

SUPREME COURT OF ARIZONA

In the Matter of a Member of the) Arizona Supreme Court
State Bar of Arizona) No. SB-15-0034-AP
)
JOHN A. SHANNON, JR.,) Office of the Presiding
Attorney No. 5033) Disciplinary Judge
) No. PDJ20149051
Respondent.)
)
) **FILED 12/15/2015**

DECISION ORDER

Pursuant to Rule 59, Rules of the Supreme Court, Respondent John A. Shannon, Jr. appealed the Disciplinary Hearing Panel's "Amended Decision and Order Imposing Sanctions." The Court has considered the parties' briefs and the record in this matter. The Court agrees with the Hearing Panel that the record establishes by clear and convincing evidence that Respondent committed the ethical violations charged in the complaint. However, contrary to the decision of the Hearing Panel, the Court concludes that suspension rather than disbarment is the appropriate discipline.

In determining appropriate sanctions, the Court and the Hearing Panel look to the American Bar Association's Standards for Imposing Lawyer Sanctions. We consider the duty violated, the lawyer's mental state, the presence or absence of actual or potential injury, and the existence of aggravating and mitigating circumstances. Standard 3.0. The Standards instruct that the ultimate sanction imposed should be at least consistent with the sanction for the most serious instance of misconduct. Multiple or repeated instances of misconduct should be

considered as aggravating factors.

The violations here stem from one count related to Respondent's handling of client funds in the face of claims by medical lien holders. The Hearing Panel found that the Respondent violated his duty to his client by failing to observe the rules governing the treatment of client funds by attorneys. See ER 1.3 (Diligence), ER 1.15 (Safekeeping Property). In addition, Respondent violated his duties to the public by making certain statements to medical lien holders regarding payment of their claims. Respondent's mental state was knowing, as he knew or should have known his obligations under the rules to deal properly with his client's property and he acted knowingly in making his statements to the medical lien holders.

Because the most serious conduct involves the Respondent's primary obligations to his client, Standard 4.0 applies. Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client. Respondent's violation of ER 1.3 makes Standard 4.4 also relevant. Under Standard 4.42 (Lack of Diligence), suspension is generally appropriate when a lawyer knowingly fails to perform client services and causes injury or potential injury to a client. Respondent's other violations support a presumptive sanction of censure.

After misconduct has been proven, aggravating and mitigating circumstances are considered in determining the appropriate sanction.

The record supports the existence of the following aggravating circumstances: Standards 9.22(a) (prior disciplinary offense); 9.22(i) (substantial experience in the practice of law). The record also reflects these mitigating circumstances: Standard 9.32 (m) (remoteness of prior offenses) and, although not a listed factor under the Standards, the Respondent's good faith belief in the invalidity of the medical liens. Respondent has maintained that the medical liens involved in these proceedings are preempted by federal law. Without deciding that issue here, we note that the court of appeals' recent decision in *Abbott v. Banner Health Network*, 246 Ariz. 436, 341 P.3d 478 (App. 2014), which held that federal law preempts certain medical liens, issued after Respondent's conduct and is now pending review before this Court.

Considering the aggravating and mitigating circumstances, the Court finds that an appropriate term of suspension is ten months.

Finally, the Court rejects the Respondent's argument that the Hearing Panel decision should be set aside due to the denial of his motion to disqualify the Presiding Disciplinary Judge from participating in these disciplinary proceedings.

Therefore, upon due consideration,

IT IS ORDERED that the appeal of Respondent John A. Shannon, Jr. is GRANTED.

IT IS FURTHER ORDERED that Respondent John A. Shannon, Jr. is

suspended from the practice of law in Arizona for a period of ten months, retroactive to April 10, 2015.

IT IS FURTHER ORDERED that, pursuant to the "Consensual Order re: Missing Check for Funds" dated June 2, 2015, the State Bar may continue to facilitate the interpleader of the client's settlement funds that were transferred by Respondent to the State Bar, using an Arizona licensed attorney identified by the client to manage and complete the interpleader proceedings.

IT IS FURTHER ORDERED that, upon reinstatement, Respondent John A. Shannon, Jr. may be placed on probation, if appropriate, with the length and any terms and conditions to be determined as a part of those proceedings.

IT IS FURTHER ORDERED that the Hearing Panel's assessment of costs and expenses of the disciplinary proceeding is AFFIRMED.

DATED this 15th day of December, 2015.

_____/s/
SCOTT BALES
Chief Justice

TO:

John A Shannon Jr
Hunter F Perlmeter
Michele Smith
Maret Vessella
Sandra Montoya
Perry Thompson
Don Lewis
Beth Stephenson
Mary Pieper
Netz Tuvera
Lexis Nexis