

IN THE SUPREME COURT OF IOWA

NO. 17-1555
GRIEVANCE COMMISSION NO. 804

IOWA SUPREME COURT ATTORNEY DISCIPLINARY BOARD,
Complainant-Appellee,

vs.

SANDRA SUAREZ,
Respondent-Appellant.

APPEAL FROM THE GRIEVANCE COMMISSION
OF THE SUPREME COURT OF IOWA

APPELLANT'S BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES 3

STATEMENT OF THE ISSUES 4

ROUTING STATEMENT..... 5

STATEMENT OF THE CASE 6

STATEMENT OF FACTS..... 7

ARGUMENT..... 9

CONCLUSION..... 20

APPELLANT’S STATEMENT OF DESIRE TO BE HEARD IN ORAL
ARGUMENT 20

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
LIMITATION, TYPEFACE 21

REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS..... 21

TABLE OF AUTHORITIES

Cases

<i>Iowa Supreme Court Attorney Disciplinary Bd. v. Boles</i> , 808 N.W.2d 431 (Iowa 2012)	13
<i>Iowa Supreme Court Attorney Disciplinary Bd. v. Carter</i> , 847 N.W.2d 228 (Iowa 2014)	17
<i>Iowa Supreme Court Attorney Disciplinary Bd. v. Clarity</i> , 838 N.W.2d 648 (Iowa 2013)	11
<i>Iowa Supreme Court Attorney Disciplinary Bd. v. Clauss</i> , 711 N.W.2d 1 (Iowa 2006)	10
<i>Iowa Supreme Court Attorney Disciplinary Bd. v. Eslick</i> , 859 N.W.2d 198 (Iowa 2015)	15
<i>Iowa Supreme Court Attorney Disciplinary Bd. v. Guthrie</i> , 901 N.W.2d 493 (Iowa 2017)	16
<i>Iowa Supreme Court Attorney Disciplinary Bd. v. Khowassah</i> , 837 N.W.2d 649 (Iowa 2013)	14
<i>Iowa Supreme Court Attorney Disciplinary Bd. v. Kingery</i> , 871 N.W.2d 109 (Iowa 2015)	11
<i>Iowa Supreme Court Attorney Disciplinary Bd. v. Said</i> , 869 N.W.2d 185 (Iowa 2015)	13
<i>Iowa Supreme Court Attorney Disciplinary Bd. v. Taylor</i> , 814 N.W.2d 259 (Iowa 2012)	13
<i>Iowa Supreme Court Attorney Disciplinary Bd. v. Ta-Yu Yang</i> , 821 N.W.2d 425 (Iowa 2012)	13
<i>Iowa Supreme Court Atty. Disciplinary Bd. v. Marks</i> , 759 N.W.2d 328 (Iowa 2009).....	9
<i>Iowa Supreme Court Atty. Disciplinary Board v. Parrish</i> , 801 N.W.2d 580 (Iowa 2011)	9, 11
<i>Iowa Supreme Court Bd. of Prof'l Ethics & Conduct v. Freeman</i> , 603 N.W.2d 600 (Iowa 1999).....	9
<i>Iowa Supreme Court Bd. of Prof'l Ethics & Conduct v. Hohenadel</i> , 634 N.W.2d 652 (Iowa 2001).....	9

STATEMENT OF THE ISSUES

I. LICENSE REVOCATION NOT AN APPROPRIATE SANCTION UPON CONSIDERATION OF ALL RELEVANT CIRCUMSTANCES

Iowa Supreme Court Attorney Disciplinary Bd. v. Kingery, 871 N.W.2d 109

(Iowa 2015)

Iowa Supreme Court Attorney Disciplinary Bd. v. Said, 869 N.W.2d 185

(Iowa 2015)

Iowa Supreme Court Attorney Disciplinary Bd. v. Ta-Yu Yang, 821 N.W.2d

425 (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

The entirety of the record for the above-captioned matter is contained in the parties' joint Stipulation pursuant to Iowa Court Rule 36.16, the attachments thereto, and the Board's exhibits. The Complainant, Iowa Supreme Court Attorney Disciplinary Board, (hereinafter "Board"), filed a Fifth Amended Complaint against the Respondent Sandra E. Quilty Suarez, (hereinafter "Sandra"), on June 21, 2017. (App. p. 4). The complaint alleged seven separate counts of ethical misconduct. Sandra filed her Amended Answer to the complaint on June 22, 2017. (App. p. 29) The parties filed a Stipulation on June 23, 2017. (App. p. 36) The stipulation requested a waiver of formal hearing before the Grievance Commission. On June 28, 2017, the Commission entered an order accepting the parties' stipulation and waiving formal hearing. Sandra timely files this Brief Regarding Sanctions. The Grievance Commission entered its Findings of Fact, Conclusions of Law, and Recommendation on September 2017. (App. p. 99) Sandra timely files this appeal. (App. p. 135)

STATEMENT OF FACTS

Sandra Suarez is a licensed attorney in Iowa, most recently providing legal services in the practice areas of immigration law, family law, and criminal law. Sandra obtained her bachelor's degree from the University of Washington in 1994 and graduated from the St. Louis University School of Law in 1998. She is a Cuban-American and fluent in Spanish and English. She has utilized her skills as a bilingual attorney to serve the Hispanic community in Iowa. Sandra recently gave birth to a beautiful baby daughter, Stella.

The record before the Grievance Commission is contained in the parties' stipulation filed on June 23, 2017. The record also contains the Board's exhibits submitted to the Commission. The complaint and stipulation outlines seven different counts against Sandra. The allegations concern ethical misconduct as an attorney for matters occurring between January 2013 and August 2016. Sandra has taken responsibility for the misconduct outlined in the complaint. She has worked with Board in preparing the Stipulation filed with the Grievance Commission. (App. p. 48).

Sandra is diagnosed with chronic alcoholism. While Sandra has taken responsibility for her actions, she also acknowledges that her struggles with

alcoholism serve as the underlying cause of her misconduct. (App. p. 48). She has counseled with Hugh Grady with the Lawyers Helping Lawyers Program through the Iowa State Bar Association. (App. p. 48). She is a member of AA and regularly attends meetings to address her issues. She has been faithful in addressing her substance abuse issues. (App. p. 48).

ARGUMENT

I. LICENSE REVOCATION NOT AN APPROPRIATE SANCTION UPON CONSIDERATION OF ALL RELEVANT CIRCUMSTANCES

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 Attorney Disciplinary Board v. Parrish*, 801 N.W.2d 580, 583 (Iowa 2011). 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).

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 Attorney Disciplinary Board 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 Attorney Disciplinary Board v. Clauss*, 711 N.W.2d 1, 4 (Iowa 2006).

ARGUMENT

Sandra acknowledges and accepts full responsibility for her ethical misconduct. She has admitted to the violations as outlined in the Board's complaint. Under the circumstances, Sandra understands a suspension would be an appropriate sanction for her misconduct. However, a number of factors weigh in favor of a mitigated sanction.

Sandra has experienced major struggles with alcoholism. Her alcoholism has served as the underlying basis for several of her problems in both her personal and professional life. She has taken a new lease on life to treat her alcoholism and attends daily alcoholics anonymous. Her newborn daughter Stella serves as her inspiration to move past her addictions to alcohol.

Sandra is also proud of her Cuban-American heritage. She has served the Hispanic community in Iowa by providing legal advice to both Spanish and English speakers. Sandra also has an extensive record of service as a volunteer in her community and providing pro bono legal service. These

mitigating circumstances indicate a suspension is the appropriate sanction in this case.

A. An appropriate sanction requires strong consideration of the mitigating factors for Sandra.

The Court considers mitigating factors in determining the appropriate sanction in an attorney discipline case. *Iowa Supreme Court Attorney Disciplinary Bd. v. Parrish*, 801 N.W.2d 580, 589 (Iowa 2011). There are several mitigating factors for the Court to consider on Sandra’s behalf.

a. Treatment of Alcoholism as a Mitigating factor

Sandra’s alcoholism has had a severe negative impact on her personal and professional life. She has made extensive efforts to confront and treat her addictions and improve her life. While Sandra takes full responsibility for her conduct, her alcoholism was the underlying basis for her ethical misconduct. Her efforts to treat her disease are a strong mitigating factor.

“Robust rehabilitative efforts to control or eliminate” alcoholism is viewed as a significant mitigating factor. *Iowa Supreme Court Attorney Disciplinary Bd. v. Kingery*, 871 N.W.2d 109, 122 (Iowa 2015); *see also Iowa Supreme Court Attorney Disciplinary Bd. v. Clarity*, 838 N.W.2d 648, 660 (Iowa 2013). Alcoholism on its own is not an excuse for ethical misconduct. *Id.* However, an attorney that acknowledges their alcoholism

and takes steps to treat it, their efforts will be considered a mitigating factor if the alcoholism contributed to their misconduct. *Id.*

Sandra has made significant efforts to treat her alcoholism so that it does not negatively control her personal and professional life. Sandra has been medically diagnosed with alcoholism. Her struggles truly serve as the underlying basis for all of her ethical misconduct and has negatively impacted all facets of her life. While her disease has harmed herself and others, she has fortunately taken steps to ensure that alcoholism does not control the next chapter of her life.

Her efforts can certainly be considered robust. She has counseled with the Director of Lawyers Helping Lawyers, Hugh Grady, through the Iowa Bar Association. She has also received both inpatient and outpatient treatment for her alcohol addiction. She is a member of AA and has consistently attended meetings where she can receive additional counseling for her substance abuse. She has fully acknowledged the harmful effects of her alcoholism and taken the necessary steps to eliminate its negative impact on her life.

The most important influence in her treatment as Sandra begins the next chapter of her life is newfound inspiration. Sandra recently welcomed a beautiful baby daughter into her family. Sandra is working to ensure that her

struggles with alcoholism do not affect her daughter. Her daughter is daily inspiration for Sandra to overcome her addictions and be the best mother she can be.

b. Record of service to the community as a mitigating factor

Sandra has a remarkable record of service to her community. Namely, she has used her talents as a Spanish and English speaker to provide legal services for the Hispanic community in Iowa. Her volunteer service is a strong mitigating factor in this matter.

Volunteer community service and pro bono legal service is a “significant mitigating factor”. *Iowa Supreme Court Attorney Disciplinary Bd. v. Boles*, 808 N.W.2d 431, 442 (Iowa 2012). “Providing legal representation to an underserved part of the community is a significant mitigating factor.” *Iowa Supreme Court Attorney Disciplinary Bd. v. Taylor*, 814 N.W.2d 259, 268, (Iowa 2012).

“The service by an attorney to a vulnerable population with limited English language skills and lack of familiarity with the American legal system can be a mitigating factor.” *Iowa Supreme Court Attorney Disciplinary Bd. v. Said*, 869 N.W.2d 185, 194 (Iowa 2015). “Substantial service to the immigrant community” is a significant mitigating factor. *Iowa*

Supreme Court Attorney Disciplinary Bd. v. Ta-Yu Yang, 821 N.W.2d 425, 431 (Iowa 2012).

Over her professional career, Sandra has provided considerable amounts of pro bono legal advice to members of the community, particularly those who do not have the means to retain counsel in the normal course. Sandra is a Cuban-American and fluent in both Spanish and English. Her talents as a bilingual attorney has helped several clients who otherwise would not have access to the legal service. She has heavily involved in activities with the Hispanic community. Finally, Sandra has an excellent record of providing legal service to the immigrant community. All of her service must be considered as a strong mitigating factor in this matter.

c. Accepting responsibility for Ethical Misconduct

The Board's complaint alleges seven counts of allegations against Sandra. Sandra has accepted responsibility for her actions and conduct. She has admitted her violations and worked with the Board in an attempt to begin the next phase of her life. Ownership of her mistakes while cooperating with the Board should be considered in determining an appropriate sanction.

Candor and cooperation with the Iowa Supreme Court Disciplinary Board is considered a mitigating factor. *Iowa Supreme Court Attorney*

Disciplinary Bd. v. Khowassah, 837 N.W.2d 649, 657 (Iowa 2013); *Herrera*, 560 N.W.2d 592, 594 (Iowa 1997). Further, taking ownership of ethical violations is considered a mitigating factor. *Iowa Supreme Court Attorney Disciplinary Bd. v. Eslick*, 859 N.W.2d 198, 202 (Iowa 2015) (attorney's remorse is a mitigating factor).

An extensive stipulation has been filed in this case. The stipulation alone consists of twenty-five pages covering seven counts alleged against Sandra. Sandra worked with her counsel, counsel for the Board, and the Board's investigator in preparing the stipulation. The joint effort also allowed the Commission to waive a formal hearing on the matter. Sandra's cooperation highlights the fact that she has taken ownership of her past action. She has taken responsibility for her past conduct and is ready to begin a new chapter of her life.

B. The Court should place great emphasis on the strong mitigating factors in this case.

Sandra Suarez has had an admirable career as an attorney providing access to justice for some of Iowa's most vulnerable population. While Sandra fully acknowledges and takes responsibility for her mistakes, the positive impact she has had on her community should not be disregarded.

In recent history, mitigating factors have been weighed by the Supreme Court in crafting the appropriate disciplinary sanctions. While this trend continues for most attorney discipline cases, this Court recently carved out a single ethical violation where mitigating factors are not to be considered. The holding should be reversed and mitigating factors should be considered, not only for Sandra, but for all attorney disciplinary cases.

The Grievance Commission recommended Sandra's license to practice law be revoked. The Commission found Sandra had committed an ethical violation by stealing client funds. The Commission also noted that she had not submitted a colorable claim defense. (App. p. 133). In support of their recommendation, the Grievance Commission cited *Iowa Supreme Court Attorney Disciplinary Bd. v. Guthrie*, 901 N.W.2d 493, 500 (Iowa 2017).

The *Guthrie* holding was the first of its kind. In *Guthrie*, this Court ruled that mitigating factors are not considered when an attorney takes client funds without a colorable future claim to the funds:

Based upon our de novo review of the record, and the stipulated facts, we find Guthrie did not have a colorable future claim to the funds he withdrew in the Vogel matter, thus leading us to hold that he misappropriated client funds. In the stipulated facts, Guthrie admits that he did not have a colorable future claim to the funds and that this resulted in the misappropriation of client funds. Guthrie presented no evidence to the contrary. This finding is critical to the outcome of this proceeding and makes it unnecessary for us

to discuss the other rule violations in detail. **Likewise, we need not consider mitigating and aggravating factors that may be present here.** *Id.* at 500. (emphasis added).

It is important to note, Luke Guthrie had significant mitigating factors in his case. The Court commended his efforts in successfully maintaining his sobriety. *Id.* However, the strong mitigating factors were not considered because Mr. Guthrie did not have a colorable future claim to the client funds. The ruling effectively established, for the first time in Iowa, a “mandatory minimum” sanction of revocation for a specific type of ethical violation.

There is one ethical violation where mitigating circumstances are not considered. As stated, the “colorable future claim” violation has been singled out as the one violation that is so egregious it warrants no consideration of mitigation and license revocation. The standard is an arbitrary one within the contexts of attorney discipline.

The term “colorable future claim” is not found in the Iowa Rules of Professional Conduct. Rather, it is designation made by this Court concerning the misappropriation of client funds. In truth, there is no cemented standard as to what constitutes a colorable future claim. This Court has noted, “[t]he contours of a colorable future claim have not been sharply drawn”. *Iowa Supreme Court Attorney Disciplinary Bd. v. Carter*, 847 N.W.2d 228, 233 (Iowa 2014).

Members of this court have certainly questioned the reasoning behind the colorable future claim distinction. Justice Wiggins provided a dissent in a recent case in which he labeled the colorable future claim distinction as “illegal stealing” and “legal stealing”. Justice Wiggins wrote:

In the past, our court has determined a sanction when an attorney has misappropriated client's funds by distinguishing between what I label “legal stealing” and “illegal stealing.” “Legal stealing” allows an attorney to receive a lesser sanction when the attorney misappropriates a client's funds so long as the attorney has a colorable future claim to the funds misappropriated. However, if an attorney commits “illegal stealing” and misappropriates funds without a colorable future claim to the funds, we revoke that attorney's license.

I believed the court developed this distinction because revocations of an attorney's license were ordinarily permanent. This distinction has never made sense to me, but I went along with it because of the harshness of the sanction of revocation. The time has come to drop the distinction between legal and illegal stealing when sanctioning an attorney for misappropriating client funds. *Iowa Supreme Court Attorney Disciplinary Bd. v. Morse*, 887 N.W.2d 131, 148, (Iowa 2016) (Wiggins, J., dissenting) (citations omitted).

In his dissent, Justice Wiggins argues, in part, the colorable future claim distinction should be done away with the distinction itself is absurd. He further argues Iowa’s system of sanctioning disciplinary matters on a case-by-case basis, as opposed to using the ABA Model Standards for discipline, leads to “arbitrariness, not evenhandedness”. *Id.*

Justice Wiggins’ point on the arbitrariness of sanctions can now be taken one step farther. **By eliminating the consideration of mitigating**

factors in colorable future claim cases, the Supreme Court negates all of the advantages of determining the appropriate sanction on a case-by-case basis. Sanctioning attorney discipline matters on a case-by-case basis has its distinct advantages. No two matters are the same requiring flexibility in determining the appropriate sanction. Further, attorney discipline cases are unique in the sense that attorneys are seen as a self-governing body. The Iowa Supreme Court is charged with overseeing the governance of our profession in the state. The flexible approach in attorney discipline cases is readily apparent.

This Court eliminated the consideration of mitigating circumstances in the *Guthrie* decision once a finding is made that the attorney did not have a colorable future claim defense. In so ruling, the Court effectively handcuffs its own analysis in determining the appropriate sanction. The analysis is instead replaced by a sanction that can only be classified as a mandatory minimum sentence for attorney discipline.

At present, the mandatory license revocation for a colorable future claim violation encapsulates the worst aspects of uniform sanctioning as proposed by the ABA model rules and the case-by-case analysis method. Unfortunately, benefits of either approach are forgone under the recent

Guthrie ruling. For this reason, the Court should consider mitigating circumstances in all attorney discipline cases.

CONCLUSION

Sandra is ready to begin the next chapter of her life as new mother. She has taken the necessary steps to confront her alcoholism in order to prevent her addictions from negatively impacting her personal and professional life. Sandra has a remarkable record of providing legal services to the Hispanic community in Iowa. Her skills as a bilingual attorney have helped numerous Spanish speakers obtain legal services who otherwise would not have access to the legal system. Under the circumstances, a ninety day suspension would be an appropriate sanction.

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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