

Not For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

IN THE MATTER OF THE DISBARMENT OF) **S. Ct. BA. No. 2007-013**
JACQUELINE A. DREW, ESQ.) formerly Super. Ct. Misc. No. 009-2006
_____)

Considered: June 20, 2008

Filed: June 30, 2008

BEFORE: **RHYS S. HODGE**, Chief Justice; **MARIA M. CABRET**, Associate Justice; and
IVE ARLINGTON SWAN, Associate Justice.

APPEARANCES:

Kevin A. Rames, Esq.
St. Croix, USVI
Attorney for Petitioner

MEMORANDUM OPINION

PER CURIAM.

This matter is before the Court on Petitioner's, The St. Croix and The St. Thomas Subcommittees of the Ethics and Grievance Committee of the U.S. Virgin Islands Bar Association (collectively "the Committee"), "Motion for Entry and Judgment by Default" and "Motion for the Appointment of an Attorney-Trustee for the Law Offices of Jacqueline A. Drew." For the following reasons, the petition will be granted.

I. BACKGROUND

Twenty-four former clients of Attorney Jacqueline A. Drew ("Respondent" or "Drew") filed grievances against Drew with the Committee. One grievance was filed in 1999, two in 2000, one in 2001, two in 2003, four in 2004, ten in 2005 and four in 2006.

The Committee adjudicated a grievance, filed on August 4, 2004, by Melvin George who complained that he paid Drew a \$600.00 retainer for a medical malpractice wrongful death claim against Mount Sinai Hospital in Miami Beach, Florida. Mr. George signed an Agreement for

Legal Representation with Drew and paid a \$600 retainer deposit. The statute of limitations for filing a claim expired without the filing of a claim and without Drew advising Mr. George as to whether she commenced work on his case. The Committee served Drew with a subpoena for the evidentiary hearing but she did not appear at the scheduled hearing. The Committee, proceeding in Drew's absence, fully reviewed the matter and recommends that this Court suspend or disbar Drew from the practice of law in the Virgin Islands.

Rather than adjudicate each of the twenty-three pending grievances, the Committee instead seeks Drew's disbarment for what is essentially abandonment of her practice and clients and absconding without accounting for client funds. On April 11, 2006, the Committee filed a complaint and motion with the Superior Court¹ for an order directing Drew to show cause why she should not be suspended or disbarred. The Superior Court issued the show cause order on May 2, 2006.

On June 11, 2006, an advertisement appeared in the Virgin Islands Daily News ("Daily News") stating that "The Center for Professional Legal Service² is CLOSED effective immediately due to illness. Clients Seeking their files may call 340-344-8829 between 12 Noon & 4 PM E.S.T." On June 23, 2006, the Committee moved for entry of judgment by default. The Superior Court denied the motion for default without prejudice, finding that Respondent was not properly served when notice was left at her former place of business and a certified letter addressed to her was returned to sender unaccepted. The Committee thereafter served Drew by publication in the Daily News, completing such service on September 18, 2006. Drew wrote to

¹ While this application was commenced in the Superior Court, on January 29, 2007, this Court has since assumed jurisdiction over admissions to the Virgin Islands Bar from the Superior Court. V.I. CODE ANN. tit. 4 §32(e) (2007 Supp.).

² Drew also practiced law under the name The Center for Professional Legal Services, a fact noted in the Committee's complaint.

the Superior Court on September 21, 2006, stating “I am in receipt of notice of disciplinary action taken against me. I hereby resign from the Virgin Islands Bar Association forthwith.”

On October 4, 2006, the Committee filed a “Motion for an Order of Disbarment” to which Drew did not respond. The Committee served Drew with an “Offer to Consent to Disbarment” on December 18, 2006, but Drew did not respond. On January 18, 2007, the Committee filed a “Notice of Offer of Consent to Disbarment and Motion for Entry and Judgment by Default.” Drew did not respond, and, other than the September 21, 2006 letter seeking to resign from the Virgin Islands Bar Association, she has not filed a response to these proceedings either before the Committee or the courts.

II. DISCUSSION

This Court has jurisdiction over discipline of members of the Virgin Islands Bar. V.I. CODE ANN. tit. 4 § 32(e) (2007 Supp.). We have stated:

The disciplinary procedures adopted by the Court require the Bar's Ethics and Grievance Committee to obtain an order from this Court to disbar an attorney from the practice of law in the Virgin Islands. *See* V.I.S.CT. R. 207.4.3(b)(II)(3). ... Our review in this respect is virtually *de novo*, except we do not hear and consider anew live testimony. *See [Matter of the Disciplinary Proceedings of] Phelps*, 637 F.2d [171,] [176 [(10th Cir. 1981)]. If we find that the respondent has violated the [ABA Model] [R]ules [of Professional Conduct], we must also decide whether to adopt the panel's recommended discipline or whether some other type of discipline is warranted. *See [In re Discipline of] Droz*, 160 P.3d [881,] [884-85 [(Nev. 2007)].

V.I. Bar v. Bruschi, S. Ct. BA Nos. 2007/64, 2007/65, 2008 WL 901533, at *1 (V.I. March 3, 2008) (footnote omitted).

Drew, in response to the motion to show cause, offered her resignation. Petitioner, in its “Motion for an Order of Disbarment” served on Drew at her Ohio residence on October 18, 2006, argues that the attempted resignation is out of compliance with this Court’s rules. “Any

member of the Bar may voluntarily resign therefrom, provided that: (1) the resignation was not filed in lieu of disciplinary proceedings, suspension or disbarment.” V.I.S.Ct.R. 206(c)(1). Here, the resignation was in direct response to the disciplinary action taken against Drew. The purported resignation does not meet the standards of an offer to consent to disbarment because an attorney respondent must admit to the Model Rules of Professional Conduct they have violated and submit such offer to this Court for approval. VISCR 207.3.13(b). The purported resignation therefore has no effect on Attorney Drew’s membership in the Bar. Moreover, the attempted resignation failed to give at least sixty days advance notice to her clients, the bar or the courts, as required by Supreme Court Rule 206(c). Accordingly, the resignation letter of September 21, 2006 is a nullity and has no effect on the proceeding.

The Committee seeks Drew’s disbarment by default. Default judgment is appropriate “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend.” Fed. R. Civ. P. 55(a). In issuing a default, “[i]f the party against whom judgment by default is sought has appeared in the action, the party . . . shall be served with written notice of the application for judgment at least 3 days prior to the hearing in such application.” Fed. R. Civ. P. 55(b)(2).

This Court must determine if Drew’s September 21, 2006 letter constitutes an appearance in the disciplinary action. The publication service was completed on September 18, 2006. Drew had until October 18, 2006 to plead or respond to the disciplinary show cause order. Drew’s September 21, 2006 letter, received by the Superior Court on September 25, 2006, is timely if it is regarded as an appearance in response to the show cause order.

An appearance is not limited to a physical appearance in court or filing of a document in the record. *United States v. McCoy*, 954 F.2d 1000, 1003 (5th Cir. 1992). The party against

whom the default judgment is sought must indicate to the court in some way, intent to pursue a defense. *Id.* “Although the rule does not define what constitutes an ‘appearance,’ federal courts have construed the term broadly so that a formal submission or presentation to the court is not required.”³ Courts take an expansive view of appearance because default judgment is an extreme remedy that should be granted only when an essentially unresponsive party halts the adversary process. *Meier v. McCord*, 632 N.W.2d 477, 482 (S.D. 2001). We therefore review Drew’s September 21, 2006 letter to determine if it is an appearance in this proceeding.

Drew’s letter states:

I am in receipt of notice of disciplinary action to be taken against me. I hereby resign from the Virgin Islands Bar Association forthwith. I have no intent to ever practice law again and I do not know when or if I shall ever be able to hold gainful employment. I have been ill for the past eighteen (18) months, in chronic pain, unable to walk without assistance, and suffering a progressive hearing loss. I left the Virgin Islands to get medical treatment, and a diagnosis for my illness. I am very sorry for the problems my illness has created but it is a situation beyond my control.

Letter from Jacqueline A. Drew, Esq., to Maria M. Cabret, Presiding Judge (Sept. 21, 2006) (on file with the Court).

Drew’s act of resigning is best described as an exit strategy and not a defense. Reference to her debilitating illness can be construed as a defense to the pending grievances filed after she fell ill in early 2005, but nine former clients, including Mr. George, filed grievances *before* she fell ill. The letter does not offer or manifest intent to defend against these pre-illness complaints. Accordingly, we find that Drew has not made an appearance for purposes of defending the action, is in default and is not entitled to the notice provision of Federal Rule of Civil Procedure 55(b). Drew was served with, but never responded to, the Committee’s October 4, 2006 “Motion

³Scott K. Zesch, Annotation, *What Constitutes "Appearance" Under Rule 55(b)(2) of Federal Rules of Civil Procedure, Providing That if Party Against Whom Default Judgment is Sought Has "Appeared" in Action, That Party Must be Served With Notice of Application for Judgment*, 139 A.L.R. Fed. 603 (1997).

for Disbarment,” filed October 23, 2006, and the Committee’s January 11, 2007 “Notice of Offer of Consent to Disbarment and Motion for Entry and Judgment by Default.”

Additionally, Drew failed to appear when the Committee served her with a subpoena for the evidentiary hearing in the Melvin George grievance matter. “Failure to timely answer [a] grievance shall be deemed an admission by the Respondent to all factual allegations contained in the grievance, and shall permit the grievance to proceed on a default basis.” VISCR 207.1.11. Due to Drew’s inaction in this proceeding and the proceeding below, default is appropriate. Drew is therefore in default and the Court will proceed to resolve this disciplinary matter without further notice to or the involvement of Drew. While judgment by default is disfavored, as decisions on the merits are preferred, *see Harad v. Aetna Cas. & Sur. Co.*, 839 F.2d 979, 982 (3d Cir. 1988), suspension or disbarment is an appropriate sanction for an attorney who abandons her clients and is in default in the disciplinary proceedings. *See In re Bradley*, 552 S.E.2d 844, 845 (Ga. 2001).

This Court must now determine the appropriate sanction. We have stated that:

In exercising our independent judgment concerning the proper sanction, we [] are guided by the Standards for Imposing Lawyer Sanctions. Under these Standards, we must consider the following four factors: “[1] the duty violated; [2] the lawyer's mental state; [3] the potential or actual injury caused by the lawyer's misconduct; and [4] the existence of aggravating or mitigating factors.” *Std's for Imposing Lawyer Sanctions* § III.B., Std. 3 .0; *see also Model Rules for Lawyer Disciplinary Enforcement* R. 10(C).

Brusch, 2008 WL 901533, at *6. A lawyer has a duty to communicate with her clients and preserve her client’s property. *Id.* A lawyer must act with reasonable diligence and promptness in representing his or her clients. *ABA Model Rules of Professional Conduct* R. 1.3 (2008).

In Mr. George’s grievance he paid Drew a \$600.00 retainer and signed a retainer agreement, thereby becoming Drew’s client. The retainer was Mr. George’s property entrusted

to Drew, but she failed to provide an accounting for the \$600.00. Despite numerous attempts to communicate with Drew about the status of his case, Drew remained unresponsive. She never filed a complaint on her client's behalf and she allowed the statute of limitations to expire. Drew failed to account for her client's property, communicate with her client and diligently represent her client.

Separate from Mr. George's grievance, Drew abruptly closed her practice and abandoned her clients with only an abrupt notice in the newspaper in violation of Supreme Court Rule 206(c), which requires sixty days advance notice and arrangements for the transfer of her cases. She failed to follow the procedure for withdrawing from the representation of her clients. More significantly, Drew's stranding of her clients violated her duty to diligently and promptly represent her clients.

In violating a duty, a lawyer may act intentionally, knowingly, or negligently. *Std's for Imposing Lawyer Sanctions* § II. Conduct is intentional when the lawyer acts with the "conscious objective or purpose to accomplish a particular result." *Std's for Imposing Lawyer Sanctions* § III. When the lawyer acts with "conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result," the conduct is done knowingly. *Id.* The least culpable mental state is negligence. A lawyer acts negligently when the lawyer fails "to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation." *Id.*

Brusch, 2008 WL 901533, at *7.

Here, Drew's actions of closing her law practice and leaving the Territory were deliberate, as evidenced by the affirmative placement of an advertisement indicating that her practice was closed and the planning and coordination required by a person who moves off-island. Simply placing an advertisement that the law practice is closed and informing clients that they must pick up their files illustrate that the representation of her clients was no longer diligent

and competent.

The record, however, does not reflect that Drew's goal was to intentionally cause her clients harm, confusion, deny them competent and diligent representation and fail to provide an accounting of retainers.

This Court is unsure of the amount of funds Drew absconded because the record does not indicate the amount of time she spent on each case; therefore it is unclear whether Drew earned a portion or all of each retainer. We do know that at least one client paid her a retainer and has no record of accounting for those funds. Drew's actions are best categorized as "knowing" because her actions were self-centered and impacted clients who contracted for her services. These actions clearly demand punishment.

The type of punishment is influenced by the existence of aggravating or mitigating factors. "An aggravating circumstance is one that may justify a more severe sanction, while a mitigating circumstance is one that may justify a more lenient sanction." *Brusch*, 2008 WL 901533, at *8 (citing *Std's for Imposing Lawyer Sanctions* § III.C., Std's 9.21, 9.31). Aggravating factors include multiple offenses, indifference to making restitution and bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency. *Std's for Imposing Lawyer Sanctions* § III.C., Std. 4.22. Personal or emotional problems are mitigating factors that this Court can entertain in determining sanctions. *Id.* at Std. 9.32(c).

The ABA Standards provide that "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." *Id.* at Std. 4.12. Absent mitigating circumstances "disbarment is generally appropriate when: (a) a lawyer abandons the practice and causes serious or potentially

serious injury to a client.” *Id.* at Std. 4.41(a).

Drew’s illness is an obvious mitigating factor. Based on her representations in her September 21, 2006 letter, her medical condition apparently deteriorated to the point where she could no longer function as a lawyer leading her to give up her law practice. We acknowledge that the manner in which Drew left her practice is unjustifiable. Nevertheless, in light of her debilitating condition, this Court believes that suspension is a more appropriate punishment than disbarment.

III. Conclusion

This Court will suspend Drew from the practice of law in the Virgin Islands Bar for two (2) years. Since her suspension is for more than three (3) months, Drew is required to petition this Court if she wishes to resume the practice of law in the Virgin Islands. *See* VISCR 203(h). As Drew is no longer living in the Virgin Islands and no longer intends to practice law in the Territory, we will appoint, if the Committee still deems it necessary, an Attorney-Trustee to collect and inventory Drew’s files to determine if any of Drew’s former clients have yet to secure new counsel. *See* VISCR 207.5.6.

ATTEST:

GLENDALAKE, ESQ.
Acting Clerk of the Court