicated. Immediately after his sworn statement, he realized his behavior was "disgusting" and "wrong" and he advised his counsel the letters were false and had been created while he was drinking. (Tr. 25, 32, 39, 42, 70).

Respondent testified he continued drinking for about one month after his sworn statement before deciding to put his life in order. In March 2020 he attended a few AA meetings in person and then after the COVID shut-down, he attended meetings via video conferencing through the Lawyer's Assistance Program. He initially attended two video meetings per week, and then increased his attendance to three or four times per week. He also began an intensive outpatient rehab program with Gateway Foundation in March or early April 2020, and completed the program in late July or early August 2020. He testified the program included random urine tests, all of which he passed. In late April 2020 he began working with his AA sponsor, Kevin Johnson, and has spoken regularly with Johnson by phone. Respondent's sobriety date is March 12, 2020. (Tr. 22-23, 32, 56-57, 65-66; Resp. Ex. 1).

Respondent realizes his drinking damaged his marriage, reputation, career and health. He has learned he cannot drink any longer and that alcohol changes his perception, even when he is not intoxicated. In November 2020, at the suggestion of his attorney, he began keeping a log of his AA meetings, which reflects he attended 39 meetings from November 11, 2020 to March 7, 2021. He also has a good support system and does not keep liquor in his home. He has not

established a relationship with a health care professional, such as a substance abuse counselor. (Tr. 24-26, 33, 44, 60, 62, 70; Resp. Ex. 2).

Kevin Johnson, an attorney and long-time AA member, testified he has been Respondent's AA sponsor and guide for the program since April 2020. Johnson has spent many hours speaking to Respondent by telephone and video conferencing, sometimes for more than three hours at a time, and checks in with him at their AA meetings. Johnson reported that Respondent is active and involved in AA, has made a sincere effort to improve the way he handles his life, and has abstained from using alcohol for the past year. He feels positive about Respondent's success in the program. (Tr. 47-51).

On July 13, 2020 Dr. Ryan Finkenbine conducted a psychiatric examination of Respondent and submitted a written report of Respondent's personal history, alcohol use, recovery efforts, and explanations for his misconduct. According to the report, at the time Dr. Finkenbine interviewed Respondent, Respondent stated that he "got lost" in McBride's case and did not respond as he should have; that alcohol did not play a role in his handling of McBride's matter; that he created false documents while intoxicated and worried about his reputation; that he feels responsible for his actions; and that he believes a six-month suspension is fair. In Dr. Finkenbine's opinion, Respondent suffers from alcohol use disorder in early remission but if he maintains his abstinence, his disorder will not have a significant impact on his ability to practice law. Dr. Finkenbine believes Respondent should attend AA meetings at least three times per week and maintain his relationship with his sponsor. In addition, external monitoring with periodic reports to the ARDC by a health care professional will help motivate Respondent's continued abstinence. (Jt. Stip. at par. 2; Tr. 22; Adm. Ex. 2).

Respondent currently maintains a solo practice, receives appellate work on a regular basis from the Sangamon County Court, and has not received any complaints of being ineffective. As

a result of this matter, he no longer works for the public defender's office. Going forward, Respondent intends to be more diligent in recognizing that the practice of law is a privilege rather than a right, and that his focus must be on the client. (Tr. 43, 56, 70).

Respondent initially testified he has not changed his view, as stated to Dr. Finkenbine, that a six-month suspension is a fair sanction for his misconduct. He later testified that because he has no prior discipline, he was intoxicated when he prepared false letters, and he has taken remedial efforts to achieve abstinence, a three-month suspension would be appropriate. (Tr. 25-26, 44-45).

Respondent presented evidence depositions of four judges and two attorneys who attested to his character. Judge John Madonia, Chief Circuit Judge of the Seventh Judicial Circuit, testified Respondent appeared before him regularly between 2017 and 2020 and was truthful and honest on those occasions. Judge Madonia believes Respondent has a reputation for being upstanding, diligent and dedicated to his clients. Judge Rudolph Braud, an Associate Circuit Judge, testified Respondent has been straightforward when appearing before him, and he has never suspected Respondent of being untruthful. Judge Kenneth Diehl and Judge Karen Tharp testified they have never heard any negative comments regarding Respondent's truth or veracity. (Resp. Exs. 3-6).

Attorney Alex Rubin who has known Respondent since junior high school, and attorney Salena Young who worked closely with Respondent at the public defender's office, each testified that Respondent enjoys a good reputation for truthfulness, and neither has heard negative remarks about his honesty. Rubin has heard comments that Respondent needs to be a bit more organized and timely. (Resp. Exs. 7, 8).

Prior Discipline

The parties stipulated that Respondent has not been previously disciplined. (Tr. 72).

RECOMMENDATION

In determining the appropriate discipline, we are mindful that the purpose of these proceedings is not to punish, but to safeguard the public, maintain the integrity of the profession and protect the administration of justice from reproach. In re Edmonds, 2014 IL 117696, ¶ 90. While we strive for consistency and predictability, we recognize that each case is unique and must be decided on its own facts. In re Mulroe, 2011 IL 111378, ¶ 25.

In arriving at our recommendation, we consider those circumstances which may mitigate and/or aggravate the misconduct. In re Gorecki, 208 Ill 2d 350, 802 N.E.2d 1194 (2003). In mitigation, Respondent admitted his misconduct shortly after his sworn statement concluded, cooperated in the proceedings, and presented six character witnesses. In his sixteen years of practice, he has not been previously disciplined.

Respondent offered evidence of his alcohol use as a factor mitigating his preparation of false letters, claiming he was intoxicated at the time he wrote them. We give only moderate weight to this factor because even if alcohol played a part in Respondent's fabrication of documents, it does not excuse or explain his other dishonest conduct. To Respondent's credit, he has taken steps to address his alcohol addiction and, according to his account, has been sober since March 12, 2020. His completion of an outpatient program and commitment to AA, through contact with a sponsor and attending meetings, are commendable. We note that he has not yet established an ongoing relationship with a professional, such as a therapist or addiction counselor, which would further aid in his maintaining sobriety.

In aggravation, Respondent engaged in an extended pattern of misconduct by failing to pursue his client's case from 2017 to mid-2019 and then, rather than acknowledging his behavior when it was discovered, made false statements to the ARDC in August 2019 and February 2020. We reject Respondent's argument that his three-year course of misconduct can be viewed as one

continuous act; the cover-up, which itself occurred on several occasions, was calculated and distinct from the behavior that preceded it. We further consider the fact that Respondent engaged in the cover-up for his own personal benefit to conceal his lack of diligence in McBride's case, for which he had no excuse.

We also take into account any harm or risk of harm caused by Respondent's actions. See In re Saladino, 71 Ill. 2d 263, 276, 375 N.E.2d 102 (1978). The risk of harm to McBride from Respondent's lack of diligence is apparent, as any filing in McBride's case was delayed and he was deprived of effective counsel for a lengthy period of time while he remained incarcerated.

With respect to a sanction, the Administrator urged us to consider a suspension of one year until further of the Court, with the last six months stayed by a two-year period of probation, with conditions. Respondent suggested that a three-month suspension would be appropriate.

We believe the following cases cited by the Administrator in which one-year suspensions were imposed are most relevant to our determination. In In re Win, 2015PR000112, M.R. 28238 (Sept. 22, 2016), an Assistant Attorney General was suspended for one year, on consent, for making a false statement to a judge and then creating a false letter to support his claim, filing a false affidavit, and making false statements to the Administrator in writing and under oath. In In re Groezinger, 04 SH 143, M.R. 20606 (March 20, 2006) a one-year suspension was imposed where an attorney was sued for malpractice and then attempted to deny her involvement in the underlying case by making false statements to opposing counsel, in her response to a request to admit facts, and in testimony to the ARDC.

Respondent's citation to In re Watt, 97 CH 10, M.R. 13693 (May 30, 1997), where the attorney was suspended for 6 months, on consent, for committing a misdemeanor (one act of prostitution), and then lying to the Administrator under oath and offering one false document to impede the Administrator's investigation, is also instructive. We note, however, that the attorney's

efforts to conceal her misconduct were more limited in scope than Respondent's efforts in the present case. In other cases cited by Respondent, the attorneys engaged in an isolated act of misconduct from which they did not receive a personal benefit, and made no attempt to impede the ARDC. Those cases resulted in lesser sanctions. See In re Melcher, 2018PR00088 (May 28, 2019); In re Myers, 99 SH 88, M.R. 17766 (Jan. 28, 2002).

While the Win, Groezienger and Watt cases are similar to the instant case in misconduct, those cases did not involve any addiction or substance abuse problems that needed to be addressed. Because of the role alcohol played in Respondent's creation of false letters, and bearing in mind Dr. Finkenbine's opinions regarding Respondent maintaining his sobriety, we believe a suspension combined with a period of probation, during which Respondent will be subject to reporting and monitoring requirements, would best serve Respondent and the public. While Respondent's involvement in AA is a positive step, he has been in recovery only since March 2020 and has not established a relationship with a health care professional. A substantial period of probation will ensure that he continues with the process he has started.

If Respondent fails to comply with the recommended conditions of probation, we recommend that he not be allowed to practice until he proves his rehabilitation in a reinstatement hearing. In other cases where attorneys had commenced a program of recovery but had not been in sustained remission for a lengthy period of time, suspensions until further order of court, stayed in whole or in part by probation, have been imposed. See In re Naylor, 2009PR0062, M.R. 30500 (Nov. 13, 2020); In re Katsis, 05 CH 64, M.R. 21211 (Nov. 17, 2006).

Accordingly, we recommend that Respondent Sean Michael Liles be suspended from the practice of law for one (1) year and until further order of the Court, with the last six (6) months and the until further order of Court provision stayed by a two (2) year period of probation subject to the following conditions, which shall take effect upon the effective date of the Court's order:

- a. Respondent shall abstain from the usage of alcohol and any unprescribed controlled substances;
- b. Respondent shall begin a course of treatment with a qualified mental health professional acceptable to the Administrator and shall report to the health professional on a regular basis of not less than two times per month, with the Administrator advised of any change in attendance deemed warranted by such professional;
- c. Respondent shall comply with any and all treatment recommendations of the treatment provider approved by the Administrator, including the taking of medications as prescribed;
- d. Respondent shall provide the Administrator and approved treatment provider with an appropriate release, authorizing the treating professional to: (1) disclose to the Administrator, on at least a quarterly basis, information pertaining to the nature of Respondent's compliance with any treatment plan established with respect to Respondent's condition; (2) promptly report to the Administrator Respondent's failure to comply with any part of an established treatment plan; and (3) respond to any inquiries by the Administrator regarding Respondent's treatment and compliance with any established treatment plan;
- e. Respondent shall, as required by the Administrator, submit to random substance testing by a qualified mental health professional or facility approved by the Administrator, within eight (8) hours of receiving notice by the Administrator that he shall submit to the testing. The results of the tests shall be reported to the Administrator. Respondent shall pay any and all costs of such testing;
- f. Respondent shall attend meetings as scheduled by the Commission probation officer. Respondent shall submit quarterly written reports to the Commission probation officer concerning the status of his practice of law and the nature and extent of his compliance with the conditions of probation;
- g. Respondent shall continue his participation in Alcoholics Anonymous or other 12-step program by attending at least three (3) meetings per week. Respondent is to maintain a log of his attendance at the meetings and submit them to the Administrator with his quarterly reports;
- h. Respondent shall maintain a sponsor in the Alcoholics Anonymous or other 12-step program and shall provide the name, address and telephone number of the sponsor to the Administrator within fourteen (14) days of being placed on probation. Respondent shall request that the sponsor communicate with the Administrator in writing on a quarterly basis regarding Respondent's participation and progress in the 12-step program and report any lapses in sobriety or usage of unprescribed controlled substances to the Administrator within seventy-two (72) hours of his/her knowledge of that usage;

- i. Respondent shall report to the Administrator any lapse in his sobriety or usage of unprescribed controlled substances within seventy-two (72) hours of that usage;
- j. Respondent shall comply with the provisions of Article VII of the Illinois Supreme Court Rules on Admission and Discipline of Attorneys and the Illinois Rules of Professional Conduct and shall timely cooperate with the Administrator in providing information regarding any investigations relating to his conduct;
- k. Respondent shall reimburse the Commission for the costs of this proceeding as defined in Supreme Court Rule 773 and shall reimburse the Commission for any further costs incurred during the period of probation;
- l. At least thirty (30) days prior to the termination of the period of probation, Respondent shall reimburse the Client Protection Program Trust Fund for any Client Protection payments arising from his conduct;
- m. Respondent shall notify the Administrator within seven (7) days of any arrest or charge alleging his violation of any criminal or quasi-criminal statute or ordinance;
- n. Respondent shall notify the Administrator within fourteen (14) days of any change of address; and
- o. Probation shall be revoked if Respondent is found to have violated any of the terms of probation. The remaining portion of the one (1) year period of suspension shall commence from the date of the determination that any term of probation has been violated and shall continue until further order of the Court.

Respectfully submitted,

Janaki H. Nair
Martha M. Ferdinand
Claude A. Robinson

CERTIFICATION

I, Michelle M. Thome, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, hereby certifies that the foregoing is a true copy of the Report and Recommendation of the Hearing Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on July 21, 2021.

/s/ Michelle M. Thome

Michelle M. Thome, Clerk of the
Attorney Registration and Disciplinary
Commission of the Supreme Court of Illinois

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