

SUPREME COURT OF ARIZONA

In the Matter of a Member of the) Arizona Supreme Court
State Bar of Arizona) No. SB-19-0004-AP
)
JOSEPH P. ROCCO,) Office of the Presiding
Attorney No. 9284) Disciplinary Judge
) No. PDJ20189032
Respondent.)
_____)

FILED 09/24/2019

DECISION ORDER

Pursuant to Rule 59, Rules of the Supreme Court, Respondent Joseph P. Rocco appealed the hearing panel's findings and sanction. The Court has considered the parties briefs and the record in this matter.

In disciplinary appeals, we accept the panel's factual findings unless they are not supported by reasonable evidence and are clearly erroneous. *In re Alexander*, 232 Ariz. 1, 5 ¶ 11 (2013). Conclusions of law are reviewed de novo. Rule 59(j). We review the imposed sanction de novo as a question of law. *In re Phillips*, 226 Ariz. 112, 117 ¶ 27 (2010).

On appeal, Respondent argues that the presiding disciplinary judge (PDJ) made a number of erroneous evidentiary rulings. With the exception of one ruling discussed below, the Court rejects Respondent's challenges to the PDJ's evidentiary rulings. As to one ruling, Respondent argues that the PDJ erred in precluding his testimony about how he has changed his office procedures and is no longer engaging in the conduct giving rise to the discipline charges. We agree with Respondent that this was relevant evidence of remedial conduct and should not have been excluded. See *In re Peasley*, 208 Ariz. 27, 39 ¶ 53 (2004). Efforts to change behavior and prevent further injury to the public are considered remedial.

Respondent argues that some of the panel's factual findings were clearly erroneous. With the exception of one factual finding discussed below, the Court rejects Respondent's challenges to the panel's findings. Respondent submits that the panel's finding that he took no remedial action following his misconduct is not supported by reasonable evidence. We agree with Respondent that this finding was clearly erroneous. Respondent presented some evidence of remedial conduct and efforts to rectify his misconduct. There was evidence the Respondent instructed his attorney to contact the Wife's attorney and take all necessary measures to make things right.

Respondent also provided medical evidence that he sought treatment to deal with health issues that may have contributed to his misconduct. See *In re Abrams*, 227 Ariz. 248, 253 ¶ 33 (2011). Further, as noted above, Respondent offered testimony that he changed his office procedures to correct his conduct. The panel's finding that Respondent took no remedial steps following his misconduct was clearly erroneous.

Notwithstanding the errors noted above, the Court accepts the panel's findings that Respondent's conduct violated ERs 1.2, 1.5(b), 3.1, 4.1, 4.4, 5.3, and 8.4(c) and (d).

As to the sanction, the panel correctly found the presumptive sanction to be suspension. The most serious misconduct in Respondent's case was his knowing misstatements to obtain the subpoenas, causing injury to the parties and the administration of justice. See ABA Standard 6.12. The Court accepts the panel's findings in aggravation and mitigation. We find, however, that the record supports some additional factors. In aggravation, the record supports a finding of Standard 9.22(b), dishonest or selfish motive. In mitigation, the record supports a finding of Standard 9.32(d), efforts to remediate or rectify the consequences of misconduct; Standard 9.32(l), remorse; and Standard 9.32(m), remoteness of prior discipline offense. The State Bar recommended a short-term suspension in this case. A consideration of these factors in aggravation and mitigation supports a ninety (90) day suspension.

The Court affirms the imposition of a ninety (90) day suspension, probation for two years upon reinstatement with LOMAP and MAP, and the imposition of costs and expenses of the discipline proceedings.

IT IS ORDERED affirming the decision and sanction of the hearing panel as set forth in this order.

DATED this 24th day of September, 2019.

_____/s/_____
ROBERT BRUTINEL
Chief Justice

TO:

Ralph W Adams

Karen A Clark

James D Lee

Catherine Montemayor

Sandra Montoya

Maret Vessella

Don Lewis

Beth Stephenson

Mary Pieper

Raziel Atienza

Lexis Nexis