In the Supreme Court of Iowa

Supreme Court No. 23-0549
Grievance Commission No. 944

Iowa Supreme Court
Attorney Disciplinary Board,

Appellee,

vs.

Scott A. Sobel,

Appellant

Appeal from the Report of the Iowa Supreme Court Grievance Commission

---

Appellee's Final Brief

Alexis W. Grove, AT0013501
Allison A. Schmidt, AT0013118
Iowa Judicial Branch Building
1111 East Court Avenue
Des Moines, IA 50319-5003
Telephone: (515) 348-4680
Fax: (515) 348-4699
alexis.grove@iowacourts.gov
allison.schmidt@iowacourts.gov

Attorneys for Appellee

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

Statutes

STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. DID THE COMMISSION CORRECTLY FIND THAT SOBEL VIOLATED IOWA RULES OF PROFESSIONAL CONDUCT 32:1.3 AND 1.4(a)(3) IN HIS REPRESENTATION OF CLIENT GOODSON?

Cases

Iowa Sup. Ct. Att'y Disciplinary Bd. v. Beauvais, 948 N.W.2d 505 (Iowa 2020)

Iowa Sup. Ct. Att'y Disciplinary Bd. v. Blessum, 861 N.W.2d 575 (Iowa 2015)

Iowa Sup. Ct. Att'y Disciplinary Bd. v. Carpenter, 781 N.W.2d 263 (Iowa 2010)

Iowa Sup. Ct. Att'y Disciplinary Bd. v. Dolezal, 796 N.W.2d 910 (Iowa 2011)

Iowa Sup. Ct. Att'y Disciplinary Bd. v. Earley, 729 N.W.2d 437 (Iowa 2007)

Iowa Sup. Ct. Att'y Disciplinary Bd. v. Morse, 887 N.W.2d 131 (Iowa 2016)

Iowa Sup. Ct. Att'y Disciplinary Bd. v. Nelson, 838 N.W.2d 529 (Iowa 2011)

Iowa Sup. Ct. Att'y Disciplinary Bd. v. Taylor, 814 N.W.2d 259 (Iowa 2012)

Iowa Sup. Ct. Att'y Disciplinary Bd. v. Wagner, 768 N.W.2d 279 (Iowa 2016)

Iowa Sup. Ct. Att'y Disciplinary Bd. v. Weiland, 885 N.W.2d 198 (Iowa 2016)

Iowa Sup. Ct. Att'y Disciplinary Bd. v. West, 901 N.W.2d 519 (Iowa 2017)

Iowa Sup. Ct. Bd. of Prof'l Ethics & Conduct v. Kennedy, 684 N.W.2d 256 (Iowa 2004)

Statutes

Iowa Code § 902.2 (2021)

Rules

Iowa R. Prof'l Conduct 32:1.3

Iowa R. Prof'l Conduct 32:1.4(a)(3)

II. DID THE COMMISSION CORRECTLY FIND THAT SOBEL VIOLATED IOWA RULES OF PROFESSIONAL CONDUCT 32:1.16(a)(2), 3.2, AND 8.4(d) AND 1.4(a)(3) IN CONNECTION WITH THE GOLUBOVIC MATTER?

Cases

Cent. Nat'l Ins. Co. of Omaha v. Ins. Co. of N. Am., 513 N.W.2d 750 (Iowa 1994)

Iowa Sup. Ct. Att'y Disciplinary Bd. v. Barnhill, 847 N.W.2d 466 (Iowa 2014)

Iowa Sup. Ct. Att'y Disciplinary Bd. v. Cunningham, 812 N.W.2d 541 (Iowa 2012)

Iowa Sup. Ct. Att'y Disciplinary Bd. v. Daniels, 984 N.W.2d 757 (Iowa 2023)

Iowa Sup. Ct. Att'y Disciplinary Bd. v. Dolezal, 796 N.W.2d 910 (Iowa 2011)

Iowa Sup. Ct. Att'y Disciplinary Bd. v. Hoglan, 781 N.W.2d 279 (Iowa 2010)

Iowa Sup. Ct. Att'y Disciplinary Bd. v. Kieffer-Garrison, 847 N.W.2d 489 (Iowa 2014)

Iowa Sup. Ct. Att'y Disciplinary Bd. v. Kingery, 871 N.W.2d 109 (Iowa 2015)

Iowa Sup. Ct. Att'y Disciplinary Bd. v. McCarthy, 814 N.W.2d 596 (Iowa 2012)

Iowa Sup. Ct. Att'y Disciplinary Bd. v. Rhinehart, 827 N.W.2d 169 (Iowa 2013)

Iowa Sup. Ct. Att'y Disciplinary Bd. v. Sotak, 706 N.W.2d 389 (Iowa 2005)

Iowa Sup. Ct. Att'y Disciplinary Bd. v. Thomas, 794 N.W.2d 290 (Iowa 2011)

Iowa Sup. Ct. Att'y Disciplinary Bd. v. Tindal, 949 N.W.2d 637 (Iowa 2020)

Stender v. Blessum, 897 N.W.2d 491 (Iowa 2017)

Statutes

Iowa Code § 614.1(2) (2019)

Rules

Iowa R. Civ. P. 1.977

Iowa R. Prof'l Conduct 32:1.16(a)

Iowa R. Prof'l Conduct 32:3.2

Iowa R. Prof'l Conduct 32:8.4(d)

Iowa Ct. R. 36.17(4)

III. WHAT IS THE APPROPRIATE SANCTION?

Cases

Iowa Sup. Ct. Att'y Disciplinary Bd. v. Aeilts, 974 N.W.2d 119 (Iowa 2022)

Iowa Sup. Ct. Att'y Disciplinary Bd. v. Bergmann, 938 N.W.2d 16 (Iowa 2020)

Iowa Sup. Ct. Att'y Disciplinary Bd. v. Cohrt, 784 N.W.2d 777 (Iowa 2010)

Iowa Sup. Ct. Att'y Disciplinary Bd. v. Daniels, 984 N.W.2d 757 (Iowa 2023)

Iowa Sup. Ct. Att'y Disciplinary Bd. v. Goedken, 939 N.W.2d 97 (Iowa 2020)

Iowa Sup. Ct. Att'y Disciplinary Bd. v. Hoglan, 781 N.W.2d 279 (Iowa 2010)

Iowa Sup. Ct. Att'y Disciplinary Bd. v. Kieffer-Garrison, 847 N.W.2d 489 (Iowa 2014)

Iowa Sup. Ct. Att'y Disciplinary Bd. v. Parrish, 801 N.W.2d 580 (Iowa 2011)

Iowa Sup. Ct. Att'y Disciplinary Bd. v. Parrish, 925 N.W.2d 163 (Iowa 2019)

Iowa Sup. Ct. Att'y Disciplinary Bd. v. Tindal, 949 N.W.2d 637 (Iowa 2020)

Iowa Sup. Ct. Att'y Disciplinary Bd. v. Vandel, 889 N.W.2d 659 (Iowa 2017)

Iowa Sup. Ct. Bd. of Prof'l Ethics & Conduct v. Mears, 569 N.W.2d 132 (Iowa 1997)

Iowa Sup. Ct. Bd. of Prof'l Ethics & Conduct v. Plumb, 589 N.W.2d 746 (Iowa 1999)

Rules

Iowa R. Prof'l Conduct 32:1.3

Iowa R. Prof'l Conduct 32:1.4

Iowa R. Prof'l Conduct 32:1.16(a)(2)

Iowa R. Prof'l Conduct 32:3.2

Iowa R. Prof'l Conduct 32:3.4

ROUTING STATEMENT

The Supreme Court should retain this case pursuant to Iowa Rule of Appellate Procedure 6.1101(2) because this is a case involving lawyer discipline.

STATEMENT OF THE CASE

Nature of the Case

The Iowa Supreme Court Attorney Disciplinary Board ("the Board") brought this lawyer disciplinary action against Scott A. Sobel ("Sobel") alleging violations of the Iowa Rules of Professional Conduct in connection with Sobel's dilatory handling of client Goodson's matter and with Sobel's failure to withdraw from the Golubovic matter and subsequent problems caused by that failure.

Course of Proceedings and Disposition

On September 20, 2022, the Board filed a Complaint against Sobel. (Appendix ("App.") 4). On September 26, Sobel's counsel David L. Brown accepted service on Sobel's behalf. Sobel filed his answer on October 14. (App. 11). On December 20, the parties filed a Partial Stipulation, stipulating to facts and exhibits and waiving a formal hearing. (App. 14). On December 29, the president of the 664th Division of the Grievance Commission ("Commission") issued an Order Accepting Stipulated Submission of Case.

The parties submitted simultaneous briefs to the Commission on January 31, 2023. In his brief, Sobel raised issue preclusion for the first time, never having provided notice to the Board of his intent to do so. The Board filed an

objection and motion to strike on February 2 regarding this issue. (App. 32). Sobel resisted on February 13. (App. 36). On April 3, the Commission filed its Findings of Fact, Conclusions of Law, Ruling on Objection and Response, and Recommendation.

Commission's Conclusion and Recommendations

The Commission ruled on the Board's objection regarding issue preclusion. (App. 43–47). The Commission rejected Sobel's argument that Iowa Court Rule 36.17—which discusses issue preclusion in disciplinary proceedings—is an "evidentiary rule" and governs only the admissibility of evidence. (App. 45). The Commission also rejected the Board's argument regarding notice and thus denied the Board's objection on that basis. (App. 45–46). However, the Commission ultimately concluded that Sobel could not properly raise issue preclusion because he had not shown that the burden of proof in the prior proceeding was greater than a preponderance of the evidence. (App. 46–47).

The Commission then concluded that Sobel violated Iowa Rules of Professional Conduct 32:1.3 and 1.4(a)(3) with respect to Count I and rules 32:1.16(a)(2), 3.2, and 8.4(d) with respect to Count II. (App. 47–53). The

Commission recommended that Sobel's license to practice law be suspended for thirty days. (App. 55–56).

Sobel's Appeal

On April 5, 2023, Sobel filed his notice of appeal with the Commission clerk. (App. 57).

STATEMENT OF FACTS

The Board is satisfied with Sobel's statement of the facts, and pursuant to Iowa Court Rule 6.903(3), includes no additional facts.

ARGUMENT

Error Preservation

The Board agrees Sobel preserved the issues presented for appellate review.

Scope and Standard of Appellate Review

The Board agrees with Sobel that the scope and standard of appellate review is de novo. *See Iowa Sup. Ct. Att'y Disciplinary Bd. v. Daniels*, 984 N.W.2d 757, 764 (Iowa 2023).

I. THE COMMISSION PROPERLY FOUND THAT SOBEL VIOLATED IOWA RULES OF PROFESSIONAL CONDUCT 32:1.3 AND 1.4(a)(3) IN CONNECTION WITH THE GOODSON MATTER.

The Commission correctly found that Sobel's neglect of his client Mario Goodson's ("Goodson") matter and his failure to communicate with Goodson before the October 4 resentencing hearing violated Iowa Rules of Professional Conduct 32:1.3 and 1.4(a)(3).

Rule 32:1.3 states, "A lawyer shall act with reasonable diligence and promptness in representing a client." A violation of this rule "often involves 'a lawyer doing little or nothing to advance the interests of a client after agreeing to represent the client.' " *Iowa Sup. Ct. Att'y Disciplinary Bd. v. West*, 901 N.W.2d 519, 524 (Iowa 2017) (quoting *Iowa Sup. Ct. Bd. of Prof'l Ethics & Conduct v. Moorman*, 683 N.W.2d 549, 552 (Iowa 2004)). "Neglect is more than negligence, and it often involves procrastination . . . ." *Iowa Sup. Ct. Att'y Disciplinary Bd. v. Earley*, 729 N.W.2d 437, 442 (Iowa 2007) (finding a violation of the precursor to rule 32:1.3 because the attorney "clearly neglected [his] clients' legal matters in his failure to communicate with his clients"). "Violations [of this rule] occur when an attorney fails to appear at scheduled court proceedings, does not make proper filings, or *is slow to act on matters*."

Iowa Sup. Ct. Att'y Disciplinary Bd. v. Nelson, 838 N.W.2d 528, 537 (Iowa 2013) (emphasis added).

In *Iowa Supreme Court Board of Professional Ethics & Conduct v. Kennedy*, the court found violations of the predecessor to rule 32:1.3 where an attorney represented her client in a postconviction relief matter but neglected the matter by, in part, "fail[ing] to prepare for the hearing." 684 N.W.2d 256, 259 (Iowa 2004). *See generally Iowa Sup. Ct. Att'y Disciplinary Bd. v. Dolezal*, 796 N.W.2d 910, 915 (Iowa 2011) ("The new rule provides that a lawyer 'shall act with reasonable diligence and promptness in representing a client'; the old rule provided that a lawyer shall not 'neglect a legal matter entrusted to him.' Thus, both rules are broadly worded to require diligence, or conversely to prohibit neglect, in the course of legal work on a client's behalf."). In concluding this, the court noted that the attorney "neglected her professional obligations" when she "did little to prepare the case for hearing and did less to involve her client in the process." *Kennedy*, 684 N.W.2d at 260; *see also Iowa Sup. Ct. Att'y Disciplinary Bd. v. Carpenter*, 781 N.W.2d 263, 269 (Iowa 2010) ("Under our rules prohibiting neglect, an attorney must advance and protect his clients' interests.").

The Board acknowledges that a single omission or failure to act does not typically result in a violation of rule 32:1.3. *See Iowa Sup. Ct. Att'y Disciplinary Bd. v. Taylor*, 814 N.W.2d 259, 265 (Iowa 2012). However, a lawyer can be found to have violated this rule if, instead of multiple instances of missed deadlines or failures to appear at hearings, he consciously disregards his duties to a client. *See id.* "[N]eglect involves a consistent failure to perform obligations the lawyer has assumed *or* a 'conscious disregard for the responsibilities a lawyer owes to a client' . . . ." *Id.* (emphasis added) (quoting *Iowa Sup. Ct. Att'y Disciplinary Bd. v. Lickiss*, 786 N.W.2d 860, 867 (Iowa 2010)).

Importantly, this is not a case of simple negligence. *See Iowa Sup. Ct. Att'y Disciplinary Bd. v. Morse*, 887 N.W.2d 131, 141 (Iowa 2016) (finding a violation of rule 32:1.3 because the attorney "did not inadvertently miss a deadline" but rather "chose a course of action contrary to his obligation of diligence"); *Taylor*, 814 N.W.2d at 265 (finding no violation of rule 32:1.3 because the attorney's failure to timely file an appeal and failure to prosecute another appeal were the result of the attorney's ignorance and inadvertent omissions). Sobel's choices in his treatment of the Goodson matter were deliberate—he chose to disregard his obligations to prepare properly for the hearing and involve his client in any sort of preparation, and he opted to start the hearing without being prepared,

essentially keeping his fingers crossed that the court would not address it. He demonstrated a "conscious disregard for the responsibilities" that he owed to Goodson. *See Taylor*, 814 N.W.2d at 265.

This is akin to *Iowa Supreme Court Attorney Disciplinary Board v. Weiland*, 885 N.W.2d 198 (Iowa 2016). In that case, the court found that the attorney had violated rule 32:1.3 after he "had difficulty filing [his client's] divorce petition with EDMS." *Id.* at 208. The court noted that, "[w]hile this alone [was] not sufficient to rise to a violation of rule 32:1.3, [his] actions following the rejection of his filing demonstrate both a 'consistent failure' to perform and a 'conscious disregard' for the obligations he had to [his client]." *Id.* (citing *Iowa Sup. Ct. Att'y Disciplinary Bd. v. Weiland*, 862 N.W.2d 627, 635 (Iowa 2015)). After his failure to file the document, the attorney apparently ignored the problem and hoped for the best, even misleading his client into believing that he had filed the document and was attempting to have the petition served. *Id.* Although the conduct in that case was admittedly much more egregious than in the instant matter, it was the attorney's choices *after* his unsuccessful attempts to adhere to his obligations as an attorney that amounted to a violation of the rule, just as it is Sobel's choices after he unsuccessfully attempted to view the

presentence investigation report ("PSI") that amount to a rule violation here. *See id.*

This was also not a case where Sobel otherwise attended to the matter but overlooked one thing through at least partial fault of the client. *See Iowa Sup. Ct. Att'y Disciplinary Bd. v. Blessum*, 861 N.W.2d 575, 586 (Iowa 2015) (finding no violation of rule 32:1.3 where the attorney otherwise handled the matter diligently and there was a "single instance of nonprejudicial delay in filing a single document, attributable partly to the client, partly to her ex-husband, and partly to the attorney"). Sobel's representation of Goodson was limited, as he was appointed to represent Goodson for purposes of resentencing. (App. 15). Only one thing mattered in that representation: the resentencing hearing. Although a court may consider information from other sources, the primary source is the PSI. *See* Iowa Code § 902.2 (2021). Sobel did not review the PSI, either by himself or with his client, before the hearing began, nor did he bother to inform anyone that he had been unable to access the PSI. (App. 15–16). The district court took note of this at the hearing:

> THE COURT: Mr. Sobel, have you also had an opportunity to review that PSI?
>
> MR. SOBEL: Unfortunately the PSI is blocked on Iowa Courts –– on EDMS, and it was not accessible.

> THE COURT: And you didn't think to come to somebody and ask for that in advance?
>
> MR. SOBEL: When I was preparing for the hearing last night and going through to read things and make sure I had everything correct, that's when I figured that one out. . . .

(App. 181–82). As the Commission noted in its report, the record indicates that the hearing began at 1:07 p.m., but Sobel notified no one that morning that he had not been able to access the PSI. (App. 48, 180). In addition to showing up to a hearing unprepared by neglecting to review the PSI, Sobel was also unprepared because he had not communicated with his client in any way prior to the hearing and thus had no way of knowing his client's position on any of the issues relevant to resentencing.[1] (App. 15).

Sobel's unpreparedness also implicates rule 32:1.4(a)(3), which states, "A lawyer shall keep the client reasonably informed about the status of the

[1] It is worth noting that it is irrelevant that Sobel's unpreparedness did not change the outcome of the resentencing hearing. As the comment to the rule notes, "Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness." Iowa R. Prof'l Conduct 32:1.3 cmt. [3]; *see also Iowa Sup. Ct. Att'y Disciplinary Bd. v. Wagner*, 768 N.W.2d 279, 287 (Iowa 2009) ("Additionally, all of Wagner's clients were harmed by stress caused by Wagner's neglect.").

matter." Sobel did not communicate with Goodson at all before the hearing.[2] (Stip. ¶ 11). In failing to do so, he failed to "explain the general strategy and prospects of success" to Goodson regarding the resentencing. *See* Iowa R. Prof'l Conduct 32:1.4 cmt. [5]; *see also Iowa Sup. Ct. Att'y Disciplinary Bd. v. Beauvais*, 948 N.W.2d 505, 514 (Iowa 2020) (finding a violation of rule 32:1.4 where it was "not clear Beauvais developed, let alone communicated, much of any strategy about how he intended to advance [his client's] case").

The Commission correctly found that the Board proved by a convincing preponderance of the evidence that Sobel violated Iowa Rules of Professional Conduct 32:1.3 and 1.4(a)(3).

II. THE COMMISSION PROPERLY FOUND THAT SOBEL VIOLATED IOWA RULES OF PROFESSIONAL CONDUCT 32:1.16(a)(2), 3.2, AND 8.4(d) IN CONNECTION WITH THE GOLUBOVIC MATTER.

The Commission correctly found that Sobel's failure to abide by deadlines, his failure to withdraw from representation in the Golubovic matter despite knowing that his illness was causing him to miss deadlines, and the

[2] The Board acknowledges that Sobel communicated with Goodson's mother before the hearing. (App. 15). However, Goodson's mother is not the client, and communication with her alone cannot satisfy Sobel's obligations to his client under rule 32:1.4, particularly without Goodson's consent to communicate with his mother in the first place.

strain this caused on the judicial system violated Iowa Rules of Professional Conduct 32:1.16(a)(2), 3.2, and 8.4(d).

Rule 32:1.16(a)(2) states, "A lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client." The court has identified three things which must be present for there to be a violation of this rule: 1) the attorney was suffering from a physical or mental condition, 2) the condition materially impaired the attorney's ability to represent clients, and 3) the attorney failed to withdraw. *Iowa Sup. Ct. Att'y Disciplinary Bd. v. Kingery*, 871 N.W.2d 109, 119 (Iowa 2015).

It is clear and undisputed that Sobel was suffering from severe medical problems during the period in question. (App. 17–18, 145–46). It is also undisputed that Sobel failed to withdraw from the representation. (App. 18). The only remaining question, then, is whether Sobel's illness materially impaired his ability to represent his clients. *See Kingery*, 871 N.W.2d at 119.

In determining whether there was a material impairment, the court looks to see "what actually happened" in the case. *Id.* at 120. This can sometimes be demonstrated by delays in court proceedings and missing court hearings. *See*

id. at 114–15, 119–20. It is uncontested that Sobel failed to obtain service and missed a hearing regarding that failure and that Sobel's failings caused his clients' case to be dismissed, which in turn caused additional delays in the proceedings. (App. 16–17, 133–78). A material impairment can also be demonstrated by whether the attorney's conduct caused harm. *See Iowa Sup. Ct. Att'y Disciplinary Bd. v. McCarthy*, 814 N.W.2d 596, 608 (Iowa 2012). In *Iowa Supreme Court Attorney Disciplinary Board v. McCarthy*, the court found that the Board had failed to prove a violation of rule 32:1.16(a)(2) because it had failed to show that the attorney's ability to represent his client had been "materially impaired." *Id.* In that case, the attorney had failed to file a petition for dissolution of marriage on behalf of his client; instead, her husband filed his own. *Id.* Who filed the petition and when really had no effect on the proceedings, so it was essentially "no harm, no foul." *Id.* Because the attorney's inaction had not put his client at any sort of disadvantage, there was no violation of the rule. *Id.* On the other end of the spectrum and in another case, *Iowa Supreme Court Attorney Disciplinary Board v. Hoglan*, the court did find a violation of the rule where the lawyer's physical condition caused him to allow

three appeals to be dismissed for want of prosecution.[3] 781 N.W.2d 279, 282–84 (Iowa 2010).

Sobel's inactions unquestionably caused harm—harm to his clients, harm to the opposing party, and harm to the courts. It is true that the district court set aside the dismissal because of "good cause attributable to excusable neglect" and that because of this, the harm to the clients was short-lived. (App. 18, 133). However, Sobel's misconduct caused his clients' case to languish for nearly eight months between when the petition was filed in February and when the court ordered the dismissal to be set aside in October. (App. 133–78). This is different from *McCarthy*, where the attorney's inaction meant the case was never filed and no deadlines were triggered. 814 N.W.2d at 608. Additionally, the type of case in *McCarthy* is relevant, as there are no statute-of-limitations considerations to a dissolution action; it makes no real difference when a divorce action is filed. *See id.* The same is *not* true of the action filed by Sobel on behalf of his client, which was a personal injury action stemming from a

[3] Interestingly, the fact that the clients harmed by the attorney's conduct all testified that they were not angry or disappointed with his representation—one of them even continuing to use his services after the dismissal of the appeal—did not affect the court's analysis regarding rule 32:1.16(a)(2). *See Hoglan*, 781 N.W.2d 279, 283–84. The fact that the clients did not fire Sobel after the dismissal and reinstatement of the claim therefore does not save him from a violation of this rule.

motor vehicle accident. (App. 176–77). According to the Petition at Law that Sobel filed on February 23, 2021, the injury occurred on February 23, 2019. (App. 176). Sobel filed the Petition on behalf of his clients on the *very last day* before the statute of limitations on the claim would have run. *See* Iowa Code § 614.1(2) (2019) (setting a two-year statute of limitations for personal-injury claims). But for the grace of the court in setting aside the dismissal, Sobel's clients would have lost that portion of their claim entirely. *See id.*

Additionally, Sobel's inactions caused harm to the opposing party in the Golubovic matter. Sobel's failure to serve the petition required the opposing party's attorney to address the failure through a motion to dismiss, as well as respond to Sobel's Motion to Set Aside Dismissal and Set Matter for Hearing. (App. 139–42, 145–46, 149–50).

Lastly, Sobel's inactions caused harm to the judicial system. His failure to serve the petition caused the court to expend its limited resources on dealing with the failure. (App. 133–78). Additionally, Sobel neglected to attend the hearing regarding the failure to serve, which required the court to set another hearing, although that hearing was eventually cancelled. (App. 16–17, 167). The court also had to devote resources to the motion to dismiss following the failure to obtain timely service. (App. 17–18, 133–78). These resources could

have been used elsewhere had Sobel withdrawn from representation after it became clear his physical ailments were materially impairing his ability to represent his clients and another attorney taken over and properly served the petition.

Although both the *Hoglan* court and the *McCarthy* court zeroed in on the harm to the clients, the facts in those cases lent themselves to that analysis. There was not a question of harm to the judicial system or harm to opposing parties in either case. As discussed above, those harms unquestionably exist here. Thus, because of the existence of harm, this case is much closer to *Hoglan* than it is to *McCarthy*.

But the analysis does not stop at finding a material impairment. There must be a clear causal link between the lawyer's physical or mental condition and that impairment. *Iowa Sup. Ct. Att'y Disciplinary Bd. v. Cunningham*, 812 N.W.2d 541, 549 (Iowa 2012). In *Iowa Supreme Court Attorney Disciplinary Board v. Cunningham*, the court found that the attorney had not violated rule 32:1.16(a)(2). *See id.* The court concluded that the Board had not met its burden because although it was "clear that something was impairing" the attorney's ability to represent his client, it was "not clear that the impairment was a mental or physical issue." *Id.* The problem in the court's eyes was the

timing of the impairment; the record indicated a specific date of impairment, but it was unclear whether the problems the attorney caused in his client's case before that date were caused by the impairment or simply run-of-the-mill neglect. *Id.*

This case differs significantly from *Cunningham*. Here, there is a clear causal link between the problems in the case and Sobel's impairment. Sobel himself admitted in his filings to the court that the reason he failed to accomplish timely service or resist the motion to dismiss his client's case is because he was extraordinarily ill. (App. 145–46). This sufficiently satisfies the causal element to rule 32:1.16(a)(2). *See Kingery*, 871 N.W.2d at 120. Because Sobel's clear physical condition materially impaired his ability to represent his clients, he violated rule 32:1.16(a)(2).

Rule 32:3.2 states, "A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client." The necessary question is "whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay." Iowa R. Prof'l Conduct 32:3.2 cmt. [1]. Failure to properly attain service is a violation of this rule. *Iowa Sup. Ct. Att'y Disciplinary Bd. v. Thomas*, 794 N.W.2d 290, 294 (Iowa 2011). In *Iowa Supreme Court Attorney Disciplinary Board v. Dolezal*, the court

found a violation of rule 32:3.2 in an attorney's representation of his client in a social security disability appeal to federal district court. 796 N.W.2d at 915. In that case, the attorney filed a complaint but did not have the complaint served, which resulted in dismissal of the case. *Id.* This was a violation of rule 32:3.2. *Id.* at 917. In *Hoglan*, the court also found that the attorney's failure to prosecute the appeals—resulting in the dismissal of those appeals—was a violation of rule 32:3.2.[4] 781 N.W.2d at 284. Sobel's own failure to effectuate service was a violation of this rule; there is no legitimate reason for Sobel to have delayed this responsibility. *See id.*; *see also* Iowa R. Prof'l Conduct 32:3.2 cmt. [1].

Rule 32:8.4(d) states, "It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice." "A lawyer's conduct violates rule 32:8.4(d) if 'it impedes the efficient and proper operation of the courts or of ancillary systems upon which the courts rely.' " *Iowa Sup. Ct. Att'y Disciplinary Bd. v. Kieffer-Garrison*, 847 N.W.2d 489, 495 (Iowa 2014) (quoting *Taylor*, 814 N.W.2d at 267). An attorney violates this rule

[4] It is worth noting that a condition triggering rule 32:1.16(a)(2) does not obviate the attorney's need to expedite litigation pursuant to rule 32:3.2 or remove the attorney's culpability for violating that rule. *See Hoglan*, 781 N.W.2d at 282–84 (finding a violation of both rules).

by causing court proceedings to be delayed; the dismissal of a matter is not required to support a violation. *Iowa Sup. Ct. Att'y Disciplinary Bd. v. Tindal*, 949 N.W.2d 637, 642 (Iowa 2020). "[F]ailing to timely file documents with the court is conduct prejudicial to the administration of justice . . . ." *Iowa Sup. Ct. Att'y Disciplinary Bd. v. Sotak*, 706 N.W.2d 385, 389 (Iowa 2005).

In *Iowa Supreme Court Attorney Disciplinary Board v. Sotak*, the Iowa Supreme Court found an attorney's "failure to properly serve opposing parties and meet court deadlines" violated the predecessor rule to rule 32:8.4(d). *Id*. In *Dolezal*, the court found that the attorney's failure to have the complaint served was a violation of this rule because "the court was forced to expend resources unnecessarily before dismissing [the client's] stale appeal." 796 N.W.2d at 917. Similarly, Sobel's failure to serve the defendant with the petition, as well as his failure to appear for a hearing or file a resistance to the motion to dismiss, wasted judicial resources and was prejudicial to the administration of justice. *See id.*

Sobel argues that the above-discussed rule violations did not occur based on the vague contention that "there is nothing for the Court to consider" and

with passing reference to issue preclusion.[5] (Appellant's Proof Brief pp. 13, 15). However, as the Commission correctly concluded, issue preclusion does not apply. Iowa Court Rule 36.17(4) governs issue preclusion in attorney disciplinary proceedings. That rule states:

> Either party may use principles of issue preclusion in an attorney discipline case if all of the following conditions exist:
>
> a. The issue has been resolved in a civil proceeding that resulted in a final judgment or in a criminal proceeding that resulted in a finding of guilt, even if the disciplinary board was not a party to the prior proceeding.
>
> b. The burden of proof in the prior proceeding was greater than a preponderance of the evidence.
>
> c. The party seeking preclusive effect has given written notice to the opposing party, not less than 10 days prior to the hearing, of the party's intention to invoke issue preclusion.

Iowa Ct. R. 36.17(4). In addition to the requirements delineated in the rule, use of issue preclusion also requires:

> (1) the issues . . . sought to be precluded in the . . . disciplinary [proceeding] are identical to the issues . . . in the prior . . . action;

---

[5] It is unclear whether Sobel is arguing that issue preclusion somehow also applies regarding the Goodson matter, as his brief contains little analysis of the doctrine and the broad conclusory statement of "[t]he crux of the complaints against Sobel are a matter of issue preclusion, having already been set aside by the Court." (Appellant's Proof Brief p. 15). Because Sobel points to no finding by the lower court that could possibly have preclusive effect in the Goodson matter, the Board addresses Sobel's argument only in relation to the Golubovic matter.

> (2) the issues . . . were raised and litigated in the prior . . . action;
>
> (3) the issues . . . were material and relevant to the disposition of the prior . . . action; and
>
> (4) the . . . determination of the . . . issues [in the prior action] [was] necessary and essential to the resulting judgment. . . .

Iowa Sup. Ct. Att'y Disciplinary Bd. v. Rhinehart, 827 N.W.2d 169, 178 (Iowa 2013) (alterations in original) (quoting *Iowa Sup. Ct. Bd. of Prof'l Ethics & Conduct v. D.J.I.*, 545 N.W.2d 866, 875 (Iowa 1996)); *see also Stender v. Blessum*, 897 N.W.2d 491, 513 (Iowa 2017) (noting that the offensive use and defensive use of issue preclusion both share these four requirements).

Although the Commission arrived at the correct result that issue preclusion does not apply here, Sobel's argument fails from the start because the issue he attempts to preclude is not identical in the instant case. *See Rhinehart*, 827 N.W.2d at 178. The issue in the underlying Golubovic matter was whether the dismissal should be set aside based upon excusable neglect.[6] (App. 133–78). Ultimately, the question was whether Sobel's prolonged pattern of inaction should be held against his clients. The court decided that it should not, concluding that there was excusable neglect and reinstating the

[6] The only rule involving parallel issues to this determination is Iowa Rule of Professional Conduct 32:1.3, which the Board intentionally did not charge in relation to the Golubovic matter.

petition. (App. 133–78). The instant disciplinary proceedings, however, deal with entirely different issues: 1) Should Sobel have withdrawn based upon his illness causing the dismissal in the first place; 2) did Sobel take reasonable efforts to expedite litigation on behalf of his clients; and 3) was Sobel's conduct prejudicial to the administration of justice? These questions were not litigated by the parties or answered by the court's determination that Sobel's conduct amounted to excusable neglect; issue preclusion thus does not apply.[7]

[7] Sobel's argument in favor of issue preclusion also fails for other reasons. The burden of proof in the prior proceedings was lower than the convincing-preponderance-of-the-evidence burden in disciplinary proceedings. *See Daniels*, 984 N.W.2d at 764. The burden of proof for a movant seeking to set aside a dismissal pursuant to Iowa Rule of Civil Procedure 1.977 is the lower burden of "good cause." Iowa R. Civ. P. 1.977; *see also Cent. Nat'l Ins. Co. of Omaha v. Ins. Co. of N. Am.*, 513 N.W.2d 750, 754 (Iowa 1994) ("Good cause is a sound, effective, and truthful reason. It is something more than an excuse, a plea, apology, extenuation, or some justification, for the resulting effect.") (citing *Flexsteel Indus., Inc. v. Morbern Indus. Ltd.*, 239 N.W.2d 593, 596 (Iowa 1976))).

Sobel's argument also fails because he did not timely notify the Board of his intent to invoke issue preclusion, thereby waiving his ability to do so. Rule 36.17(4) requires that any party seeking to invoke issue preclusion must provide "written notice to the opposing party, not less than 10 days prior to the hearing, of the party's intention." Iowa Ct. R. 36.17(4)(c). Sobel failed to do so. He did not raise issue preclusion as an affirmative defense in his Answer, include it as an issue to be briefed (despite the existence of an explicit list in the Partial Stipulation of the issues the parties had not agreed upon and thus intended to brief), or provide any other such notice of his intent to invoke the doctrine. Instead, Sobel raised issue preclusion for the very first time in his briefing to the Commission. Importantly, the Board had no opportunity to respond to Sobel's argument regarding issue preclusion because briefing was—

The Commission correctly found that issue preclusion did not apply and that the Board proved by a convincing preponderance of the evidence that Sobel violated Iowa Rules of Professional Conduct 32:1.16(a)(2), 3.2, and 8.4(d) during the course of his representation of Golubovic and Dervisedic when he missed deadlines and caused additional unnecessary court proceedings, because he failed to withdraw when his illness prevented him from representing his clients.

III. THE COMMISSION'S RECOMMENDED SANCTION OF A THIRTY-DAY SUSPENSION IS PROPER.

In analyzing Sobel's misconduct and the appropriate mitigating and aggravating factors, the Commission correctly recommended a sanction of a thirty-day suspension. In *Iowa Supreme Court Attorney Disciplinary Board v. Vandel*, the court summarized the applicable factors in evaluating an attorney discipline case:

---

by agreement of the parties—simultaneous. (App. 19, 21). Contrary to the Commission's interpretation, the existence of a stipulation does not negate the requirement of notice. *See Iowa Sup. Ct. Att'y Disciplinary Bd. v. Barnhill*, 847 N.W.2d 466, 471, 482 (Iowa 2014) (noting that the Board properly gave the respondent notice under rule 36.17(4) (formerly rule 35.7) of its intent to use issue preclusion even though the parties stipulated).

> In determining the appropriate sanction a lawyer must face for misconduct,
>
> > we consider the nature of the violations, protection of the public, deterrence of similar misconduct by others, the lawyer's fitness to practice, and the court's duty to uphold the integrity of the profession in the eyes of the public. We also consider aggravating and mitigating circumstances present in the disciplinary action.
>
> Our primary purpose when imposing sanctions is to protect the public, not to punish the lawyer. However, when an attorney violates multiple conduct rules, we may impose enhanced sanctions.

889 N.W.2d 659, 669 (Iowa 2017) (citations omitted) (quoting *Nelson*, 838 N.W.2d at 542). The appropriate sanction here is a thirty-day suspension of Sobel's license to practice law.

The Board recognizes there are some mitigating factors present here. Sobel's ill health is at the heart of the Golubovic matter, and this can be mitigating. *See Hoglan*, 781 N.W.2d at 287. Sobel's work with underserved portions of the community is also mitigating. *See Tindal*, 949 N.W.2d at 645.

There are also some aggravating factors to consider. Sobel's "substantial experience in the practice of law," having been licensed since 1983, is an aggravating factor. *Iowa Sup. Ct. Att'y Disciplinary Bd. v. Parrish*, 925 N.W.2d 163, 181 (Iowa 2019). (App. 15). Sobel's misconduct spanned multiple matters

and demonstrates a pattern of misconduct. *See Iowa Sup. Ct. Att'y Disciplinary Bd. v. Aeilts*, 974 N.W.2d 119, 132 (Iowa 2022) (finding aggravating that there were multiple rule violations involving two unrelated events); *Kieffer-Garrison*, 847 N.W.2d at 496 (noting that a pattern of misconduct—as opposed to an isolated incident—normally gives rise to enhanced sanctions).

The most important aggravating factor here is Sobel's prior disciplinary history. Sobel has been privately admonished six times since 2002 and publicly reprimanded three times since 2010.[8] (App. 15, 59–107). The Board recognizes that Sobel's misconduct here is relatively minor, but it is Sobel's prior warnings from the Board and this Court that prompted a proceeding before the Commission, as it is troubling that Sobel has not taken the numerous private admonitions and public reprimands to heart and corrected his behavior. *See Daniels*, 984 N.W.2d at 766 (finding that "deterrence is a key factor in calibrating the sanction" where the attorney was "undeterred" by the public reprimand issued many years earlier for the same behavior, and "[a] suspension [was] now required").

[8] Of those, only the public reprimand issued on April 22, 2022, post-dated the conduct at issue and is thus not considered aggravating.

"Prior admonitions are considered an aggravating factor. This factor is even stronger when those prior actions involved the same . . . subject matter as the present action because they put the attorney 'on notice of his [or her] ethical requirements.' " *Iowa Sup. Ct. Att'y Disciplinary Bd. v. Goedken*, 939 N.W.2d 97, 108 (Iowa 2020) (quoting *West*, 901 N.W.2d at 526); *accord, e.g.*, *Iowa Sup. Ct. Att'y Disciplinary Bd. v. Cohrt*, 784 N.W.2d 777, 783 (Iowa 2010). "Even 'somewhat dated' prior reprimands can be considered an aggravating factor." *Goedken*, 939 N.W.2d at 108 (quoting *Iowa Sup. Ct. Att'y Disciplinary Bd. v. Van Ginkel*, 809 N.W.2d 96, 110 (Iowa 2012)).

Though the sum of Sobel's disciplinary history itself is aggravating, the admonitions and reprimand dealing with the same conduct at issue here are especially aggravating. *See Daniels*, 984 N.W.2d at 766. On July 22, 2010, Sobel was privately admonished for violations of rule 32:1.4. (App. 64–65). On July 18, 2017, the Iowa Supreme Court issued a public reprimand to Sobel for his neglect of six appeals and violations of Iowa Rules of Professional Conduct 32:1.3, 32.1.4(a)(2)–(3), 32:3.2, 32:8.4(d), and 32:1.16(a)(2), as well as rule 32:3.4. (App. 92–95). On February 9, 2021, Sobel was again privately admonished for violations of rule 32:1.4(a). (App. 66–67). Sobel's prior admonitions and public reprimand have clearly had little effect in stressing the

importance to him in attending to the details in the practice of law, as well as the importance of withdrawing to protect his clients if he is too ill to practice.

The matters before this Court boil down to neglect and delay. "When attorney misconduct involves neglect, sanctions have typically ranged from a public reprimand to a six-month suspension." *Hoglan*, 781 N.W.2d at 286. Cases involving conduct comparable to Sobel's have generally resulted in public reprimands. *See Iowa Sup. Ct. Att'y Disciplinary Bd. v. Bergmann*, 938 N.W.2d 16, 23–24 (Iowa 2020) (issuing a public reprimand for an attorney's neglect in three matters); *Tindal*, 949 N.W.2d at 645 (publicly reprimanding the attorney for neglectful conduct in relation to default notices on appeal). However, this case differs from those matters, considering Sobel's extended history of prior warnings from the Board. Thus, the court's treatment of cases involving aggravating prior discipline are instructive.

In *Iowa Supreme Court Board of Professional Ethics & Conduct v. Mears*, the court discussed an attorney's three prior private admonitions for similar misconduct and concluded that misconduct in two matters—which may have been otherwise relatively minor—warranted public discipline because of that prior discipline. 569 N.W.2d 132, 134–35 (Iowa 1997). The attorney's neglect

of two matters, given his prior admonitions, justified imposition of a public reprimand. *Id.*

A step beyond *Mears* was *Iowa Supreme Court Attorney Disciplinary Board v. Parrish*, 801 N.W.2d 580 (Iowa 2011), the analysis of which is more applicable to the case at hand. In that case, the attorney's violations across two matters largely related to mishandling of client funds and violations of the trust accounting rules. *Id.* at 584–85. The attorney—Parrish—had received six prior private admonitions that also related to handling of funds. *Id.* at 589. Parrish's mitigating factors were largely similar to Sobel's, with his pro bono legal services and active involvement in the community, although he took remedial measures that Sobel has not attempted. *See id.* Parrish's conduct, however, was troubling to the court, as it was clear that his behavior had devolved into a problematic pattern:

> While an error in judgment or mere negligence by an attorney is not an appropriate basis for discipline, Parrish's conduct over the last ten years has now developed into a pattern of violating the Iowa Rules of Professional Conduct and the rules of this court relating to the administration of trust accounts.

Id. Similarly, Sobel's conduct has developed into a pattern of violating the rules requiring diligence and communication with his clients. In *Parrish*, the court

found that a public reprimand was not adequate, given the multiple violations and his history of violations. *Id.* The court stated, "Unfortunately, the recurring pattern of conduct in this case warrants a stiffer sanction—namely a suspension." *Id.* at 590. The court imposed a sixty-day suspension. *Id.* Sobel's conduct was not as egregious as Parrish's, although Sobel's disciplinary history is more extensive than the attorney in *Mears.* The appropriate disposition here is a thirty-day suspension.

As stated above, the goal of attorney discipline is not punishment but rather, among other things, protection of the public, deterrence, and upholding the integrity of the profession in the eyes of the public. None of these goals are served by giving Sobel yet another slap on the wrist. A suspension is appropriate here to protect the public. Sobel has made no indication that he will change his practice methods to prevent this behavior in the future. *See Tindal*, 949 N.W.2d at 645 ("Tindal's suspension is not needed to protect the public. Tindal has discontinued taking criminal or postconviction appeals for the State Public Defender."); *Parrish*, 801 N.W.2d at 589 (noting the attorney's remedial actions to improve his problematic practices).

Sobel himself has also clearly not been deterred by his prior discipline, and other members of the profession will also not be deterred if Sobel is given

another lenient sanction. *See Daniels*, 984 N.W.2d at 766 (highlighting deterrence as a "key factor in calibrating the sanction" where prior discipline had not corrected the attorney's behavior); *see also Iowa Sup. Ct. Bd. of Prof'l Ethics & Conduct v. Plumb*, 589 N.W.2d 746, 749 (Iowa 1999) (imposing a two-month suspension where the attorney had neglected two matters and failed to return client property and had received two prior reprimands that had "not improved [the attorney's] practice"). If an attorney is allowed to continue in perpetuity with his or her bad conduct, the message sent to the bar is that low-level offenses, although still harmful to the public and the system as a whole, have no real and tangible consequences. The same message is sent to the public at large.

It is helpful to examine *Hoglan* in the context of the appropriate sanction, as the violations of rule 32:1.16(a) are similar, and the court found it particularly troubling that the attorney had ignored a public reprimand for prior violation of that rule. 781 N.W.2d at 287. Although that attorney received a public reprimand, which put him "on notice of his obligation to withdraw from representation" after an illness presented him from "adequately represent[ing] his client," he failed to withdraw from subsequent representations where his illness caused clients' appeals to be dismissed. *Id.* Notably, the court stated,

"The goal of deterring other lawyers from similar conduct would not be advanced if we ignore this fact." *Id.* Although the reprimand in *Hoglan* was closer in time to the subsequent violation of that rule, the same nevertheless holds true here. Sobel was on notice in 2017 when he received his public reprimand that a physical condition preventing him from fulfilling his obligations as a lawyer required that he withdraw. He did not do so. Something more stringent than a public reprimand is appropriate here; the Court should impose the Commission's recommended sanction of a thirty-day suspension.

CONCLUSION

Sobel's prior disciplinary history necessitates a thirty-day suspension of his license. Prior admonitions and reprimands have not served to correct Sobel's behavior. Because of this, the Court should suspend Sobel's license to practice law for thirty days.

IOWA SUPREME COURT
ATTORNEY DISCIPLINARY BOARD

By: /s/ Alexis W. Grove
Alexis W. Grove, AT0013501
Iowa Judicial Branch Building
1111 East Court Avenue
Des Moines, IA 50319-5003
Telephone: (515) 348-4687
Fax: (515) 348-4699
E-mail:
Alexis.Grove@iowacourts.gov

By: /s/ Allison A. Schmidt
Allison A. Schmidt, AT0013118
Iowa Judicial Branch Building
1111 East Court Avenue
Des Moines, IA 50319-5003
Telephone: (515) 348-4685
Fax: (515) 348-4699
Email:
Allison.Schmidt@iowacourts.gov

Attorneys for Appellee

REQUEST FOR NONORAL SUBMISSION

The Board requests submission of the case without oral argument.

Alexis W. Grove

Certificate of Compliance with Typeface Requirements and Type–Volume Limitation

This brief complies with the typeface requirements and type-volume limitation of Iowa Rules of Appellate Procedure 6.903(1)(d) and 6.903(1)(g)(1) because this brief has been prepared in a proportionally spaced typeface using Cambria in 14 point and contains 7,610 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

6/21/23
Date

Alexis W. Grove