

IN THE SUPREME COURT OF IOWA

NO. 23-0549
GRIEVANCE COMMISSION NO. 944

IOWA SUPREME COURT ATTORNEY DISCIPLINARY BOARD,
Complainant-Appellee,

vs.

SCOTT A. SOBEL,
Respondent-Appellant.

APPEAL FROM THE GRIEVANCE COMMISSION
OF THE SUPREME COURT OF IOWA

APPELLANT'S BRIEF

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SCOTT A. SOBEL

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STATEMENT OF THE ISSUES

I. Was the appropriate sanction imposed against Scott Sobel?

Iowa Supreme Court Att’y. Disc. Bd. v. Lickiss, 786 N.W.2d 860 (Iowa 2010).

Iowa Supreme Ct. Att’y Disc. Bd. v. Taylor, 814 N.W.2d 259 (Iowa 2012).

Iowa Supreme Court Att’y. Disc. Bd. v. Boles, 808 N.W.2d 431 (Iowa 2012).

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 Respondent, Scott A. Sobel. The Iowa Supreme Court Attorney Disciplinary Board filed a Complaint against Scott Sobel on September 20, 2022, alleging several violations of the Iowa Rules of Professional Conduct. (App. p. 4). The parties subsequently filed a Partial Stipulation Pursuant to Iowa Court Rule 36.16 on December 20, 2022, that consisted of a stipulation of facts, a stipulation of exhibits, and a waiver of a formal hearing on this matter. (App. p. 14). In lieu of a formal hearing, both parties submitted post-stipulation briefs on January 31, 2023. (App. p. 23). On February 2, 2023 the Board filed an Objection and Motion to Strike Portions of Respondent's Post-Stipulation Brief. On February 13, 2023, Sobel filed a Response to the Objection. On April 3, 2023, The Grievance Commission of the Supreme Court of Iowa issued its Findings of Fact, Conclusions of Law, Ruling on Objection and Response, and Recommendation. (App. 38). The Findings found Scott Sobel violated the rules of professional conduct and recommended a thirty day suspension of Sobel's license to practice law. (App. 55). Scott Sobel timely filed an appeal of the Commission's findings. (App 57).

STATEMENT OF FACTS

The factual record for this matter is contained in the parties' Partial Stipulation and exhibits pursuant to Iowa Court Rule 36.16 filed with the Grievance Commission on December 20, 2022. Scott Sobel was admitted to practice law in Iowa on June 17, 1983. (App. p. 15). At the time of the conduct alleged, Sobel resided in Fayette County, Iowa. (App. p. 15).

MARIO GOODSON MATTER

On or about September 14, 2021, Sobel was appointed to represent Mario Goodson ("Goodson") regarding Goodson's resentencing in Black Hawk County Case No. FECR217122. (App. p. 15). Prior to Sobel's appointment, a sentencing hearing had been set for October 4, 2021. (App. p. 15). On October 3, 2021, Sobel attempted to read the Presentence Investigation Report ("PSI") to prepare for the October 4 sentencing hearing. (App. p. 15). Sobel learned that he was not able to access the PSI but did not alert anyone of these technical problems until the hearing had begun on October 4. (App. p. 15). Sobel did not communicate with Goodson in any manner until the hearing on October 4, although Sobel did communicate with Goodson's mother before the hearing. (App. p. 15). The Honorable Judge Fangman presided over the October 4 hearing. (App. 16). Judge Fangman was not aware Sobel had not yet reviewed the PSI with his client until the record was opened and the hearing was underway. (App. p. 16). Once Judge Fangman learned that Sobel had

not reviewed the PSI with his client, she ordered a brief break off the record to allow him to do so. (App p. 16). The hearing proceeded following this break, but Judge Fangman ordered a second break after Goodson indicated he did not have sufficient opportunity to review the PSI. (App. p. 16). After the second break, the hearing proceeded, and Goodson was sentenced to a term of incarceration not to exceed 25 years. (App p. 16).

SAMIR GOLUBOVIC & RAMIZA DERVISEDIC MATTER

On February 23, 2021, Sobel filed a Petition at Law alleging negligent operation of a motor vehicle on behalf of his clients, Plaintiffs, Samir Golubovic (“Golubovic”) and Ramiza Dervisedic (“Dervisedic”), in Black Hawk County Case No. LACV142074. (App. p. 16). Sobel failed to obtain service of process within 90 days. (App. p. 16). Because of the failure to obtain service, the court set a hearing for June 23, 2021. (App p. 16). The court noted in its order setting the hearing that “[f]ailure by the Plaintiff to appear and proceed at this hearing will result in immediate dismissal of the case at the Plaintiff’s expense.” (App. p. 16). Sobel failed to attend the June 23 hearing. (App. p. 16). After Sobel’s failure to attend, the court issued an order rescheduling the hearing for July 9, 2021. (App. p. 17). The court noted, “If the plaintiff again fails to appear for the scheduled hearing, the matter will be dismissed.” (App. p. 17). The defendant to the suit were served on June 28, 125 days after the Petition had been filed. (App. p. 17). The July 9 hearing was thus

canceled. (App. p. 17). On August 2, the defendants filed a pre-answer motion to dismiss. (App. p. 17). On August 16, the court granted the motion to dismiss. (App. p. 17). Sobel did not resist the motion before the court issued the August 16 order and did not seek a continuance or an extension to respond. (App. p. 17). On August 17, Sobel filed a Motion to Set Aside Dismissal and Set Matter for Hearing. (App. p. 17). The basis for Sobel's motion was that he had been "sick during the time to file [a] resistance" with "bronchitis and ear issues," difficulties with "diabetes management," and needing to use his "rescue inhaler on multiple occasions." (App. p. 17). Sobel also noted that he had been exposed to COVID-19 and had been in quarantine. (App. p. 17). Sobel also explained in his motion that he had not accomplished timely service because he had undergone "scopes and biopsies and dilation to determine difficulty swallowing and motility of the digestive tract," and he had a "systemic yeast infection" and "pneumonia contracted after the procedures." (App. p. 18). According to Sobel, "[f]rom start to finish this process took a little over 2.5 months for scheduling, covid pretesting, diagnosis and follow up." (App. p. 18). Sobel concluded the motion by stating, "I am out of energy as I complete this Motion with a spike of over 400 for the past couple hours." (App. p. 18). Other than to orally suggest to his clients that they seek other counsel, Sobel took no other steps to withdraw from representation in this matter during the period that

he was ill. (App. p. 18). On October 11, the court set aside the dismissal because of “good cause attributable to excusable neglect.” (App. p. 18).

ARGUMENT

Error Preservation: This matter is fully preserved in the Stipulation, Exhibits, and the Commission’s Findings of Fact, Conclusions of Law, Ruling on Objection and Response, and Recommendation.

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). Considering heavily the particular circumstances of each case. *Iowa Supreme Ct. Att'y Disc. Bd. v. Lynch*, 901 N.W.2d 501, 509 (Iowa 2017) (quoting *Iowa Supreme Ct. Att'y Disc. Bd. v. Willey*, 889 N.W.2d 647, 657 (Iowa 2017)). 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).

I. THE STIPULATED CONDUCT DOES NOT VIOLATE THE IOWA RULES OF PROFESSIONAL CONDUCT

The conduct of Scott Sobel does not result in a violation of any rules of professional conduct. In the Goodson, and Golubovic matters no party suffered any harm due to the conduct of Sobel. No sanction should be imposed on Sobel. The facts of the matter are what they are and do not warrant any discipline. Prior law issued by the Iowa Supreme Court is instructive regarding the present case. In cases involving neglect of a client matter, sanctions have ranged from a public reprimand to a six-month suspension. *Iowa Supreme Court Atty. Disc. Bd. v. Lickiss*, 786 N.W.2d 860, 868 (Iowa 2010). In Lickiss, neglect by an attorney is defined as “a consistent failure to perform those obligations that a lawyer has assumed, or a

conscious disregard for the responsibilities a lawyer owes to a client. *Id.* at 867. An attorney does not typically commit neglect by missing a single deadline. *Iowa Supreme Ct. Att’y Disc. Bd. v. Taylor*, 814 N.W.2d 259, 265 (Iowa 2012). Pursuant to the Golubovic complaint, the finding by the trial judge of excusable neglect by Sobel should negate any further action as the matter has already been adjudicated by a competent and respected Court. Regarding the conduct taken by Sobel in the Golubovic matter there is nothing for the Court to consider.

In the Goodson matter, Goodson suffered no harm as a result of Sobel’s conduct. The Court consistently finds that a lack of client harm will be a mitigating circumstance. *Iowa Supreme Court Att’y. Disc. Bd. v. Boles*, 808 N.W.2d 431 (Iowa 2012). Despite not being able to review the PSI before Goodson’s hearing, The Honorable Judge Fangman stopped the hearing twice to allow Sobel and then, Goodson a chance to receive adequate time to review the PSI. The hearing then proceeded with Sobel and Goodson familiar with the PSI. The hearing concluded with all parties having been reasonably informed of the matter at hand. “Ordinary negligence does not constitute neglect.” *Iowa Supreme Ct. Att’y Disc. Bd. v. Taylor*, 814 N.W.2d 259, 265 (Iowa 2012). Sobel was appointed to represent Goodson in a limited scope, for the matter of Goodson’s re-sentencing hearing. A violation of Iowa Rule of Professional Conduct 32:1.3 arises not from inadvertent acts or omissions or from missing a single deadline, but from consistently failing to perform

functions required of an attorney or from repeatedly missing deadlines. *Iowa Supreme Ct. Atty Disc. Bd. v. Bergmann*, 938 N.W.2d 16 (Iowa 2020); *Iowa Supreme Ct. Atty Disc. Bd. v. Conroy*, 845 N.W.2d 59, 64 (Iowa 2014). This was a single incident, which occurred over one case. Sobel did not miss any hearings, there was no hearing rescheduled, nor was Goodson prejudiced at all by Sobel's conduct.

II. MITIGATING AND AGGRAVATING FACTORS

Scott Sobel has devoted the entirety of his professional life to assisting persons throughout the State of Iowa in many charitable circumstances. Sobel's decades of experience doing public service are viewed as a significant mitigating factor in determining an appropriate sanction. *Iowa Supreme Court Atty. Disc. Bd. v. Boles*, 808 N.W.2d 431, 442 (Iowa 2012). Sobel has served as the President of the JACC Foundation, and President of the JAC Shalom House. (App. p. 198). In 1997, Sobel received the Governor's Volunteer Service Award for Refugee work. (App. p. 192). Sobel's volunteering service and charitable contributions are a strong mitigating factor when determining the appropriate sanction. Sobel has been dealing with significant health limitations. Physical health limitations are considered mitigating factors when determining attorney sanctions. *Iowa Supreme Court Atty. Disc. Bd. v. Cannon*, 821 N.W.2d 873, 881 (Iowa 2012). The basis for Sobel's Motion to Set Aside Dismissal and Set Matter for Hearing was that he had bronchitis, ear issues, diabetes management, and needing to use his rescue inhaler on multiple occasions.

(App. p. 145). Additionally, Sobel had undergone scopes and biopsies and dilation to determine difficulty swallowing and motility of the digestive tract, had a systemic yeast infection, and contracted pneumonia after the procedures. (App. pp. 145-146). Sobel has been fully cooperative with the investigation against him. Full cooperation with the Board's investigation is a mitigating factor. *Iowa Supreme Court Atty. Disc. Bd. v. Heggan*, 981 N.W.2d 701 (Iowa 2022).

CONCLUSION

The complaint against Scott Sobel should be dismissed. There is no appropriate sanction warranted against Sobel for the conduct alleged. The crux of the complaints against Sobel are a matter of issue preclusion, having already been set aside by the Court. The Iowa Grievance Commission rules of procedure allow either party in an attorney disciplinary proceeding to invoke principles of offensive issue preclusion. *Iowa Supreme Court Atty. Disc. Bd v. Noel*, 923 N.W.2d 575, 583 (Iowa 2019); *Iowa Supreme Court Atty. Disc. Bd v Blessum*, 861 N.W.2d 575 (Iowa 2015). Principles of equity and fairness require this doctrine to be extended to defensive issue preclusion, barring a party from relitigating an issue decided against another party in an earlier action.

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

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

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION,
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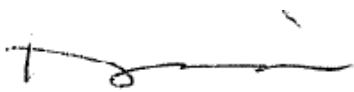
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DAVID L. BROWN

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