

IN THE SUPREME COURT OF IOWA

Supreme Court NO. 22-0376
GRIEVANCE COMMISSION NO. 920

IOWA SUPREME COURT ATTORNEY DISCIPLINARY BOARD,
Complainant-Appellee,

vs.

BONNIE J. HEGGEN,
Respondent-Appellant.

APPEAL FROM THE GRIEVANCE COMMISSION
OF THE SUPREME COURT OF IOWA

APPELLANT'S BRIEF

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STATEMENT OF THE ISSUES

I. Was the appropriate sanction imposed against Bonnie Heggen?

Iowa Supreme Court Atty Disc. Bd. v. Ricklefs, 844 N.W.2d 689 (Iowa 2014)

Iowa Supreme Court Atty. Disc. Bd. v. Sobel, 779 N.W.2d 782 (Iowa 2010)

Iowa Supreme Court Atty. Disc. Bd. v. Smith, 904 N.W.2d 154 (Iowa 2017)

ROUTING STATEMENT

As this is a matter regarding attorney discipline, it must be retained by the Iowa Supreme Court. Iowa Ct. R. 35.10.

STATEMENT OF THE CASE

This is an attorney ethics case involving the Respondent, Bonnie J. Heggen. The Iowa Supreme Court Attorney Disciplinary Board brought a complaint against Bonnie Heggen on March 3, 2021, alleging several violations of the Iowa Rules of Professional Conduct. (App. p. 4) A hearing was held before the 920th Division of the Grievance Commission on November 8 and 9, 2021. The Commission issued its Findings of Fact, Conclusions of Law, and Recommendation on February 25, 2022. (App. p. 26) The Findings found Bonnie Heggen violated the rules of professional conduct and recommended a six-month suspension as a sanction. Bonnie Heggen timely filed an appeal of the Commission's findings. (App. p. 40) The Iowa Supreme Court Attorney Disciplinary Board filed Cross-Appeal alleging the proposed sanction was insufficient. (App. p. 45)

STATEMENT OF FACTS

Bonnie Heggen (“Bonnie”) is a 67-year-old solo practitioner who practices education, family, civil rights, and disability law. She serves as an advocate for disabled children and their families. She has been serving the community as an attorney since she was admitted to the Iowa Bar in 2004. She has a passion for helping the underserved and those children with disabilities who need her professional expertise in the public school system. She is one of five in the state of Iowa that does this type of work. She first gained experience in this field when she worked at “Disability Rights Iowa” as a staff attorney. To summarize her experience there:

Diverse background representing persons with disabilities while staff attorney at Disability Rights IOWA, including but not limited to civil rights, employment litigation, education, substitute decision making and other disability rights ADA claims. Represented clients in cases including but not limited to wrongful death, personal injury and medical malpractice while in private practice as an associate.

A copy of Bonnie’s Resume and qualifications was introduced as Exhibit B, pages 1-3. (App. pp. 52-54).

Since 2012, Bonnie took the knowledge she gained from Disability Rights Iowa and started working as a solo practitioner. Her practice primarily consists of special education law, representing special education eligible students with disabilities and their families. Bonnie assists families in securing the resources to which their special education eligible students are entitled to under IDEA federal and state special education law. Families often need legal representation and guidance in navigating the public school system to be provided the educational planning, and implementation of that planning, to allow the student with disabilities to receive the special services necessary to enable them to learn.

In January 2020, Bonnie was retained by Joann and Robert Burgett Jr. as potential clients to provide assistance with obtaining the resources their son, Brevyn, was entitled to under law as a special education student in the Des Moines Public School District.

The Burgetts executed an Attorney Fee Contract which provided for a \$3,000.00 retainer and \$50.00 designated for expenses. Set out by that contract which provided inter alia that Bonnie represent Joann and Robert Burgett in connection with special education issues, was introduced as Exhibit A, pages 196-207. (App. p. 47). The contract provided that the client would pay a \$3,000.00 retainer at the time of retention and that the retainer would be

completely refunded when the case was successfully resolved. Bonnie explained at the hearing this is her practice so that the clients have a “skin in the game” with all the things that need to be done in resolving these types of cases. IDEA and Iowa Special Education law mandate that eligible students receive a free and appropriate public education (FAPE). Therefore, Bonnie structures her fee in this practice area that allows for the parents to obtain the accommodations, modifications and support to which their children are entitled to by law, such that the obstructions to learning are addressed, thus allowing the children access to the general curriculum. In Brevyn’s case this included, but was not limited to, a stand-up desk for use in the general classroom, and a one-on-one para-educator assigned to him during the entirety of each school day.

In May 2020, the matter was heard addressing a number of issues to maximize the resources from the school system for Brevyn’s best interests. Bonnie was successful in the mediation in getting everything that the Heggen’s were seeking for Brevyn. Bonnie was able to obtain a stand-up desk, one-on-one transportation, break times throughout the day. Mr. Burgett is quoted as saying “I thoroughly was pleased with what [Bonnie] had done. She went over and above, what she had actually done.” (App. p. 186). It was also

provided at the time of settlement that Bonnie would receive attorney fees from the Des Moines School District of \$6,767.00.

From the evidence, clearly it is undisputed that Bonnie did an outstanding job in obtaining the benefits entitled to the Burgetts and their son from the Des Moines Public School District through the negotiated mediation. She honored the Attorney Fee Contract in all respects. The \$3,000 retainer was returned to the Burgetts, and they were extremely satisfied with her representation with an outstanding result which only cost them \$50.00 in fees. (App. p. 184).

The crux of their complaint was there was an alleged delay in returning the retainer of \$3,000.00. The Burgett's retainer was returned in its entirety in August of 2020. There was no evidence presented by the Iowa Supreme Court Attorney Disciplinary Board showing that Bonnie did not provide exceptional representation for the Burgett family. There is also no evidence presented that, in any fashion, were the clients dissatisfied with her professional representation. The only question raised was a concern that the retainer was not refunded at once after the mediation, although the entire retainer was returned in August 2020.

It is undisputed that the entirety of the \$3,000 retainer was returned to the Burgetts, the Burgetts paid nothing for Bonnie's outstanding

representation other than \$50.00 for expenses. The State called two different auditors who had reviewed the books and records of Bonnie. Neither auditor could dispute that Bonnie had a colorable claim to the \$6,750 paid by the Des Moines Public School District nor were they able to discern that Bonnie did not pay back the \$3,000 retainer to the Burgetts. Neither auditor could contradict the fact that the Burgetts paid nothing for Bonnie's representation other than \$50.00 for expenses.

The allegation in the Complaint was that Bonnie misappropriated money and/or stole money from the Burgetts. It was proven in testimony that the allegation was wholly unsupported by both auditors, Steven Bly and Gerald Murphy.

Remarkably, neither auditor had ever talked to the Burgetts and although the auditors noted other persons that Bonnie had represented in the past, none of them were contacted by the auditors, none of those previously represented by Bonnie had filed a complaint with the Board and there was no indication that they were anything other than satisfied with the professional representation Bonnie provided. No client besides the Burgetts testified nor filed a complaint against Bonnie alleging issues of conversion or payment. Alleged violations against prior clients were only discussed by auditors during testimony. All parties did not dispute that her bookkeeping practices were

subpar, that the Client Security responses filed with the Supreme Court were inaccurate and that Bonnie was out of compliance with Iowa Court Rule 45 regarding the proper maintenance of office records and current financial records. These allegations were never disputed in the testimony. Bonnie acknowledged it in correspondence directly with Tara van Brederode and honestly answered questions from the auditor as well as from counsel at the time of hearing.

Following the conclusion of testimony, the Commission recommended that Bonnie's license to practice law be suspended for a period of six months. Citing *Iowa Supreme Court. Atty Disc. Bd. v. Ricklefs*, to present similar facts, and thus to be persuasive as to the six-month sanction. 844 N.W.2d 689 (Iowa 2014). Surprisingly, the Commission found the actions of Bonnie to be more aggregating than the actions of Ricklefs, who took advantage of the protections of an attorney trust fund to shield his assets from creditors, which only warranted a three-month suspension. Additionally, the sanction handed down by the Commission was deemed insufficient by the Board. To further their crusade against Bonnie, the Board then filed a Cross-Appeal requesting that the license of Bonnie Heggen be revoked.

During testimony, Bonnie showed remorse and regret for her actions, "It's indefensible and I realize that." (App. p 244). In response to the Board's

Complaint, Bonnie has taken action to mitigate her infractions by hiring a bookkeeper to ensure her compliance with the Iowa Court Rules; Clearly, not following the record-keeping requirements of the Iowa Court Rules is inappropriate and some sanction may be imposed to address the issue and underscore the need for appropriate recordkeeping practices.

However, under the facts of this case, the Board was unable to meet their burden of proof that “theft” had occurred, nor was there any basis established rising to a level warranting revocation.

ARGUMENT

I. **A SIX-MONTH SUSPENSION DOES NOT ALIGN WITH THE FACTS OF THE CASE**

Error Preservation: This matter is fully preserved in the Stipulation, Board's Exhibits, Grievance Commission hearing transcript, and the Commission's Findings of Fact, Conclusions of Law and Ruling.

Scope and Standard of Appellate Review: The Court reviews attorney disciplinary proceedings de novo. *Iowa Supreme Court Atty. Disc. Bd. v. Parrish*, 801 N.W.2d 580, 583 (Iowa 2011). The board has the burden of proving an attorney's ethical misconduct by a convincing preponderance of the evidence. *Iowa Supreme Court Atty. Disc. Bd. v. Gailey*, 790 N.W.2d 801, 803 (Iowa 2010). The appropriate discipline in a particular case turns on the nature of the alleged violations, the need for deterrence, protection of the public, maintenance of the reputation of the profession as a whole, and the Respondent's fitness to continue in the practice of law. *Iowa Supreme Court Board of Prof'l Ethics & Conduct v. Freeman*, 603 N.W.2d 600, 603 (Iowa 1999). The commission's findings and recommendations are given respectful consideration, but [the Court] are not bound by them. *Iowa Supreme Court Atty. Disc. Bd. v. Isaacson*, 750 N.W.2d 104, 106 (Iowa 2008).

There is no standard discipline for a particular type of attorney misconduct. *Iowa Supreme Court Board of Prof'l Ethics & Conduct v. Hohenadel*, 634 N.W.2d 652, 655 (Iowa 2001). The form and extent of any sanction must be tailored to the specific facts and circumstances of each individual case. *Iowa Supreme Court Atty. Disc. Bd. v. Marks*, 759 N.W.2d 328, 332 (Iowa 2009). The Court is, however, concerned with maintaining some degree of consistency throughout disciplinary cases. *Iowa Supreme Court Atty. Disc. Bd. v. Clauss*, 711 N.W.2d 1, 4 (Iowa 2006).

ARGUMENT

A. The Commission's decision contradicts precedent and is unnecessarily harsh

This case is fundamentally a tale of two cities, by all accounts Bonnie Heggen is an outstanding attorney, dedicated to obtaining justice for her clients who are being pushed around by those who are unequivocally more powerful than them.

Conversely, Bonnie's practice needed some work. Since the tragic loss of her husband, Bonnie was left without a bookkeeper. Her husband was Bonnie's accountant and financial guide, a man who was gifted in mathematics, personal finance, and statistics. In the wake of her loss, Bonnie was left to navigate the bookkeeping role on her own. A dual responsibility that Bonnie now realizes she cannot do alone. While the procedural arm of

her practice may have been in disarray, not a single client was left without their just compensation. Bonnie takes full responsibility for the errors in her firm's finances. Bonnie has a total appreciation for her misstep, having ensured complete compliance with the Iowa Court Rules. Bonnie now employs a well-respected bookkeeper to ensure that mismanagement of her trust and billing practices never reoccurs. Bonnie has spared no expense to rectify her practice, enabling her to continue practicing law in the State of Iowa to bring justice and equal access for all citizens of Iowa.

The Commission imposed a six-month suspension on Bonnie Heggen, an aggressive punishment with the goal of making an example of Bonnie. The Commission found the facts of Bonnie's case to be similar to *Iowa Supreme Court Atty. Disc. Bd. v. Ricklefs*, 844 N.W.2d 689 (Iowa 2014). In *Ricklefs*, the court placed a three-month suspension on an attorney who failed to maintain a check register or client ledgers, did not regularly perform reconciliation, did not retain bank statements, commingled funds, made knowingly false statements on the questionnaire, and failed to comply with the trust account rules even after being instructed to do so in a prior audit. *Id.* Ricklefs used the trust account as a conduit for personal funds to avoid creditor claims against his personal assets. *Id.*

Additionally, Ricklefs had three prior incidents of disciplinary history. *Id.* Not only was Ricklefs taking advantage of the protections offered by the attorney trust account, Ricklefs also had multiple prior offenses; yet he only warranted a three-month suspension.

Bonnie, however, has no prior violations. No prior violations by an attorney are considered a mitigating factor when determining sanctions. *Iowa Supreme Court Atty. Disc. Bd. v. Conroy*, 845 N.W.2d 59, 64 (Iowa 2014). Therefore, the case against Scott Sobel offers the most similar precedent. *Iowa Supreme Court Atty. Disc. Bd. v. Sobel*. 779 N.W.2d 782 (Iowa 2010). Scott Sobel has a reputation for accepting cases from clients with limited financial means, recognized for his volunteer work in aiding refugees and had no prior disciplinary record. *Id* at 783. Sobel received a public reprimand for not rendering a proper written accounting for legal services. *Id* at 790. Like Sobel, Bonnie is a noted servant of the public who has no prior disciplinary record. Bonnie works tirelessly to ensure that the education system in Iowa is accessible to all children regardless of ethnicity, disability, location, or income status. Her calling is to help to bring justice and equal access to justice for all citizens of Iowa, with a focus on those with disabilities.

This is the first attorney disciplinary complaint filed against Bonnie regarding a trust account violation. In other cases, involving trust account

violations, [the Court] imposed only a public reprimand when the violations were isolated incidents. *Id.* at 789-90; *Iowa Supreme Court Atty. Disc. Bd. v. Denton*, 814 N.W.2d 548, 551 (Iowa 2012); *Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Apland*, 577 N.W.2d 50, 60 (Iowa 1998).

Bonnie's Rule 45 violation, while a regrettable mistake, did not affect her ability or talent to practice law. The goal of attorney sanctions is to protect the public, not to punish the lawyer. *Iowa Supreme Court Atty. Disc. Bd. v. Hier*, 937 N.W.2d 309 (Iowa 2020). Bonnie's Rule 45 violation had no effect on her ability to provide her clients with extraordinary professional service. The complaint filed against Bonnie was no in way about her service provided as an attorney. She consistently and undisputedly provided the Burgetts with exceptional legal service. (App. pp. 184, 186) Their complaint against Bonnie was purely based on a dispute over prompt reimbursement of the settlement Bonnie received on behalf of the Burgetts. (App. 184) Mr. Burgett goes as far as to say Bonnie went "over and above" in getting their child what he deserved from the Des Moines School District. (App. p. 186) By all accounts Bonnie is an excellent attorney, continually obtaining positive results for her clients. Every single client Bonnie has represented, including the Burgetts has been satisfied with her representation. (App. p. 232) Bonnie is not a villainous character with the intention of defrauding the public, of whom we need to

protect society from. She is a human who, as we all have, made an error outside the courtroom and, for that she is remorseful.

Bonnie receiving a six-month suspension cast her in the same light as the harshest, non-license revocation, sanctions handed down by the Commission. In the past year alone, an attorney received only a 90-day suspension for smoking methamphetamines on video with current clients. *Iowa Supreme Court Atty. Disc. Bd. v. Bryan J. Barker*, Grievance Case No. 928. The Court ordered a 90-day suspension for an attorney, with a history of discipline related to alcohol addiction, who was convicted of Operating While Intoxicated, Second Offense, and two counts of Child Endangerment. *Iowa Supreme Court Atty. Disc. Bd. v. Michelle Murphy Rivera*, Grievance Case No. 926. The Court precedent that looks to protect the public over punishing an attorney, would make Bonnie's punishment of a six-month suspension as a first-time offender does not align with Court precedent.

B. By suspending Bonnie, the rights of those in need are threatened

Bonnie is one of only five attorneys in the State of Iowa who dedicates her career to the advocacy for the rights of disabled children and their families involving school districts. The Court must consider mitigating and aggravating circumstances, including companion violation, repeated neglect, and the attorney's disciplinary history. Any extended suspension of Bonnie's

license for a violation that did not impede on her ability to practice law would disproportionately harm the rights of families in need. “The primary purpose for imposing sanctions is not to punish the lawyer but to protect the public.” *Hier*, 937 N.W.2d 309 (Iowa 2020). While Bonnie’s violation must be taken seriously and not overlooked, any violation that involves a suspension of her license to practice will not serve to protect the public, only harm the public. Bonnie is one of only five lawyers in Iowa that know anything about this field and excels at aiding families in crisis situations. Any day she is not able to practice law serves to directly harm families of disabled children across Iowa.

Additionally, there are no indications Bonnie’s clients, the Burgetts, suffered any harm from Bonnie’s Rule 45 violation. The Court consistently finds that a lack of client harm will be a mitigating circumstance. *Iowa Supreme Court Atty. Disc. Bd. v. Boles*, 808 N.W.2d 431 (Iowa 2012). While there was a slight delay with Bonnie returning the \$3,000.00 settlement to the Burgetts, the Burgetts were made whole by Bonnie. The Burgetts only had to pay \$50.00 for the exceptional legal service provided by Bonnie.

C. Bonnie immediately remedied the alleged issue of the complaint by hiring a well-respected bookkeeper and she recognized the gravity of the allegations

The Commission did not consider that Bonnie addressed the deficiencies in her practice after receiving the complaint from the Board and, was regretful for not addressing the deficiency in her practice. First, immediately after learning about the Complaint filed against her, Bonnie addressed the crux of the complaint and hired a bookkeeper to ensure her compliance in the future. Second, Bonnie took full responsibility for the allegations made against her and worked to fully comply with the investigation.

i. Bonnie addressed her bookkeeping deficiencies in response to the complaint

Immediately after learning about the Complaint filed against her, Bonnie hired a bookkeeper. In *Piazza*, the Court declined to impose suspension on an attorney who was able to demonstrate and convince the Court he would be in compliance with ethics rules in the future due to the fact he had since reformed his accounting practices. *Iowa Supreme Court Atty. Disc. Bd. v. Piazza*, 756 N.W.2d 690, 700 (Iowa 2008). Bonnie testified that she has hired a bookkeeper to make certain that her violation will never be repeated, and that the issues identified by auditors Steven Bly and Jerry Murphy don't and won't exist anymore. Tr. P. 199.

ii. *Bonnie showed considerable remorse for her actions during her testimony*

Bonnie takes full responsibility for her transgression, complying with the investigation and being forthcoming during her testimony. Full cooperation with the commission is considered by the Court to be a significant mitigating factor, “Additionally, significant mitigating factors are present here... [Smith cooperated fully with the auditor, the commission, and the Board.” *Iowa Supreme Court Atty. Disc. Bd. v. Smith*, 904 N.W.2d 154 (Iowa 2017). Bonnie complied with both auditors Steven Bly and Jerry Murphy. Mr. Murphy testified that Bonnie was cooperative in the audit, provided what was asked for, and did not make things difficult. Tr. P. 114. The Court also considers remorse and admission of wrongdoing as a mitigating factor, “Even though we expect cooperation with, and candid response to, commission auditors, remorse and cooperation generally mitigate our sanction.” *Iowa Supreme Court Atty. Disc. Bd. v. Eslick*, 859 N.W.2d 198 (Iowa 2015) (Where attorney appeared genuinely remorseful in all communications with the auditor, Board, and commission). On multiple occasions in her testimony, Bonnie was forthcoming and genuinely remorseful for her actions. In writing a letter in response to an audit by the Client Security Commission, Bonnie provided the Commission with a full confession “I was in dire financial straits

and used the Burgetts' retainer before it was entirely earned." Tr. P. 136. Later in response to the complaint that she received from the Attorney Disciplinary Board, Bonnie further displays her trustworthiness and responsibility, "I have received a copy of the complaint and unfortunately my former clients are correct as to my failure to properly and timely refund the \$3,000." Tr. P. 151. Lastly, Bonnie was genuine during her testimony, showing respect for her transgression and the gravity of her actions, "Transparency, you know... I never shirked talking to them about it, telling them what was going on. I wasn't trying to hide anything; I simply didn't do it the way I should have." Tr. P. 201.

CONCLUSION

Imposing a six-month suspension on Bonnie Heggen does not align with Court precedent, harms the rights of vulnerable populations, and is not warranted as Bonnie understood the severity of her infraction, seeking to immediately remedy the situation. The Court should not impose a suspension of any length on Bonnie Heggen. The appropriate sanction is a public reprimand as was imposed on *Smith*. 904 N.W.2d 154 (Iowa 2017).

APPELLANT'S STATEMENT OF DESIRE TO BE HEARD IN ORAL ARGUMENT

Appellant hereby states her desire to be heard in oral argument pursuant to Iowa Rule of Appellate Procedure 6.21(1).

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
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DAVID L. BROWN

_____7/8/2022_____

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