STATE OF WISCONSIN
SUPREME COURT

CASE NO. 2011AP001767-D

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

OFFICE OF LAWYER REGULATION,

Complainant-Respondent,

vs.

BRIDGET E. BOYLE,

Respondent-Appellant,

APPEAL FROM REFEREE JAMES J. WINIARSKI'S FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION FOR DISCIPLINE DATED OCTOBER 16, 2012

REPLY BRIEF OF RESPONDENT-APPELLANT

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INTRODUCTION

Recognizing that the Court does not view favorably repetitious argument, Respondent-Appellant Boyle will submit this brief reply to the Brief of Complainant-Respondent.

ARGUMENT

I. THE SANCTION RECOMMENDED BY THE REFEREE EXCEEDS WHAT IS NECESSARY AND APPROPRIATE.

There a few aspects of OLR's reply brief that will be addressed specifically. First off on Page five, OLR indicates that "Moses paid Boyle $20,000.00 for sloppy legal work." (OLR Brief p. 5). There is absolutely no indication in the record that supports this statement. Matter of fact, the Referee in this matter indicated that the work was performed on the Moses matter. The Referee states "I am satisfied that she did spend substantial time handling Moses' file. Her time included investigation, file review, transcript review, a direct appeal to the 7th Circuit, and a 2255 motion and brief." (44:21). OLR indicates that there were very few letters that were sent to Moses. (OLR Brief p. 5). The fact that Moses may have received few letters does not justify a finding of

misconduct. There were briefs filed in both the Appellate Court and the District Court in that matter. OLR also states that each of these clients were "vulnerable" because they were sentenced to prison. (OLR Brief p. 6). Granted that might be a generalized statement, but there is no evidence to suggest that these clients were weak. Boyle was not responsible for putting them in prison. Either the clients created their own situation by their conduct that put them in prison or another lawyer was responsible for putting them in prison.

OLR cites a number of cases to support its position. These cases can all be distinguished. First off, In the Matter of Disciplinary Proceedings Against Jevon Jaconi, 2003 WI 137, 267 Wis.2d 1, 671 N.W.2d 1, in this matter Jaconi stipulated to 20 counts of misconduct with six different clients. It appears from the stipulation in that matter that one of the most egregious counts of misconduct involved a client which acquired a warrant for Jaconi's failure to follow proper and long standing criminal procedure by informing the client that they did not have to appear on a felony matter. This conduct resulted in the client having an additional charge of bail jumping. Id. at 6.

In Disciplinary Proceedings Against Cavendish-Sosinski, 2004 WI 30, 270 Wis.2d 200, 676 N.W.2d 887, this was a matter in which Cavendish-Sosinski defaulted on a 25 count disciplinary complaint. The decision in that matter is extremely lengthy in examples of Cavendish-Sosinski's misconduct with nine different clients. In matter, Cavendish-Sosinski received a 9 month suspension of her license for all of the matters that were set forth in the complaint that she defaulted on.

In Disciplinary Proceedings Against Boyd, 2009 WI 59, 318 Wis.2d 281, 767 N.W.2d 226, Boyd had at least 5 prior disciplines with the Supreme Court. Also in the this matter, it appears from the record in that case that there were two clients who lost their ability to proceed in their respective courts. One lost the ability to proceed in Federal Court due to Boyd not filing the court paperwork. Id. at 7. Another client lost the ability to proceed before the Wisconsin Court of Appeals. Id. at 18. In this matter, it was a default situation.

In Disciplinary Proceedings Against Joset, 2008 WI 41, 309 Wis.2d 5, 748 N.W.2d 778, this was another example of a default situation. Therefore, there was no testimony as to the conduct of Joset. As a result, it is difficult to

assess the actual facts of Joset's matter with the case at hand due to the fact that there was a default.

OLR has also cited Disciplinary Proceedings Against DeGracie, 2004 WI 44, 270 Wis.2d 640, 678 N.W.2d 252. In that matter it certainly indicates that DeGracie was punished for eight month even though he had no prior disciplinary history. However, in that matter, DeGracie never appeared for any hearing, he never appeared for any telephone scheduling conference and it appears he defaulted on the complaint. Id. at 1.

Finally in Disciplinary Proceedings Against Glynn, 2000 WI 117, 238 Wis.2d 860, 618 N.W.2d 740, he stipulated to a nine month consecutive suspension for three clients. This was a Disciplinary matter that had obviously no testimony or evidence because of the stipulation that was agreed upon.

In the previous brief that has been submitted, the undersigned has discussed the facts in Bowe and therefore, will not discuss them again in this brief.

OLR has correctly cited the disciplinary of each of the above-mentioned matters. However, all of them are situations of either defaults or stipulations. In this matter there were three different hearing dates in which testimony was offered regarding the specific facts of each

client. The undersigned is aware of the fact that this Honorable Court will review this matter in its entirety in order to ascertain whether or not the Referee's decision was correct and whether the penalty was correct.

Finally, OLR indicates that Boyle should pay $24,500.00 restitution in the Pearson matter. The undersigned can only assume that OLR has made an error in this requested amount since the evidence in the record is that Pearson paid $2,500.00. There is absolutely no evidence that Pearson paid $24,500.00 to Boyle.

Having stated that in Disciplinary Proceedings Against Boyd, 2009 WI 59, 318 WIs.2d 281, 767 N.W.2d 226, there is a discussion as to whether or not a client in that matter was entitled to restitution. In Boyd, it discusses that the Lawyers' Fund for Client Protection provides some guidance as to what constitutes a "reimbursable loss." It states that if the loss was caused by "the dishonest conduct of an attorney." Boyd at 28, See SCR 12.045(7)(a)(1). Furthermore it states that client "discipline for professional misconduct, provides that restitution may be ordered when the client's money or property was 'misappropriated or misapplied." Id. at 28, See SCR 21.16(2m)(a)1. The Court stated in Boyd that even though the client paid "$1,800 for very substandard-indeed

incompetent-legal work. While G.W. may have grounds for a civil action against Attorney Boyd, it appears that the $1,800 fee does not meet the criteria the OLR uses to assess whether restitution was reasonable."

In the Pearson matter, Boyle produced evidence of work that was performed on that matter, specifically a draft motion. Boyle also indicated that she read the transcripts. In addition Boyle had a meeting with Barbara Terry and phone calls with both Terry and Pearson. As previously stated in her initial filing, Boyle was not responsible for the errors in Pearson's appeal. She was hired in an attempt to rectify the problems created by Pearson's former lawyer, Ann Bowe. OLR offers no evidence in its brief to suggest that the work was not performed.

Boyle submits that the Pearson matter is exactly why the concept of arbitration has been created and instituted. During the course of the hearing in this matter Barbara Terry's credibility was challenged and to rely solely upon her word would be amiss considering the evidence that was produced at the hearing. One specific example of the challenge to her credibility is that Terry indicates that she had no idea that Boyle was in trial. She basically indicates that she would not have hired Boyle if she knew she had an upcoming trial. (47:196, 207). However in the

voicemail played during the hearing, Terry stated that she knew that Boyle was in trial. (48:410).

The Pearson matter is not a matter in which Boyle had the case for a year and did not perform any work on it. She had the matter for a period of two weeks and shortly after that time she was terminated but Boyle submits that work was performed on the matter.

CONCLUSION

For all the reasons stated herein, Respondent-Appellant Boyle hereby restates the requested outcome set forth in her previous submission.

Dated this 19th day of February 2013.

Respectfully submitted,

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Certification

I certify that this brief conforms to the rules contained in Wis. Stat. Section 809.19(8)(b) and (c) Stats., for a brief produced with a monospaced font: 10 characters per inch; double spaced; 1.5 inch margin on left side and 1 inch margin on the other 3 sides. The length of this brief is 7 pages.

Dated: 02-19-13

/s/ Bridget E. Boyle

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CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of s. 809.19(12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated: 02-19-13

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