

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

In Re: : **08-0762**

Complaint against : **Case No. 06-042**

Marcus Poole : **Findings of Fact,**
Attorney Reg. No. 0064329 : **Conclusions of Law and**
: **Recommendation of the**
Respondent : **Board of Commissioners on**
: **Grievances and Discipline of**
Cuyahoga County Bar Association : **the Supreme Court of Ohio**

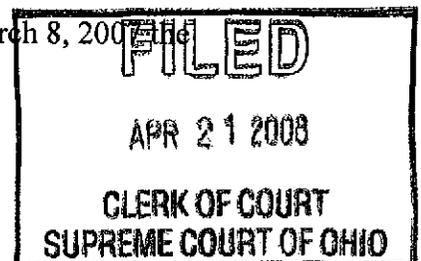
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Relator :
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This matter was heard on November 2, 2007 in Columbus, Ohio, before a panel consisting of members Judge Thomas F. Bryant and Alvin R. Bell of Findlay, Ohio and Joseph L. Wittenberg of Toledo, Ohio, Chair of the panel. None of the panel members resides in the appellate district from which this matter arose or served as members of the probable cause panel in this case.

The Relator was represented by Ellen S. Mandell and Laurence A. Turbow. The Respondent was represented by E. Yvonne Harris and Reginald N. Maxton.

INTRODUCTION

On June 9, 2006, the Cuyahoga County Bar Association, Relator, filed a complaint against Marcus Poole, the Respondent. Respondent did not file an answer and on February 27, 2007 the Relator filed a Motion for Default. On March 8, 2007 the



Respondent filed his answer to the complaint.

On April 26, 2007 the Relator filed an amended complaint. The Respondent did not file an answer to the amended complaint.

The amended complaint alleges the following violations of the Code of Professional Responsibility:

- DR 1-102(A)(6) [conduct adversely reflecting on fitness to practice law];
- DR 6-101(A)(3) [neglect of an entrusted legal matter];
- DR 7-101(A)(1) [intentionally fail to seek the lawful objectives of his client];
- DR 7-101(A)(2) [intentionally fail to carry out a contract of employment];
- DR 7-101(A)(3) [intentionally prejudice or damage his client];
- DR 1-102(A)(4) [conduct involving dishonesty, fraud, deceit or misrepresentation];
- DR 9-102(A) [failure to deposit client funds into a separate, identifiable account];
- DR 9-102(B)(4) [failure to promptly return client funds and property];
- Gov. Bar R. V (4)(G) [failing to cooperate in the investigation].

Prior to the hearing, the Relator and Respondent entered into stipulations of fact and rule violations. A copy of the stipulations are attached to this report. Respondent stipulated to all of the alleged above-mentioned rule violations with the exception of a violation of DR 9-102(A) [failure to deposit client funds into a separate, identifiable account], DR 1-102(A)(4) [conduct involving dishonesty, fraud, deceit or

misrepresentation] in the Thompson matter and DR 7-101(A)(3) [intentionally prejudice or damage his client] in the Crawford matter. The Relator stipulated that Respondent did not violate DR 9-102(A), DR 1-102(A)(4) and DR 7-101(A)(3).

FINDINGS OF FACT

In August 2005, Delores Crawford filed a complaint with the Cuyahoga County Bar Association Lawyer/Client Relations Committee (hereafter "LCR") seeking reimbursement of \$200.00 which she had paid to Respondent for Respondent to prepare a motion seeking judicial release of her grandson from prison. Crawford claimed that Respondent had not taken any action and she wanted a refund of the fee.

Respondent was notified by the LCR chair by letter dated August 9, 2005 that the complaint had been received. Respondent was requested to respond within 14 days and was advised of his obligation to cooperate pursuant to Gov. Bar R. V. When no response was received, a second letter was sent to Respondent by certified mail. The letter was returned "unclaimed" and was resent by ordinary mail to Respondent's address. Respondent admitted that he received the letters but did not reply. Consequently, LCR referred the matter to the Cuyahoga County Bar Association Certified Grievance Committee (hereafter "CCBA") for investigation.

In March 2006, CCBA initiated an investigation of the Delores Crawford matter. On or about November 8, 2005, the CCBA notified the Respondent of the complaint that Delores Crawford had filed and requested he respond to the assigned investigator within 14 days. Respondent was advised in that correspondence that he had a duty to cooperate with the Grievance Committee of the Cuyahoga Country Bar Association,

and that a failure to cooperate could result in a certified grievance proceeding for non-cooperation.

Respondent provided no written or oral response to the letters received from the CCBA.

By letter dated January 18, 2006, Respondent was provided written notice that Relator was proceeding to the "Trial Committee" on the matter. By letter dated March 29, 2006, the Chair of the CCBA notified Respondent that a formal complaint was being filed with the Board of Commissioners on Grievances and Discipline (Board), enclosing for Respondent's review a copy of the drafted complaint. Respondent did not reply.

After a finding of probable cause, service of the formal complaint was made upon Respondent by the Board on June 9, 2006. He did not file an answer or otherwise respond to the complaint in the time provided for in Gov. Bar R. V.

Relator filed a motion for default on February 27, 2007. Thereafter Respondent contacted Relator and, on March 5, 2007, he submitted what was titled Response to Complaint filed by Delores Crawford.

In the second matter in February 2006 Nicole Thompson engaged Respondent to provide legal services in connection with a predatory lending scheme that had potentially defrauded her of significant monies in connection with the purchase of two houses. Thompson met with the Respondent who indicated that she had a good case and that for the initial sum of \$1,000 he would take her case. Thompson paid the Respondent the sum of \$1,000 which check was negotiated on October 30, 2005. The funds were deposited into Respondent's IOLTA account. There was no written

retention agreement between Respondent and Thompson. Respondent took one call from Thompson subsequent to being retained wherein he informed Thompson that the case was coming along well and that his paralegal had gathered some good evidence. However, Respondent's file contained no notes, research or other indicia of investigation of the fraud claims. Thereafter Respondent did not return Thompson's calls, failed to return her money, and failed to return her file to her, although duly requested by Thompson in telephone calls and a letter dated January 13, 2006. At the time Thompson requested a refund of unearned fees, those funds were no longer in Respondent's IOLTA account.

CONCLUSIONS OF LAW

The parties stipulated and the panel found by clear and convincing evidence the following violations:

- DR 6-101(A)(3) [neglect of an entrusted legal matter] in both matters;
- DR 7-101(A)(1) [intentionally fail to seek lawful objectives of his client] in the Crawford matter;
- DR 7-101(A)(2) [intentionally fail to carry out a contract of employment] in the Crawford matter;
- DR 1-102(A)(6) [conduct adversely reflecting on fitness to practice law] in the Thompson matter;
- DR 9-102(B)(4) [failure to promptly return clients funds and property] in both matters;
- Gov. Bar R. V(4)(G) [failure to cooperate in the fee dispute process and the grievance process] in both matters.

The Respondent and Relator stipulated that Respondent did not violate DR 9-

102(A), DR 1-102(A)(4) and DR 7-101(A)(3).

MITIGATION AND AGGRAVATION

The Respondent has been a lawyer since November 20, 1978 and has not been the subject of any prior disciplinary proceedings.

The Relator and Respondent stipulated to aggravating and mitigating factors which are attached to this complaint. The Relator also stipulated to two character letters written on behalf of the Respondent which are attached hereto.¹

In addition to the stipulated aggravating and mitigating factors, the panel found that Respondent was not registered to practice law with the Supreme Court of Ohio. Respondent did testify that he had paid the registration fee, albeit late, the day prior to the hearing.

In addition, the panel does not accept the stipulation in which Relator stipulated in the Thompson matter that DR 9-102(A) [failure to deposit client funds into a separate, identifiable account] and DR 1-102(A)(4) [conduct involving dishonesty, fraud, deceit or misrepresentation] were not violated. The panel finds that the evidence was clear and convincing that Respondent did violate DR 9-102(A) and DR 1-102(A)(4). But, because Relator stipulated to the conclusion before evidence was taken at hearing that DR 9-102(A) and DR 1-102(A)(4) were not violated, and therefore not technically charged, the panel cannot find a violation of these rules, but has considered the conduct revealed by the evidence as

¹ Eight character letters were written on behalf of the Respondent and were first given to Relator at the hearing. Relator has not agreed to stipulate to the other six character letters.

a matter in aggravation of the sanction.²

SANCTION

In determining the appropriate sanction, the panel gave consideration to the guidelines for sanctions by reviewing the mitigation and aggravation elements.

The Relator requests that Respondent be given an actual suspension of six months.

The Respondent requests that the entire complaint be dismissed (even though he has stipulated to violations) or in the alternative, a sanction of a public reprimand.

Therefore, based upon all of the foregoing, the panel finds that a twenty-four month suspension with eighteen months stayed for probation is appropriate and that the same is recommended.

The panel further recommends that upon Respondent's return to practice after the period of actual suspension, he complete a period of eighteen months probation observing any specified conditions under the supervision of Relator or its successor pursuant to Gov. Bar R. V (9).

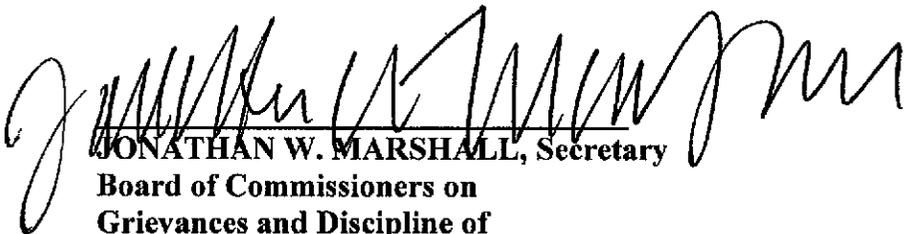
BOARD RECOMMENDATION

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 April 11, 2008. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Panel and recommends that the Respondent, Marcus Poole, be suspended from the practice of law for a

² In their concluding remarks, both counsel for Relator and counsel for Respondent suggested to the panel that Respondent may suffer from some mental illness or depression and that his mental examination should be required. However, neither party submitted any admissible, credible evidence on the subject and the purpose of the examination and its relation to Relator's recommendations for sanction were not explained.

period of twenty-four months with eighteen months suspended and upon the probation 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.


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

respond within 14 days and was advised of his obligation to cooperate pursuant to Gov. Bar R. V. Respondent did not respond to the letter.

3. When no response was received, a second letter was sent to Respondent, via certified mail; that letter was returned "Unclaimed" and was resent by ordinary mail to Respondent's address.

4. There was no reply from Respondent to this second notification. Consequently, LCR referred the matter to the Certified Grievance Committee for investigation.

5. In March 2006, CCBA initiated an investigation of the Delores Crawford matter and appointed Attorney Andrea Burdell-Ware to investigate.

6. On or about November 8, 2005, Anthony J. Vegh, Chair of the Certified Grievance Committee, notified Mr. Poole by U.S. mail of the Complaint that Ms. Crawford had filed and requested that he respond to the assigned investigator within fourteen (14) days.

7. Respondent was advised in that correspondence that he had a duty to cooperate with the Grievance Committee of the Cuyahoga County Bar Association, and that a failure to cooperate could result in a certified grievance proceeding for non-cooperation.

8. Mr. Poole provided no written or oral response to Burdell-Ware.

9. Subsequently, by certified letter dated December 13, 2005 and received at Respondent's office the following day, Burdell-Ware requested Respondent's cooperation. No response was forthcoming.

10. By letter dated January 18, 2006, Respondent was provided written notice that Relator was proceeding to Trial Committee on the matter.

11. Service of the formal Complaint was made upon Respondent on June 9, 2006. He did not file an Answer or otherwise respond to that Complaint.
12. Relator advised Respondent of its intent to seek default judgment by letter dated February 23, 2007.
13. Prior to the filing of the Motion for Default, Relator received a complaint relating to Respondent's conduct after he had been retained by Nicole Thompson on September 30, 2005, to pursue a predatory lending action.
14. Respondent did not provide a written fee agreement to Thompson.
15. Respondent received a check in the amount of \$1000.00 from Thompson as a retainer.
16. Respondent deposited the retainer check into his IOLTA account on or about October 6, 2005.
17. Thompson discharged Respondent after she experienced difficulty making contact with him.
18. Respondent promised to refund one-half of Thompson's retainer to her, representing that he had done research on her case. Respondent had no time records to support the time spent on the case.
19. Respondent represented that he would make the refund after his return from vacation on January 3, 2006. Thompson agreed to the \$500.00 refund to be paid on that date.
20. Respondent did not refund Thompson's money as promised due to lack of funds.

21. Respondent did not reply to the Relator's investigator's inquiries sent March 15 and April 20, 2006.

22. Respondent eventually sent his response via e-mail on October 25, 2006.

23. Respondent's conduct with respect to the Delores Crawford matter was in violation of : DR 6-101(A)(3) [neglect of an entrusted legal matter]; DR 7-101(A)(1) [failure to seek lawful objectives of a client]; DR 7-101(A)(2) [failure to carry out a contract of employment]; DR 9-102(B)(4) [failure to promptly return client funds]. Respondent's failure to cooperate and/or timely cooperate in both the fee dispute process and the grievance process was in violation of Gov. Bar R.V(4)(G). The parties stipulate that Respondent's conduct did not prejudice or damage Delores Crawford in violation of DR 7-101(A)(3).

24. Respondent's conduct with respect to the Nicole Thompson matter was in violation of DR 1-102(A)(6) [conduct adversely reflecting on fitness to practice law]; DR 6-101(A)(3) [neglect of an entrusted legal matter]; DR 9-102(B)(4) [failure to promptly return client funds]. Respondent's failure to timely cooperate in the grievance investigation was in violation of Gov. Bar R.V(4)(G).

25. Respondent did not violate DR 9-102(A) or DR 1-102(A)(4).

Aggravating and Mitigating Factors

26. Respondent has never been subject to disciplinary action prior to the present matters. The absence of a prior disciplinary history is mitigating.

27. Respondent serves a population which has difficulty securing legal representation. This is a mitigating factor.

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28. Respondent's mother was ill for an extended period of time, ending in her death on March 12, 2006. Respondent spent an extended period of time away from his office during his mother's illness. Respondent's personal life stresses constitute mitigating factors.

29. Respondent suffered from serious physical illnesses and depression, requiring medical treatment and hospitalization, during the period of time when the fee dispute and grievance matters were filed, ~~which prevented him from attending to the matters timely.~~ *AM*
~~Respondent's personal medical conditions constitute mitigating factors.~~ *AM*

30. Respondent had an enormous volume of bankruptcy cases pending in 2005 and 2006, which, in addition to his personal problems, caused him to neglect Nicole Thompson.

31. Respondent's clients were particularly vulnerable. This is an aggravating factor.

32. Respondent committed multiple disciplinary violations involving more than one client. This is an aggravating factor.

33. Respondent's complete failure to cooperate the fee dispute process and his delayed participation in the grievance processes constitute aggravating factors.

34. Respondent acknowledges his ethical violations and has shown remorse for his conduct. This constitutes a mitigating factor.

35. Respondent did not act out of selfish or dishonest motives; rather, his *Jim*
~~violations and lack of cooperation were the result of personal problems which have been~~
ameliorated.

Respectfully submitted,

CUYAHOGA COUNTY BAR ASSOCIATION
CERTIFIED GRIEVANCE COMMITTEE

By: *Stanley E. Stein*
STANLEY E. STEIN (0000783)
Trial Committee Chair

By: *Ellen S. Mandell*
ELLEN S. MANDELL (0012026)
Bar Counsel

By: *Marcus L. Poole*
MARCUS L. POOLE (0040030)
Respondent

By: *E. Yvonne Harris*
E. YVONNE HARRIS (0058636)
Attorney for Respondent

LENZA McELRATH, JR.
ATTORNEY AT LAW
1624 Copley Road
Akron, Ohio 44320
216.469.1260
330.836.8886

November 1, 2007

To: **Disciplinary Committee**

Ladies and Gentlemen:

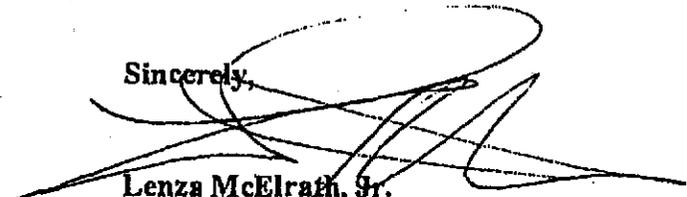
I was licensed to practice in Minnesota (1977), Illinois (1980) and Ohio (1984). Recently, I had the privilege of working with Mr. Marcus Poole in a criminal case involving two relatives of mine. During this four-month period, I had an opportunity to observe Mr. Poole and his understanding and research of the legal issues involved and his ability to deal with my relatives, a private investigator, the prosecutor and the Judge. I found that he had a special and unique ability to pay attention to the details while keeping track of the big picture. I was especially pleased with the manner in which he navigated potential land mines at various stages of the proceedings. As you can image, both my relatives and I put Mr. Poole through quite a bit while the cases proceeded. I felt that he handled each situation with skill and professionalism that reflected well on our profession.

The public often looks upon lawyers as uncaring and not thorough in how they handle clients' matters. Throughout the criminal process involving my relatives, I noticed a strong sense of involvement and caring that is often lacking among lawyers today. Mr. Poole is indeed a credit to our profession. He gave me a level of confidence in his understanding of the law and how he would use the facts to secure the desired results that my involvement was significantly easier.

Finally, I had the opportunity to talk with Mr. Poole about subjects other than the law and was quite pleased to find that he is well read. I now look forward to a continued relationship with Mr. Poole as a friend and have discussed various areas in which we can possibly collaborate on in the future.

Should you wish any additional information from me regarding my experience with Mr. Poole, please feel free to write or call.

Sincerely,



Lenza McElrath, Jr.
00257941



TRIVERS & DICKERSON, LLC
ATTORNEYS AND COUNSELORS AT LAW

Oscar Trivers
Emmanuel E. Dickerson

October 31, 2007

To Whom It May Concern:

RE: Marcus L. Poole

Dear Sir/Madame:

I have known *Marcus L. Poole* for approximately 10-years. From 1997 to 2004 we shared office space in the Huntington Building, 925 Euclid Avenue, Cleveland, Ohio, 44115. From 2004 to the present, we have shared office space here at 55 Erievue Plaza, Suite 220, Cleveland, Ohio, 44114. During this period of time, I have been co-counsel with Marcus on several cases; he has represented me on several cases and, I have observed him in the office as well as at social functions.

Marcus always carries himself in a professional manner. I would trust him with my personal affairs.

Mr. Poole is a credit to the Bar. Should you need additional information, feel free to contact me at (216) 696-5444.

Very truly yours,

Oscar Trivers

Oscar Trivers, Esq.

OT:mwg