

SUPREME COURT OF ARIZONA

In the Matter of A Member of the) Arizona Supreme Court
State Bar of Arizona) No. SB-16-0011-AP
)
DAVID R. WROBLEWSKI,) Office of the Presiding
Attorney No. 20079) Disciplinary Judge
) No. PDJ20149041
Respondent.)
) **FILED 9/6/2016**
_____)

DECISION ORDER

Pursuant to Rule 59, Rules of the Arizona Supreme Court, Respondent David Wroblewski appealed the hearing panel's imposition of disbarment. Wroblewski argues that the presiding disciplinary judge erred in striking his answer and entering default. The Court has considered the parties' briefs and the record in this matter. We review the order entering default for an abuse of discretion. Upon consideration, the Court concludes that the presiding disciplinary judge erred in striking Wroblewski's answer.

The complaint and supplemental complaint in this case included one hundred ninety (190) counts and alleged misconduct involving two hundred forty (240) clients of Wroblewski's law firm. In his answer, Wroblewski denied all ethical violations and, based on his inability to access client information, stated that he had insufficient information to either admit or deny the other facts. The presiding disciplinary judge found that the answer was deficient because Wroblewski had failed to make a reasonable inquiry to determine whether he had knowledge or information that required him to admit or

deny certain averments in the complaint and supplemental complaint. We disagree. The record shows that Wroblewski made reasonable efforts to obtain information in order to respond to the majority of the allegations in the complaint and supplemental complaint.

Wroblewski had a duty to conduct a reasonable investigation into the facts and law before filing his answer. *Boone v. Superior Court*, 145 Ariz. 235, 241 ¶ 9 (1985); Rule 11(a), Rules of Civil Procedure. "What constitutes reasonable efforts must be determined in light of the situation existing, the facts known, the amount of time available for investigation, the need for reliance upon the client or others for obtaining facts, the plausibility of the claim, and other relevant factors." *Boone, supra* (citations omitted).

Wroblewski was the managing attorney of his firm and had no personal knowledge of the facts in each client's case. Before the commencement of formal discipline proceedings, Wroblewski had filed Chapter 7 bankruptcy on behalf of his law firm. As a result, the bankruptcy trustee took possession of the law firm's property, including files, computers, data, and client information. To verify any information about a specific case, Wroblewski would have had to rely on material in the client's file or the case notes. The record reflects that Wroblewski went to the office of the attorney for the trustee to access the firm's computer. Due to technical problems, however, neither the bankruptcy trustee, his attorney, nor Wroblewski could access the law firm's server. Consequently, Wroblewski could

not obtain pertinent client information. Thus, for the vast majority of the allegations in the complaint and supplemental complaint, Wroblewski had no knowledge or information to enable him to admit or deny them and, in spite of reasonable efforts, he was not able to obtain this information. Under the circumstances presented to Wroblewski, his investigation of the charges was reasonable.

Bar counsel argued that Wroblewski had sufficient information to admit certain allegations in the complaint. For example, he could have admitted that he was admitted to practice in Arizona and Illinois, or that he had purchased the bankruptcy practice. In general, if a party in bad faith asserts in a pleading that they lack sufficient information, the courts simply deem the allegation admitted. See *Clay v. Dist. of Columbia*, 831 F.Supp.2d 36, 46-47 (D.D.C.2011); 5 Arthur R. Miller, et al., *Federal Practice and Procedure*, § 1262 (3d ed. 2012). The presiding disciplinary judge had authority to deem these particular allegations admitted. Striking the entire answer, however, was not an appropriate sanction. Accordingly,

IT IS ORDERED granting Wroblewski's appeal.

IT IS FURTHER ORDERED vacating the order striking Wroblewski's answer and entering default judgment. As a consequence, the decision and order of disbarment also are vacated. This matter is remanded to the presiding disciplinary judge for further proceedings consistent with this decision.

IT IS FURTHER ORDERED placing Wroblewski on interim suspension status pending the outcome of these discipline proceedings.

DATED this 6th day of September, 2016.

_____/s/_____
SCOTT BALES
Chief Justice

TO:

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