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STATE OF WISCONSIN IN SUPREME COURT

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST BRIDGET E.
BOYLE, ATTORNEY AT LAW.

OFFICE OF LAWYER REGULATION,

CASE NUMBER: 11AP1767-D

COMPLAINANT-RESPONDENT;

vs.

BRIDGET E. BOYLE,

RESPONDENT-APPELLANT.

Appeal from the Referee Report and Recommendation
dated October 16, 2012,
Referee James J. Winiarski, Presiding

BRIEF OF COMPLAINANT-RESPONDENT
OFFICE OF LAWYER REGULATION

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STATEMENT OF ISSUES

1. Is a four-month suspension an appropriate sanction?

Answered by the Referee: Yes.

STATEMENT ON ORAL ARGUMENT

Complainant-Respondent Office of Lawyer Regulation (OLR) does not request oral argument. This disciplinary proceeding does not present novel or complex issues of law.

STATEMENT ON PUBLICATION

The decision will be published like all other disciplinary cases, excepting private reprimands and dismissals.

STATEMENT OF THE CASE

The Office of Lawyer Regulation (OLR) filed a disciplinary complaint against Bridget E. Boyle (Boyle) on August 2, 2011. The complaint alleged nine counts of Supreme Court rule violations in the Christopher Moses matter and four counts of Supreme Court rule violations in the Carnell Pearson/Barbara Terry matter.

A disciplinary hearing in the matter was held before appointed referee James Winiarski on June 13, 2012; June 26, 2012; and July 9, 2012. OLR requested that Counts 1 through 3 of the amended complaint be dismissed. There was no objection, and the counts were dismissed.

Following post-hearing briefing, Referee Winiarski issued his report and recommendation dated October 16, 2012. He determined that all other remaining counts as to Christopher Moses (Counts 4 through 9) had been proven by OLR. As to Carnell Pearson/Barbara Terry, he determined that three of the four counts (Counts 11 through 13) had been proven and Count 10 had not been proven by clear and convincing evidence.

In sum, three of the thirteen original counts had been voluntarily dismissed by OLR, one had been dismissed by the referee based on failure of proof, and the remaining nine were proven.

The referee recommended Boyle's license to practice law in Wisconsin be suspended for four months and that she be ordered to pay restitution in the Pearson matter in the sum of $2,500.00. Boyle appealed the referee's sanction recommendation.

STATEMENT OF RELEVANT FACTS[1]

[1]Boyle identifies one issue for appeal, i.e. whether the sanction recommended by the referee exceeded what was necessary and appropriate. However, her brief contains her version of certain pertinent facts which are contrary to those facts found by the referee. Boyle does not argue that the referee's findings of fact were clearly erroneous or that his conclusions of law should be

The referee's report contains detailed facts (R-App. 6-15) and conclusions of law (R-App. 15-18). Other facts pertinent to the sanction issue are set forth in the argument.

ARGUMENT

I. A FOUR-MONTH LICENSE SUSPENSION IS AN APPROPRIATE SANCTION

A. AGGRAVATING FACTORS SUPPORT THE REFEREE'S SANCTION

There are many aggravating factors in this matter. Boyle has been disciplined previously for similar conduct. *See Private Reprimand of Attorney Bridget Boyle*, 08-09. In the private reprimand matter, Attorney Boyle delayed the filing of a writ for eleven months and did not respond to the client's telephone calls, emails, and letters for more than twenty months after filing the writ. In *Disciplinary Proceedings Against Boyle*, 2012 WI 54, 341 Wis. 2d 92, 813 N.W.2d 215, Boyle's law license was suspended for sixty days for multiple counts of

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reviewed. Referee Winiarski's detailed report contains many credibility determinations in his findings of fact that contradict factual assertions made by Boyle in her appeal brief. Given the fact that this appeal deals with sanction only, OLR finds it unnecessary to comment on the referee's factual findings or conclusions of law.

misconduct in four matters, including repeated failures to communicate with clients and act diligently on their behalf as well as dishonest dealings with OLR. Boyle's conduct in the instant matter follows a similar pattern of delay, poor communication, and a stubborn refusal to respond to client requests for information.

Other aggravating factors include multiple counts of misconduct. In addition, Pearson/Terry paid Boyle $2,500.00 for no meaningful legal work, and Pearson could not obtain a return of his fees. OLR requested, and the referee recommended, that Boyle make restitution of that $2,500.00. In addition, Moses paid Boyle $20,000.00 for sloppy legal work. Moses received few letters from Boyle, learned about court rulings on his own, and was unable to obtain an accounting or his file back from Boyle. Although OLR is not requesting restitution for the reasons set forth in its previously filed restitution statement and the reasons set forth in the referee's report, Boyle's misconduct in the Moses matter was aggravated. Further each of these clients was

vulnerable, having been sentenced to years in the prison system.

Boyle expresses no remorse over her conduct. She does not take responsibility. She is quick to deflect blame to others. She unnecessarily attacks the credibility of Moses. She claims her failure to write Moses was based upon concerns over Rule 35 use of such letters by other prison inmates. She claims the communication system in the prison (telephone/mail) is faulty and unreliable. All experts called by the parties did not seem to have problems communicating with their federal prison clients.

B. CASE LAW SUPPORTS THE REFEREE'S SANCTION

The Court has not hesitated to suspend lawyers for unresponsive representation in criminal matters. In *Disciplinary Proceedings Against Jaconi,* 2003 WI 137, 267 Wis. 2d 1, 671 N.W.2d 1, the Court suspended attorney Jevon Jaconi for one year for his misconduct involving seven clients. Attorney Jaconi, on multiple occasions, failed to act diligently, regularly failed to return telephone calls or respond to inquiries, and, in one

instance, acted incompetently in advising his client. Other than an administrative suspension, Attorney Jaconi had no prior discipline.

In *Disciplinary Proceedings against Boyd*, 2010 WI 41, 324 Wis. 2d 688, 782 N.W.2d 718, the Court suspended Attorney Boyd for one year for her misconduct involving four criminal matters. Included among the findings of misconduct were failure to provide competent representation, failure to act diligently, failure to communicate, failure to consult with the client on the objectives of the representation, and charging an unreasonable fee. Attorney Boyd had a significant disciplinary history.

Attorney Charles Glynn was suspended by the Court for nine months in *Disciplinary Proceedings Against Glynn,* 2000 WI 117, 238 Wis. 2d 860, 618 N.W.2d 740 for his dilatory conduct in three criminal matters. Attorney Glynn also did not respond to client communications, did not keep the clients informed, and failed to cooperate with the investigation. In one instance, he failed to

file a notice of appeal, jeopardizing his client's appellate rights.

In *Disciplinary Proceedings Against Cavendish-Sosinski*, 2004 WI 30, 270 Wis. 2d 200, 676 N.W.2d 887, Attorney Cavendish-Sosinski received a nine-month suspension for misconduct involving nine client matters and twenty-five rule violations. All the matters involved criminal cases and, in most matters, Cavendish-Sosinski failed to act diligently, failed to communicate with her clients, and completely failed to cooperate with OLR's investigations. Attorney Cavendish-Sosinski suffered from depression, had recently been divorced, had lost her house in a fire, and signaled an intention to quit the practice of law and move to Louisiana. Importantly, Attorney Cavendish-Sosinski had no prior disciplinary history.

In *Disciplinary Proceedings Against DeGracie*, 2004 WI 44, 270 Wis. 2d 640, 678 N.W.2d 252, the Court suspended Attorney DeGracie for eight months for misconduct involving two clients. Attorney DeGracie, who had no prior disciplinary history, was appointed by the

State Public Defenders Office (SPD) to represent two clients and, in both matters, neglected to take any action on behalf of the clients, did not respond to numerous telephone calls, and failed to respond to OLR's investigative inquiries. In one case, Attorney DeGracie blocked telephone calls from his client. In the other matter, Attorney DeGracie lied about filing a motion. The referee noted in his recommendation that, although OLR recommended a six-month suspension, a more severe eight-month suspension was warranted "because the liberty of two of DeGracie's clients was at stake, and because the clients and the public had the right to expect DeGracie to be honest and to perform his duties...".

The Court suspended Attorney Joan Boyd for six months in the case of *Disciplinary Proceedings Against Boyd*, 2009 WI 59, 318 Wis. 2d 281, 767 N.W.2d 226. The Court found that Attorney Boyd had engaged in thirteen counts of misconduct arising from five separate client matters. In one case, Attorney Boyd acted incompetently by filing a motion based on speculation instead of fact and sought unauthorized relief in the case. Attorney

Boyd also failed to act with diligence, failed to communicate appropriately with her clients, failed to provide an accounting, and engaged in conduct involving dishonesty.

In *Disciplinary Proceedings Against Joset*, 2008 WI 41, 309 Wis. 2d 5, 748 N.W.2d 778, the Court suspended Attorney Jennelle Joset for six months for ten counts of misconduct involving three client matters referred to her by SPD. Attorney Joset failed to act diligently, failed to communicate with her clients, and failed to cooperate with the investigation. Attorney Joset had no disciplinary history, although she had been administratively suspended for failure to comply with CLE requirements.

Boyle relies upon *Disciplinary Proceedings Against Ann Bowe*, 2011 WI 48, 334 Wis. 2d 360, 800 N.W.2d 367. Contrary to her statement that the Court imposed a private reprimand, Bowe was actually publicly reprimanded. There is little similarity to the case now before the Court. Bowe's disciplinary history (an old private reprimand) was deemed not to be a factor by the

Court. Unlike Boyle, Bowe acknowledged she was completely responsible for her misconduct and presented as contrite, humble, and apologetic. Boyle presented excuses and was openly defiant about the suggestion she had violated Supreme Court Rules.

CONCLUSION

While no two disciplinary cases are exactly identical, our Court has endorsed the concept of progressive discipline, *Disciplinary Proceedings Against Converse*, 2006 WI 4, ¶ 37, 287 Wis. 2d 72, 707 N.W.2d 530; *Disciplinary Proceedings Against Ray*, 2004 WI 45, 270 Wis. 2d 651, 678 N.W.2d 246; *Disciplinary Proceedings Against Nussberger*, 2006 WI 111, 296 Wis. 2d 47, 57, 719 N.W.2d 501. Boyle's last disciplinary sanction was a sixty-day suspension for conduct similar to that involved here. Progressive discipline warrants a four-month suspension.

In the instant case, Boyle's many counts of misconduct include failure to act diligently on behalf of a client, failure to communicate with a client, failure to keep a client informed about the status of the case,

failure to explain fees and legal services, failure to surrender client files, and failure to refund unearned fees. In light of her disciplinary record and her ongoing misconduct, in order to protect the public and the legal system, Boyle should serve a four-month suspension as recommended by the referee, and she should be ordered to pay $24,500.00 restitution in the Pearson matter.

Respectfully submitted this 30th day of January, 2013.

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c), for a brief produced with a monospaced Courier font, 10 characters per inch. The length of this brief is 12 pages.

I hereby certify that the text of the electronic copy of this brief is identical to the text of the paper copy of the brief.

Dated this 30th day of January, 2013.

_____

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