

Supreme Court

In the Matter of David W. Gervasini

No. 2008-30 M.P.

O R D E R

The respondent-attorney, David W. Gervasini is before the Supreme Court pursuant to a Decision and Recommendation of the Disciplinary Board of the Supreme Court of the State of Rhode Island (board) that he be suspended from the practice of law for one year and a day. Rule 6(d) of Article III of the Supreme Court Rules of Disciplinary Procedure provides in pertinent part:

“If the [Disciplinary] Board determines that a proceeding * * * should be concluded by public censure, suspension or disbarment, it shall submit its findings and recommendations, together with the entire record, to this Court. This Court shall review the record and enter an appropriate order.”

Upon receipt of the decision and recommendation of the board, this Court ordered the respondent to appear before the court on January 31, 2008 to show cause why he should not be disciplined in accordance with the board's recommendation. The respondent appeared before the court without counsel. After hearing the representations of the respondent and Disciplinary Counsel we conclude that the respondent should be disciplined.

The facts giving rise to the board's recommendation are as follows: In 1995, the respondent was appointed by the Westerly Probate Court as co-trustee for three minor children: Eugene Bilby, III; Ryan Bilby; and Justin Bilby. The purpose of the trust was to provide for the distribution of \$4,900 to the children, who were entitled to the distribution of

these funds due to the death of their father, Eugene Bilby, Jr. The Probate Court ordered that the funds be placed in an interest bearing account and further provided:

“Said \$4,900 shall not be drawn upon or withdrawn until the 18th birthday of each child and then and only then may one-third of the then existing account with interest be withdrawn.[sic] For the benefit of that child then reaching the age of 18.”

The respondent delivered funds to Eugene III, and Ryan when they reached the age of 18. However, when Justin reached his 18th birthday, and a request was made for payment of his share, the respondent advised that no funds were available.

On January 17, 2007 the mother of Justin Bilby, who is also co-trustee of the trust, filed a complaint with the Office of Disciplinary Counsel. On February 21, 2007, in response to that complaint, the respondent provided a check to Justin in payment of his share. That check was drawn on respondent's client account. The source of those funds was his own money, and not the trust fund which he had been ordered to establish. The respondent failed to provide an accounting to disciplinary counsel regarding the trust funds, and made misrepresentations to disciplinary counsel regarding the records of the trust account. The board concluded that respondent violated the following Rules of Professional Conduct in regards to this matter: Rule 1.3 (diligence); 1.15 (safekeeping property); 1.16 (required bookkeeping records); 3.4 (fairness to opposing party and counsel); 8.1 (failure to cooperate with disciplinary counsel); and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation).

In a second matter the respondent provided services to Claire Parssinen.¹ In January of 2005, Ms. Parssinen paid him a \$1,000 retainer to represent her in a claim arising from a motor vehicle accident. He did not provide a written fee agreement to his client, and

¹ Ms. Parssinen passed away prior to the initiation of these disciplinary proceeding.

performed no legal services on her behalf. Ms. Parssinen resolved the claim through her own insurance carrier.

In March of 2005, Ms. Parssinen provided respondent an additional \$10,000. Of that payment, \$6,000 was earmarked as her donation for a charitable trust that respondent advised her he was establishing for the welfare of children. The respondent has not established any such charitable trust.

In June of 2005, Ms. Parssinen terminated the respondent's services, and hired new counsel who requested a full accounting for the monies paid. In response, the respondent provided a purported accounting showing that he billed Ms. Parssinen \$250 per hour for non-legal services such as driving her to and picking her up at the airport, and further claiming that he had taken the funds specifically designated as a donation to the purported charitable trust and applied those funds to his fee. The board concluded that the respondent violated the following Rules of Professional Conduct in his representation of Ms. Parssinen: Rule 1.15 (safekeeping property); Rule 1.17(d) (failure to refund fee that has not been earned); and Rule 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation).

Based upon these findings, it was the unanimous recommendation of the board that the respondent be suspended for period of one year and one day. The board further recommended that the respondent be required to apply to this court for reinstatement, and that, prior to such reinstatement, he be required to provide acceptable accountings in both cases, and that he refund to his clients or their representatives any unearned retainer funds.

After hearing the representations of the respondent, we deem that the recommendation of the Board is more than justified. We note that the respondent was served with two Petitions for Disciplinary Action which were filed on July 18, 2007 and July 25,

2007. Article III, Rule 6(b) of the Supreme Court Rules of Disciplinary Procedure provides, in relevant part: "In the event the respondent-attorney fails to file an answer, the charges shall be deemed admitted; . . ." Additionally, Rule 3.18(d) of the Rules of Procedure of the Disciplinary Board provides "In the event that the respondent-attorney fails to file an answer, the charges shall be deemed ADMITTED." (emphasis in original). On August 10, 2007 the respondent filed a motion for an extension of time for 20 days, for, among other reasons, to obtain possible representation. No answer to the petitions was filed, and no attorney has entered an appearance on behalf of respondent.

The disciplinary board scheduled this matter for hearing on November 14, 2007. The respondent received notice of this hearing. He did not file an answer, make a formal request for a continuance, or appear at the hearing. Accordingly, the board proceeded in his absence, properly determined that all charges were admitted, and recommended a sanction.

The respondent appeared before this Court pursuant to our show cause Order, and claimed he had been denied the opportunity to be heard and to be represented by counsel. He requested that we remand this matter to the board for purposes of conducting an evidentiary hearing. Based upon the record, we find such a claim and request to be baseless.

It is abundantly clear that the respondent was provided ample opportunity to contest these allegations. He failed to cooperate with counsel's investigation into these allegations, failed to answer the formal disciplinary charges filed against him, and failed to appear or seek a continuance of the disciplinary hearing. When he appeared before this Court he exhibited a lack of insight which we find deeply troubling. Moreover, it is clear that he fails to recognize the depth of his malfeasance in these matters, and that he is unwilling to accept

any responsibility for his actions. Rather, he seeks to assign blame to his victims, the complainants, disciplinary counsel, and the disciplinary board.

We adopt, in full, the recommendation of the board. Accordingly, the respondent, David W. Gervasini, is hereby suspended from the practice of law for one year and one day, commencing 30 days from the date of this Order. The respondent shall fully comply with the mandates of Article III, Rule 15 of the Supreme Court Rules of Disciplinary Procedure. He shall not be readmitted to practice law in this State except by Order of this Court pursuant to Article III, Rule 16. He shall not be eligible for consideration for reinstatement until he has provided a full accounting and refunded all unearned fees. We note that Rule 16 imposes a heavy burden on a suspended attorney seeking reinstatement. Any reinstatement application submitted by the respondent will be subject to rigorous scrutiny.

Entered as an Order of this Court this 6th Day of February, 2008.

By Order,

/s/

Clerk