

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 REPLY 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 Atty. Disc. Bd v. Noel, 923 N.W.2d 575 (Iowa 2019)

Iowa Supreme Court Atty. Disc. Bd v. Blessum, 861 N.W.2d 575 (Iowa 2015)

ARGUMENT

GOODSON MATTER

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

The Board cites to *Iowa Supreme Ct. Att’y Disc. Bd. v. Weiland*, as controlling for violations of Iowa R. Prof’l Conduct 32:1.3 in this matter. 885 N.W.2d 198 (Iowa 2016) (Appellee’s Proof Brief p. 17). “A violation of [rule 32:1.3] arises not from inadvertent acts or omissions from missing a single deadline, but from consistently failing to perform functions required of an attorney or from repeatedly missing deadlines.” *Id.* (quoting *Iowa Supreme Ct. Att’y Disc. Bd. v. Conroy*, 845 N.W.2d 59, 64 (Iowa 2014)). In *Weiland*, the attorney had intentionally misled the client into believing that he had correctly filed the clients divorce petition, when the attorney knew it had been rejected by EDMS. 885 N.W.2d at 208 (Iowa 2016). This conduct occurred over a period of four months. *Id.* Furthermore, the attorney failed to inform the client of a scheduled pretrial conference, which neither were present at. *Id.* Before eventually, the client found other representation. *Id.* It is hard to compare the rule violation by *Weiland* to the conduct of *Sobel* in the *Goodson* matter. *Sobel* admitted that he had not reviewed the PSI before the hearing, and he was then allowed to review the PSI to become familiar with it. The hearing then proceeded with *Sobel* and *Goodson* familiar with the PSI and both parties reasonably informed of the matter. Unlike *Weiland*, there was no months long intentional deception by

Sobel, nor was there a failure to inform the client of scheduling, nor was there any attempt by the client to seek new representation due to the inadequacies of the attorney. Not only is the conduct in Weiland far more egregious than the conduct in the Goodson matter, but it is also extremely unlike the matter at all.

Furthermore, the Board cites *Iowa Supreme Ct. Att’y Disc. Bd. v. Beauvais* as controlling for Iowa R. Prof’l Conduct 32:1.4(a)(3) violations. 948 N.W.2d 505 (Iowa 2020) (Appellee’s Proof Brief p. 20). The attorney, Beauvais was found to be in violation of this rule because he admitted to never figuring out how he’d prove causation or damages in his litigation strategy before he pressured his client to settle a case for an amount not acceptable to the client as an attempt to cover up their inadequate preparation with trial looming and a discovery sanctions motion pending. *See id.* This was in addition to Beauvais failing to provide the client with copies of court orders that negatively portrayed his performance in the case. *Id* at 514. “Beauvais’s failure to inform and involve [the client] understandably spurred Bank’s confusion and anger when Beauvais later pushed [the client] to accept settlement to avoid dismissal of the case or payment of attorney fees and court costs.” *Id* at 514. Beauvais conduct clearly illustrates a violation of rule 32:1.4(a)(3). However, Sobel’s conduct does not rise to the egregiousness of Beauvais. The hearing at issue was stopped to allow Sobel to discuss the matter with his client, including explaining strategies and allow Goodson to make informed decisions on the matter. There is no

accusation by Goodson that he was not reasonably informed nor that he was pressured to make a decision that he was not comfortable with as in Beauvais. Accordingly, the Board did not meet its burden to prove that Sobel violated Iowa R. Prof'l Conduct 32:1.3 and 32:1.4(a)(3).

GOLUBOVIC MATTER

II. THE STIPULATED CONDUCT IN THE GOLUBOVIC MATTER DOES NOT VIOLATE THE IOWA RULES OF PROFESSIONAL CONDUCT

The Board likens the conduct of Sobel in the Golubovic Matter as similar to *Iowa Supreme Ct. Att'y Disc. Bd. v. Hogan*, 781 N.W.2d 279 (Iowa 2010) (Appellee's Proof Brief p. 25). In *Hogan*, the attorney neglected several client matters which resulted in the dismissal of three appeals for failure to prosecute and the dismissal of one claim for failure to perfect an administrative appeal. *Id* at 281. On its face it is difficult to compare the conduct of *Hogan* to that of Sobel in the Golubovic matter. The Court in the Golubovic matter set aside the dismissal because of "good cause attributable to excusable neglect." (App. p. 18). While the conduct of *Hogan* allowed 4 clients to lose meritorious claims, harm that is nowhere present in the Golubovic Matter.

The remainder of the Board's argument on the Golubovic Matter is dedicated to an attempt to insert their judgement into a decision that has already been made by the Honorable Judge Fangman. (Appellee's Proof Brief p. 25-32). The finding by

Judge Fangman of excusable neglect should negate any further action as the matter has already been adjudicated by a competent and respected Court. Further analysis and re-hashing by the Board is irrelevant.

CONCLUSION

The complaint against Scott Sobel should be dismissed. There is no appropriate sanction warranted against Sobel for the conduct alleged. The Board did not meet its burden to prove that Sobel violated Iowa R. Prof'l Conduct 32:1.3 and 32:1.4(a)(3). Additionally, 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
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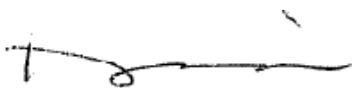
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