

DECISION FROM DISCIPLINARY REPORTS AND DECISIONS SEARCH

***Petition Allowed by the Illinois Supreme Court
and Imposing Discipline on Consent***

Allowed May 21, 2019

IN THE SUPREME COURT OF ILLINOIS

In the Matter of:

CHERYL ANN POWELL,

Supreme Court No. M.R.29815

Attorney-Respondent,

Commission No. 2018PR00031

No. 6197333.

**PETITION TO IMPOSE DISCIPLINE ON CONSENT
PURSUANT TO SUPREME COURT RULE 762(b)**

Jerome Larkin, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney, Peter L. Rotskoff, pursuant to Supreme Court Rule 762(b), with the consent of Respondent, Cheryl Ann Powell, and the approval of a panel of the Hearing Board, petitions the Court to enter an order suspending Respondent from the practice of law for one year and until further order of the Court, with the suspension stayed after 60 days in favor of a two-year period of probation with conditions. In support, the Administrator states:

I. BACKGROUND AND SUMMARY OF PETITION

1. Respondent is 55 years old and was licensed to practice law 1988. She is a solo practitioner in Mount Vernon. In one case, Respondent improperly revealed client confidences, failed to adequately communicate with the client, sent the client an inaccurate billing statement and made a false statement about her billing statements in a sworn statement. With regard to a second client, she failed to comply with discovery in a divorce case, leading to sanctions being entered against the client. She also did not adequately communicate with that client. In a third matter, she failed to appear for a hearing on her clients' scheduled adoption of their two foster children, causing distress to the clients and their family.

2. In mitigation, Respondent has not been previously disciplined, she has been cooperative in the disciplinary process and some of her misconduct was causally connected to

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her major depressive disorder. Respondent contacted the Lawyer's Assistance Program ("LAP") in the fall of 2018 and has been treating with Dr. Miriam Schroeder, a psychiatrist in St. Louis since October 17, 2018. Dr. Schroeder has stated that with proper treatment and medication, Respondent's depression can be controlled and should not substantially impact her practice in the future. In aggravation, Respondent's conduct impacted three separate clients and continued over a lengthy

period of time. Additional details concerning factors in aggravation and mitigation are contained in Section III of the petition.

3. Respondent's suspension for one year and until further order of the Court, with the suspension stayed after 60 days by a two year period of probation subject to the conditions outlined in Section IV of this petition, would be consistent with this Court's precedent, including the cases of *In re Taylor*, M.R. 28164, 2015PR00083 (September 22, 2016) and *In re Haley*, M.R. 20381, 2004PR00010 (November 22, 2005). A description of the recommendation for discipline is contained in Section IV of this petition.

4. At the time this petition was prepared, a seven-count amended complaint was pending against Respondent before the Commission's Hearing Board. The members of the panel assigned to consider that complaint have, as required by Rule 762(b)(1)(b), approved the submission of this matter to the Court as an agreed matter. Respondent's affidavit is attached as Exhibit One. A copy of the panel's order approving the submission of this matter is attached as Exhibit Two. A copy of the report of proceedings before the Hearing Board is attached as Exhibit Three.

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II. FACTUAL BASIS FOR RECOMMENDATION

A. *Improperly Revealing Confidential Information, Improper Billing and Failure to Adequately Communicate* - Laura Richardson

5. In May 2016, Laura Richardson ("Richardson") consulted with Respondent concerning Richardson's four year-old granddaughter. The child had been the victim of sexual abuse and Richardson was seeking the appointment of a guardian *ad litem* and court-ordered counseling for the child. Richardson's son, Cody Richardson ("Cody") had pled guilty to criminal sexual abuse of the child. Richardson repeatedly told Respondent that she did not want Cody or the child's mother, Heather Richardson ("Heather"), to know that Richardson had retained an attorney and was considering legal action.

6. In violation of Richardson's direct instructions, Respondent disclosed her representation of Richardson and her client's intent to pursue and legal action, including a petition for adjudication of wardship, to the prosecutor and defense attorney in Cody's sexual abuse case, and to Heather during a meeting Respondent had with Heather, unbeknownst to Richardson and without her informed consent to the disclosures.

7. Respondent improperly billed Richardson \$200 for the one-hour meeting with Heather that Richardson did not authorize. Respondent also improperly billed Richardson \$500 for a two-and-a-half hour meeting with Richardson on June 2, 2016. That meeting did not take place. Respondent has repaid Richardson \$700 for the improper billings. On June 29, 2016, Respondent met with Richardson and declined to represent her further.

8. Between May 26, 2016 and October 24, 2016, Richardson called Respondent on at least 10 occasions and left messages asking Respondent to return her calls. Respondent never returned the calls and never spoke to Richardson by telephone.

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B. *False Statement to ARDC about the Richardson Billing*

9. Respondent sent two different bills to Richardson for services she claimed to have rendered for the time period between May 26, 2016 and June 29, 2016. The first bill, dated August 2, 2016, had charges totaling \$865. Respondent sent a second bill to Richardson on October 20, 2016, with charges totaling \$1,465. The second bill included an additional \$700 worth of charges for the purported meeting with Richardson on June 2, 2016, and Respondent's unauthorized meeting with Heather.

10. On January 3, 2018, Respondent appeared for a sworn statement at the ARDC's Springfield office. During the sworn statement, Respondent was shown the statement of services drawn on her letterhead, dated August 2, 2016, and addressed to Richardson. Respondent stated that the bill:

"?was not sent to Laura in the mail. It was not approved by me. It was given to her by my former secretary when she [Laura] came into the office. It was not approved by me."

Respondent's statement was false because Richardson received the bill in the mail on or about August 3, 2016, not from Respondent's secretary in August, 2016.

C. *Lack of Diligence and Communication - Jennifer Borton*

11. In March 2016, Respondent agreed to represent Jennifer Borton ("Borton") in a pending divorce case in Wayne County. Respondent failed to appear for a case management conference set by the court on May 11, 2016, nor had Respondent notified Borton about the case management conference. Between August 9, 2016 and November 20, 2017, Respondent filed three motions to continue scheduled hearings in the divorce case without notifying Borton of those hearings or the motions to continue.

12. In August 2016, Respondent received a request for production of documents and interrogatories from the attorney representing Borton's husband, Penelope Westwater

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("Westwater"). Respondent made no response to the request until November 2017, when Respondent moved to continue a hearing on Westwater's motion *in limine* seeking sanctions due to Respondent's failure to respond to the requests. In Respondent's motion, she stated that she had been ill and had not worked much in the past several weeks, and she had been unable to respond to the discovery. Respondent did not notify Borton of the motion to continue the hearing.

13. On December 29, 2017, Respondent filed a motion to withdraw from Borton's case. Respondent did not notify Borton that she had scheduled the motion to be heard on January 8, 2018. At that time, the motion was granted without Borton present. Sanctions were ordered against Borton prior to the bench trial on April 4, 2018, where Borton appeared *pro se*. In May, new counsel for Borton moved to vacate the judgment due to Respondent's conduct in the case. The court allowed that motion on September 9, 2018.

D. *Lack of Diligence - Jeffrey and Annie Mount*

14. In March 2017, Respondent agreed to represent Jeffrey and Annie Mount ("the Mounts") in the adoption of two of their foster children. Respondent scheduled the adoption hearing for March 6,

2018, at 9:30 a.m. in Marion County. Respondent did not appear for the adoption hearing, nor did she move to continue the hearing or notify the Mounts that she would not be present. The guardian *ad litem*, the foster care manager and the Mounts' friends and family were all present for the hearing. Multiple people attempted to call and to send text messages to Respondent but they were unable to reach her or obtain a response to the messages.

15. Another attorney who happened to be in the courtroom offered to complete the adoption hearing because the Mounts were very upset. With the court's approval, the attorney entered her appearance and completed the adoption hearing.

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E. *Conclusions of Misconduct*

16. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. failing to abide by the client's decisions concerning the objectives of representation by revealing to Heather and others, Respondent's representation of Richardson, after Respondent was specifically instructed by Richardson not to reveal any information concerning the representation, in violation of Rule 1.2(a) of the Illinois Rules of Professional Conduct (2010);
- b. failing to act with reasonable diligence and promptness by conduct including failing to appear for the adoption hearing on behalf of the Mounts, failing to appear at a status hearing on behalf of Borton and failing to timely refund unearned or improper fees to Richardson, in violation of Rule 1.3 of the Illinois Rules of Professional Conduct (2010);
- c. failing to promptly inform the client of any decisions of circumstances with respect to which the client's informed consent is required by conduct including failing to inform Borton about the motion in limine and failing to obtain Richardson's informed consent before meeting with and making disclosures to Heather about her representation of Richardson, in violation of Rule 1.4(a)(1) of the Illinois Rules of Professional Conduct (2010);
- d. failure to promptly comply with reasonable requests for information by conduct including not returning Richardson's phone messages in violation of Rule 1.4(a)(3) of the Illinois Rules of Professional Conduct (2010);
- e. failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions concerning the representation by conduct including failing to inform Richardson about the consequences of a guardian or wardship action, and failing to inform Borton about the motion in limine and possible sanctions, in violation of Rule 1.4(b) of the Illinois Rules of Professional Conduct (2010);
- f. improperly revealing information related to the representation of a client without the informed consent of Richardson by revealing information about the representation of Richardson, in violation of Rule 1.6(a) of the Illinois Rules of Professional Conduct (2010);

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- g. making a false statement of material fact in a disciplinary matter by conduct including making a false statement during a sworn statement conducted by the Administrator, in violation of Rule 8.1(a) of the Illinois Rules of Professional Conduct (2010); and
- h. conduct involving dishonesty, fraud, deceit, or misrepresentation by conduct including making a false statement during a sworn statement conducted by the Administrator, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

III. FACTORS IN AGGRAVATION AND MITIGATION

17. In aggravation, Respondent's conduct occurred over a period of approximately two years and caused harm and distress to multiple clients. In mitigation, Respondent has not been previously disciplined and she has been cooperative in the disciplinary process. She voluntarily sought the help of LAP for her depression. Since October 2018, she has been treated by a psychiatrist in St. Louis, Miriam Schroeder, M.D., who diagnosed her with major depressive disorder. Dr. Schroeder has stated that Respondent's decreased efficiency and inability to manage her day-to-day workload was causally connected to her depressive disorder. Dr. Schroeder also determined that Respondent's depressive symptoms were particularly severe during 2017 and 2018, during the time she was caring for her boyfriend's terminally ill mother.

18. Dr. Schroeder has stated that with continuing counseling and a regimen of antidepressant medications, Respondent should be able to maintain professional functioning without risk to her clients or the public.

IV. RECOMMENDATION AND DISCUSSION OF PRECEDENT

19. The Administrator respectfully requests that this Court enter an order suspending Respondent from the practice of law for a period of one year and until further order of the Court, with the suspension stayed after 60 days in favor of a two-year period of probation, subject to the

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following conditions, with the conditions to commence upon the effective date of the Court's order:

- a. Respondent shall comply with any and all treatment, medication and continuing care recommendations of Dr. Miriam Schroeder, or another psychiatrist and treatment program approved by the Administrator;
- b. Respondent shall provide the Administrator and Dr. Schroeder with an appropriate release, authorizing the treating professionals to: (1) disclose to the Administrator information pertaining to the nature of Respondent's compliance with any treatment plan established with respect to Respondent's condition; (2) to promptly report to the Administrator Respondent's failure to comply with any part of an established treatment plan; and (3) to respond to any inquiries by the Administrator regarding Respondent's treatment and compliance with any established treatment plan;
- c. Respondent shall attend meetings as scheduled by the Commission probation officer. Respondent shall submit quarterly written reports to the Commission probation officer

concerning the status of her practice of law and the nature and extent of her compliance with the conditions of probation;

- d. Respondent shall comply with the provisions of Article VII of the Illinois Supreme Court Rules on Admission and Discipline of Attorneys and the Illinois Rules of Professional Conduct and shall timely cooperate with the Administrator in providing information regarding any investigations relating to her conduct;
- e. Respondent shall reimburse the Commission for the costs of this proceeding as defined in Supreme Court Rule 773 and shall reimburse the Commission for any further costs incurred during the period of probation;
- f. At least thirty (30) days prior to the termination of the period of probation, Respondent shall reimburse the Disciplinary Fund for any Client Protection payments arising from her conduct;
- g. Respondent shall notify the Administrator within seven days of any arrest or charge alleging her violation of any criminal or quasi-criminal statute or ordinance;
- h. Respondent shall notify the Administrator within fourteen (14) days of any change of address; and

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- i. Probation shall be revoked if Respondent is found to have violated any of the terms of probation. The remaining portion of the one year period of suspension shall commence from the date of the determination that any term of probation has been violated and shall continue until further order of the Court.

20. The recommended sanction is consistent with discipline imposed by this Court for similar misconduct. For example, in *In re Taylor*, M.R. 28164, 2015PR00083 (September 22, 2016) an attorney who was diagnosed with depression was suspended for one year and until further order of the Court, with the suspension stayed after 60 days in favor of two years of probation subject to conditions. Taylor neglected four separate client matters, failed to refund unearned fees and improperly used his client trust account. As in this case, some of the conduct was causally related to his mental health condition.

21. Also, similar to the instant case is *In re Haley*, M.R. 20381, 2004PR00010 (November 22, 2005), where an attorney diagnosed with major depressive disorder was suspended for one year and until further order of the Court, with the suspension stayed after 60 days by two years of probation with conditions. Haley neglected five client matters, made misrepresentations to one client, converted client funds and improperly attempted to settle a malpractice claim with a client. As in this case, Haley had begun a treatment program for his depression, and his psychiatrist provided an opinion that his prognosis was good if he continued with treatment and medication, and that his condition would not preclude him from practicing law in the future if he was compliant with treatment.

22. As in *Taylor* and *Haley*, Respondent had sought treatment for her mental health condition and her psychiatrist has indicated that with continued treatment and medication, her mental health conditions

should not preclude her from practicing law in the future. A period of probation will allow Respondent to be monitored to ensure she can provide legal services

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without harm to the public, with the added protection of an additional suspension until further order of the Court in the event of her noncompliance with the conditions of probation.

WHEREFORE, the Administrator, with the consent of Respondent, Cheryl Ann Powell, and the approval of a panel of the Hearing Board, respectfully requests that the Court enter an order suspending Respondent from the practice of law for a period of one year and until further order of Court, with the suspension stayed after 60 days in favor of a two-year period of probation, subject to the following conditions, with the conditions to commence upon the effective date of the Court's order:

- a. Respondent shall comply with any and all treatment, medication and continuing care recommendations of Dr. Miriam Schroeder, or another psychiatrist and treatment program approved by the Administrator;
- b. Respondent shall provide the Administrator and Dr. Schroeder with an appropriate release, authorizing the treating professionals to: (1) disclose to the Administrator information pertaining to the nature of Respondent's compliance with any treatment plan established with respect to Respondent's condition; (2) to promptly report to the Administrator Respondent's failure to comply with any part of an established treatment plan; and (3) to respond to any inquiries by the Administrator regarding Respondent's treatment and compliance with any established treatment plan;
- c. Respondent shall attend meetings as scheduled by the Commission probation officer. Respondent shall submit quarterly written reports to the Commission probation officer concerning the status of her practice of law and the nature and extent of her compliance with the conditions of probation;
- d. Respondent shall comply with the provisions of Article VII of the Illinois Supreme Court Rules on Admission and Discipline of Attorneys and the Illinois Rules of Professional Conduct and shall timely cooperate with the Administrator in providing information regarding any investigations relating to her conduct;
- e. Respondent shall reimburse the Commission for the costs of this proceeding as defined in Supreme Court Rule 773

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and shall reimburse the Commission for any further costs incurred during the period of probation;

- f. At least thirty (30) days prior to the termination of the period of probation, Respondent shall reimburse the Disciplinary Fund for any Client Protection payments arising from her conduct;
- g. Respondent shall notify the Administrator within seven days of any arrest or charge alleging her violation of any criminal or quasi-criminal statute or ordinance;

- h. Respondent shall notify the Administrator within fourteen (14) days of any change of address; and
- i. Probation shall be revoked if Respondent is found to have violated any of the terms of probation. The remaining portion of the one year period of suspension shall commence from the date of the determination that any term of probation has been violated and shall continue until further order of the Court.

Respectfully
submitted,

Jerome
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Administrator
Attorney
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and
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Commission

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