

**BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO**

07 - 1117

In Re: :

Complaint against : **Case No. 06-020**

Bernard Redfield : **Findings of Fact,**
Attorney Reg. No. 0024600 : **Conclusions of Law and**
: **Recommendation of the**
Respondent : **Board of Commissioners on**
: **Grievances and Discipline of**
Disciplinary Counsel and : **the Supreme Court of Ohio**
Cleveland Bar Association :

Relators :

FILED
JUN 21 2007
MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

{¶1} Case Number 06-020, In re Complaint Cleveland Bar Association against

Bernard Redfield and Case number 06-035, In re Complaint of Disciplinary Counsel against Bernard Redfield were consolidated for hearing by order of the Board Chair entered July 12, 2006 and hearing was held on March 23, 2007 in Cleveland, Ohio, before a panel composed of Lynn Jacobs, Esq. of Toledo, Ohio, Martha Butler of Columbus, Ohio, and Panel Chair, Judge Thomas F. Bryant, of Findlay, Ohio.

{¶2} None of the panel members is from the district from which the complaint arose and none was a member of the probable cause panel that certified either matter to the Board. M. Terence Cawley, Esq. and Robert Lustig, Esq. appeared as counsel for the Cleveland Bar Association, Relator in Case No. 06-020. Carol Costa, Assistant Disciplinary Counsel, appeared as counsel for Disciplinary Counsel, Relator in Case No. 06-035. Respondent Bernard Redfield was present, appearing *pro se*.

PROCEDURAL BACKGROUND

{¶3} The separate complaints of Cleveland Bar Association and of Disciplinary Counsel were filed with the Board April 10, 2006. The complaint of Cleveland Bar Association in Case No. 06-020 alleged in each of Counts I (Gertrude Harris) and Count II (Daviejean Stevens) violations of DR 1-102(A)(4) [Conduct involving dishonesty, fraud, deceit, and misrepresentation], DR 6-101(A)(3), [Neglect a legal matter entrusted to him] and DR 7-101(A) [A lawyer shall not intentionally (1) Fail to seek the lawful objectives of his client, (2) Fail to carry out a contract of employment, and (3) Prejudice or damage his client during the course of a professional relationship]. Count III alleged Respondent's violation of Gov. Bar R. V (4) (G) [Lawyer's duty to cooperate in the investigation]. At hearing Counsel for Cleveland Bar Association withdrew Count I, and introduced evidence only on Counts II and III.

{¶4} Disciplinary Counsel's Complaint in Case No. 06-035 alleged in Count I Respondent's violation of DR 1-102(A)(5) [Conduct that is prejudicial to the administration of Justice] and DR 1-102(A)(6) [A lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law]. In Count II Disciplinary Counsel alleged Respondent's violation of Gov. Bar R. V (4)(G) and in Count III alleged Respondent's violation of Gov. Bar R. VI (1)(A)[failure to file a certificate of registration and registration fee].

{¶5} After service of process upon Respondent with copies of the Complaints and following Respondent's failure to file Answers or to plead otherwise in either case and the cases having been consolidated by order of the Board Chair, the co-relators filed their motion for default judgment with evidentiary exhibits. Before a ruling was made on

the motion for default, Respondent filed a memorandum in opposition to the motion and thereafter with leave eventually filed Answers to the Complaints.

{¶6} By his Answers to the Complaints in both cases, Respondent admitted some of the facts alleged, but denied that his conduct violated any of the disciplinary rules or rules governing the Bar.

{¶7} At the commencement of the evidentiary hearing, counsel for Relator Cleveland Bar Association advised the panel that its two original grievants did not wish to testify.

{¶8} Respondent Redfield testified in his own behalf and upon cross examination but called no other witnesses and offered no respondent's exhibits.

{¶9} Both Relator Cleveland Bar Association and Respondent Redfield have referred in argument to unspecified matter in "the record" in proof of claims and defenses. Presumably, one of the matters referred to in "the record" is the affidavit of Daviejean Stevens submitted in support of an earlier motion for default in these cases in which she states that she paid Respondent \$1800.00 to apply toward a fee of \$2500. Another is her original grievance form in which she states that the fee was to be a contingent fee. However, the panel has considered as probative of the issues drawn by the pleadings, the exhibits offered and received in evidence, the admissions of Respondent's Answers and the unchallenged sworn testimony of the several witnesses who testified at hearing, including Respondent Redfield.

FINDINGS OF FACT

{¶10} The panel finds the following facts to have been proven by clear and convincing evidence.

{¶11} Respondent, Bernard Redfield, Ohio Attorney Registration number 0024600 was admitted to the practice of law in Ohio on May 7, 1984 and is an attorney subject to the Code of Professional Responsibility and the Supreme Court Rules for the Government of the Bar.

{¶12} On February 14, 2005, Respondent's license to practice law was suspended by the Ohio Supreme Court for an interim period pursuant to Gov. Bar R. V Section 5 (A)(1)(b) and (4) on default of two Child Support Orders entered by the Juvenile Division of the Court of Common Pleas of Cuyahoga County, Ohio.

{¶13} Respondent's license to practice law in Ohio was suspended December 2, 2005 for failure to register as an attorney for the 2005/2007 registration biennium which began September 1, 2005.

Case No. 06-020
Count I
Gertrude Harris

{¶14} Count I based on the grievance lodged by Gertrude Harris was withdrawn by Realtor's counsel following opening statement. No evidence was submitted regarding the merits of the Harris matter. The Grievance by Gertrude Harris was investigated by the Cleveland Bar Association and to that extent is relevant to Count III of Relator Cleveland Bar Association's Complaint alleging Respondent's failure to cooperate in the investigation.

Count II
Daviejean Stevens

{¶15} In 2002, Daviejean Stevens retained Respondent to represent her, in connection with a claim she sought to bring against the Dollar Store.

{¶16} Respondent had previously and perhaps contemporaneously represented

Daviejean Stevens in several criminal and civil matters including an action against Dollar Store by which Ms. Stevens previously had been employed and discharged.

{¶17} Respondent did not memorialize his undertaking through the use of a fee agreement, retention agreement, receipt, or any other document.

{¶18} The panel does not find clear and convincing evidence that Ms. Stevens paid Respondent any sum of money as a retainer with respect to the Dollar Store litigation, although she apparently paid him cash for fees for other matters in which he had previously and contemporaneously represented her or her family members. CBA Exh. 2.

{¶19} Ms. Stevens did not testify at the evidentiary hearing before the panel.

{¶20} Respondent did file suit on Ms. Stevens' behalf in the Cuyahoga County Court of Common Pleas. However, Respondent did nothing further to prosecute the action. CBA Exh. 1

{¶21} Respondent failed to act in behalf of his client to respond to or oppose a motion for summary judgment filed in response to Ms. Stevens' Complaint because she did not furnish documents and witnesses upon which her claim was made and following her deposition by defendant's counsel, he no longer believed in the merits of her claim. He expected the motion to be granted for judgment against her. He took no other action of any kind in the matter to preserve Ms. Stevens' right of action.

{¶22} As a result of Respondent's failure to act competently on her behalf to preserve her rights before or after summary judgment was granted dismissing Ms. Stevens' case with prejudice, any right of action Ms. Stevens may have had was lost.

{¶23} The panel finds that respondent did not intend to prejudice or damage his

client by his inaction after filing her complaint against Dollar Store.

Count III
Failure to Cooperate in Investigation

{¶24} Daviejean Stevens filed a grievance against Respondent alleging his neglect of her legal matters and her inability to contact him.

{¶25} On March 4, 2005, Respondent sent a letter in reply to Relator Cleveland Bar Association's request for reply to the grievance filed by Daviejean Stevens. CBA Exh. 2.

{¶26} On April 25, 2005, the matter was assigned to attorney Christopher Fisher for investigation. CBA Exh. 7.

{¶27} Respondent met once with Mr. Fisher about the Stevens matter, but thereafter Mr. Fisher was unable to communicate with Respondent by mail, telephone, or otherwise and Respondent could not be found at the address he had furnished to Mr. Fisher and to the Clerk of the Supreme Court of Ohio.

{¶28} Relator Cleveland Bar Association also opened a file against Respondent after it received a grievance filed by Gertrude Harris.

{¶29} On July 20, 2005, Relator sent a letter to Respondent by regular and certified mail requesting a written response to Ms. Harris' grievance by August 3, 2005. The certified letter was returned unclaimed but the letter sent by regular mail was not returned to Relator as refused, unclaimed, or otherwise having failed to be delivered. CBA Exh. 4

{¶30} Relator received no response from Respondent about the Harris grievance.

{¶31} On August 12, 2005, Relator sent a second letter to Respondent by regular mail requesting a written response to Ms. Harris' grievance by August 26, 2005. The

letter was not returned to Relator as refused, unclaimed, or otherwise having failed to be delivered. CBA Exh. 5

{¶32} Again Relator received no response from Respondent.

{¶33} On August 30, 2005, Ms. Harris' grievance was assigned to Attorney Christopher Fisher who had also been assigned to investigate Ms. Stevens' grievance. CBA Exh. 8. Mr. Fisher received no response to phone calls or e-mails although Respondent had initially responded to both in connection with Ms. Stevens' grievance.

{¶34} Respondent failed thereafter to respond or otherwise cooperate with Relator regarding Ms. Harris' grievance.

**Case No. 06-035
Count I**

{¶35} The Cuyahoga County Child Support Enforcement Agency notified the Board of Commissioners on Grievances and Discipline of its purpose to suspend Respondent's license to practice law for his failure to make child support payments in case number 7010323405, in which Joann Montgomery is the payee, and in case number 7009950168, in which Tabitha Tripp is the payee. The Secretary for the Board of Commissioners on Grievances and Discipline notified the Supreme Court of Ohio of Respondent's default of the Cuyahoga County child support orders.

{¶36} On February 14, 2005, pursuant to Gov. Bar R. V (5) (A), the Supreme Court of Ohio suspended Respondent's license to practice law for an interim period, due to his failure to comply with the two child support orders. ODC Exh. 1.

{¶37} On April 6, 2005 a motion to show cause for non-payment was held in the Tripp case in the Cuyahoga County Juvenile Court. ODC Exh.14.

{¶38} On May 24, 2005 respondent made a payment of \$500.00 to purge the

contempt in the Tripp case. ODC Exh.14.

{¶39} On July 18, 2005, respondent made another payment of \$800.00 to purge the contempt in the Tripp case. ODC Exh.14.

{¶40} On September 28, 2005 a second motion to show cause was filed in the Tripp Case.

{¶41} Respondent made no more payments in the Tripp case.

{¶42} As of December 28, 2005, Respondent's total arrearage in the Tripp case was \$13,465.00.

{¶43} As of December 28, 2005 Respondent's total arrearage in the Montgomery case was \$9,292.83.

{¶44} On September 29, 2005 the Cuyahoga County Child Support Enforcement Agency requested that the Cuyahoga County Juvenile Court file a motion to execute in the Montgomery case.

{¶45} On January 4, 2006 a capias for Respondent's arrest was issued by the Cuyahoga County Juvenile Court. ODC Exh.8.

{¶46} As of February 28, 2007, Respondent's total arrearage in case number 7009950168, Redfield v. Tripp, was \$18,415.12, the last payment having been made July 18, 2005.

{¶47} As of February 28, 2007 Respondent's total arrearage in case number 7010323405, Redfield v. Montgomery was \$12,119.38, the last payment having been made May 11, 2005.

{¶48} On March 22, 2007, Respondent posted bond on the outstanding warrants using \$2500.00 borrowed from a friend for the purpose.

{¶49} Respondent was in arrears in support owed in both cases as of the date of hearing, March 23, 2007.

{¶50} Respondent has not filed with the Board pursuant to Gov. Bar R. V(5)(D)(1) (a) a certified copy of a judgment entry reversing the determination of default as to his child-support obligation, or (b) a notice from a court or child-support enforcement agency that respondent is no longer in default of a child-support order, or (c) a notice from a court or child-support enforcement agency that respondent is in compliance with a withholding or deduction notice to collect current support or any arrearage due under the child-support order that was in default and is complying with that notice or order.

Count II

{¶51} On February 23, 2005 Relator Disciplinary Counsel sent a letter of inquiry to Respondent by certified mail, requesting an explanation as to the defaults by March 9, 2005. The letter was sent to Respondent's business address listed in attorney registration records.

{¶52} The letter of inquiry was returned "unclaimed."

{¶53} On March 17, 2005 Relator Disciplinary Counsel forwarded a second letter of inquiry to Respondent requesting an immediate response. This letter was sent to respondent's home address listed in attorney registration records.

{¶54} The second letter of inquiry was also returned "unclaimed."

{¶55} On February 9, 2006 Relator Disciplinary Counsel forwarded a letter to Respondent to his home address, indicating that it found probable cause of misconduct and that a formal complaint would be filed with the Board of Commissioners on

Grievances and Discipline.

{¶56} The February 9, 2006 letter was returned "unclaimed."

{¶57} Respondent testified that the address he furnished to the Clerk of the Supreme Court as his home address is the office address of a Child Care facility operated by the person by whom he is now employed for \$7.00 per hour. (In passing, the Panel notes that there is no other evidence in the record to establish Respondent's current income.)

{¶58} Respondent did not and does not live or work on the premises and apparently has no permanent home or address anywhere else. Respondent testified that he asked the person in charge of the child care facility to save for Respondent any mail that came for him.

{¶59} Respondent did not with regularity call to learn of mail that might have been delivered and explained to the panel that because he did not come frequently to that address, perhaps as often as once per month, other employees there threw away his mail. Therefore, he explains, he was unaware of mail sent him by the Courts, Relators' counsel, or the Board of Commissioners on Grievances and Discipline.

{¶60} Respondent has no telephone and apparently borrowed a cell phone to participate in the pre-hearing telephone conference conducted in this proceeding.

{¶61} Respondent knew of Disciplinary Counsel's investigation and ignored or evaded it until default judgment was sought against him in this proceeding.

{¶62} Respondent failed to cooperate in the investigation of his interim suspension for failure to pay child support arrearages.

Count III

{¶63} Respondent failed to register for the current biennium as required by the Supreme Court Rules for the Government of the Bar of Ohio.

{¶64} As a result of his failure to register, respondent's license to practice law was suspended on December 2, 2005.

CONCLUSIONS OF LAW
Case No. 06-020
Count II

{¶65} Respondent's conduct with respect to Count II, the matter of the litigation filed by Respondent for Daviejean Stevens against Dollar Store, violated DR 6-101 (A)(3) [A lawyer shall not neglect a legal matter entrusted to him]; DR 7-101 (A)(1) [A lawyer shall not intentionally fail to seek the lawful objectives of his client through reasonably available means permitted by law]; and DR 7-101(A)(2) [A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services].

{¶66} The panel found that respondent did not intend to prejudice or damage his client by his inaction after filing her complaint against Dollar Store. Therefore the evidence is not clear and convincing that respondent violated DR 7-101 (A)(3) [A lawyer shall not intentionally prejudice or damage his client during the course of the professional relationship]. The Panel recommends that this claim be dismissed.

{¶67} The panel found no clear and convincing evidence to support Relator's allegation of violation of DR 1-102(A)(4) [Conduct involving dishonesty, fraud, deceit, or misrepresentation]. The Panel recommends that this claim be dismissed.

Count III

{¶68} As to Count III, Respondent's failure to provide a timely response to

Relator Cleveland Bar Association and assist in its investigation of Ms. Harris' grievance or to assist in the continued investigation of the Stevens grievance constitutes misconduct and is a violation of Gov. Bar R V (4)(G) [No lawyer shall neglect or refuse to assist or testify in a disciplinary investigation or hearing.]

**Case No. 06-035
Count I**

{¶69} Respondent by repeatedly failing to comply with the judgments entered against him and the court orders directed to him as found in Count I of Case No. 06-035 has violated DR 1-102(A)(5), [Conduct that is prejudicial to the administration of justice]; and DR 1-102(A)(6), [Conduct that adversely reflects on his fitness to practice law].

Count II

{¶70} Respondent by his conduct as found in Count II has violated Gov. Bar R. V (4)(G) [No lawyer shall neglect or refuse to assist or testify in a disciplinary investigation or hearing].

Count III

{¶71} Respondent's conduct found in Count III violates Gov Bar R. VI (1)(A), [on or before September 1 of each odd-numbered year, each attorney who is admitted to the practice of law in Ohio shall file with the Clerk of Court a Certificate of Registration and pay a registration fee of \$300.00].

MATTERS IN AGGRAVATION AND MITIGATION

{¶72} Section 10 of the Rules of Procedure on Complaints and Hearings Before the Board of Commissioners on Grievances and Discipline provides Guidelines for Imposing Lawyer Sanctions.

{¶73} Considering the relevant aggravating factors set forth in Section 10 it is clear that Respondent has engaged in multiple instances of failure to pay child support arrearages as ordered by the Juvenile Court and has engaged in multiple instances of failure to cooperate in the investigation of the allegations of his misconduct.

{¶74} The principal mitigating factor is the absence of prior discipline during Respondent's lengthy law practice before his interim suspension and subsequent suspension for failure to register with the Ohio Supreme Court as an attorney and to pay the registration fee.

OTHER MATTER RELEVANT TO APPROPRIATE SANCTION

{¶75} Respondent has no permanent home and testified that his existence is at bare subsistence level. He testified that he is unable to do legal work or related work because his law license and his driver's license have been suspended in consequence of his inability to pay his child support arrearage. He testified that he has repeatedly been told by prospective employers that he is overqualified for the work he is allowed to do and that he has not been hired because employers fear his sudden departure when his law license is regained. His geographical area for employment is circumscribed because he has no automobile and cannot drive. He describes himself as barely existing on "Maslow's lowest rung."¹

{¶76} It is noteworthy that, in spite of his ignoring the ongoing disciplinary investigations and institution of disciplinary proceedings against him, Respondent resisted judgment by default and defended the action. Indeed, he somehow persuaded his pastor-employer-former landlord to put up a substantial cash bond on a capias issued by

¹ Editor's note: a reference to the ranking of needs by late author and psychologist Abraham Maslow.

the Cuyahoga County Juvenile Court to prevent Respondent's arrest on the day of this disciplinary hearing.

RECOMMENDATIONS

{¶77} Counsel for Relator Cleveland Bar Association recommended that Respondent's license to practice be suspended for one year commencing if and when Respondent's license to practice is reinstated under the terms of his interim suspension and compliance with registration as an attorney, the entire term of one year to be stayed.

{¶78} Assistant Disciplinary Counsel recommended that Respondent's license to practice law in Ohio be suspended for twenty-four months with twelve months stayed, arguing that Respondent's conduct is more egregious than that found in *Disciplinary Counsel v. Curry*, 112 Ohio St.3d 130, 2006-Ohio-6517 and *Disciplinary Counsel v. Geer*, 112 Ohio St.3d 124, 2006-Ohio-6516.

PANEL RECOMMENDATION

{¶79} In 1984, Respondent passed the Ohio Bar Examination after five attempts. His private law practice never produced a large income. He was married and is the father of a son from that marriage whose support is not involved in the arrearages underlying this proceeding. Respondent was subsequently divorced. The mothers of the two children for whom support is owed apparently were never married to Respondent. The income from his law practice was marginal and he fell in arrears of court ordered child support. When eventually his law license was suspended for the interim, his income ceased and his circumstances have spiraled down from that time. Respondent's law license has now been suspended for more than two years. He has no assets with which to satisfy the

accrued support arrearage and his current income is below poverty level. His prospect for improved financial circumstance seems bleak.

{¶80} Unlike *Curry* and *Geer*, although he failed to cooperate in the investigation by either Relator, eventually Respondent presented his limited defense to a hearing panel. The support amounts here are much smaller than *Geer*. Unlike Curry who could earn more money from his non-law employment than from his law practice, Respondent here has no other marketable skills.

{¶81} Respondent also has neglected a legal matter undertaken for a client to the client's prejudice.

{¶82} The differences in Respondent's circumstances from those of *Curry* and *Geer* are sufficient, however, to suggest that should Respondent ever pay his full arrearage, or reach a workable compromise to afford relief from the interim suspension, one or two additional years of suspension thereafter seems to defeat the coercive purpose for which the interim suspension was imposed initially.

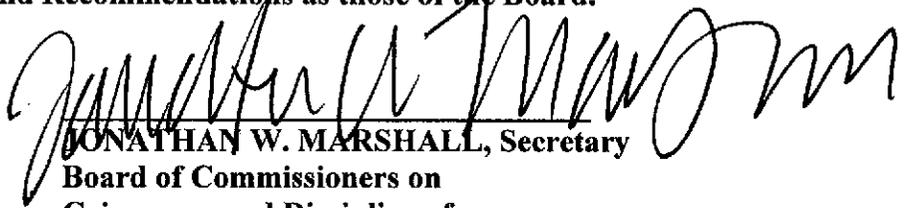
{¶83} Therefore the panel recommends that Respondent's law license be suspended for a period of two years commencing February 14, 2005, and that Respondent's reinstatement, in addition to satisfaction of all other requirements, be conditioned upon his proof of compliance with all the conditions imposed in the interim suspension order of February 14, 2005.

BOARD RECOMMENDATION

Pursuant to Gov. Bar Rule V(6)(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on June 8, 007. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the

Panel and recommends that the Respondent, Bernard Redfield, be suspended for two years commencing February 14, 2005, and upon the conditions contained in the panel report. The Board further recommends that the cost of these proceedings be taxed to the Respondent in any disciplinary order entered, so that execution may issue.

Pursuant to the order of the Board of Commissioners on Grievances and Discipline of The Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendations as those of the Board.

A handwritten signature in black ink, appearing to read 'Jonathan W. Marshall', is written over a horizontal line.

JONATHAN W. MARSHALL, Secretary
Board of Commissioners on
Grievances and Discipline of
The Supreme Court of Ohio