

BEFORE THE SUPREME COURT OF OHIO

In re:)
)
MARCUS L POOLE)
)
RESPONDENT)
)
VS.)
)
CUYAHOGA COUNTY BAR ASSN.)
)
RELATOR)
)

CASE NO.: 2006-042
08-0762

RESPONDENT'S OBJECTIONS TO FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND RECOMMENDATION OF THE BOARD OF COMMISSIONERS
ON GRIEVANCES AND DISCIPLINE OF THE SUPREME COURT OF OHIO

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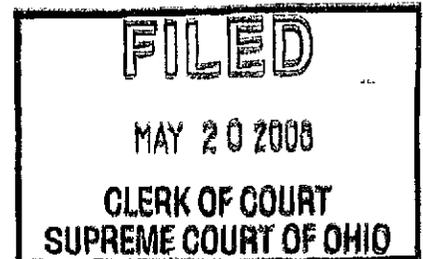


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STATEMENT OF THE CASE

This matter came on for trial on November 2, 2007 in Columbus, Ohio on a Complaint filed by the Relator, the Cuyahoga County Bar Association.¹ On June 9, 2006 the Relator filed a complaint against the Respondent, Marcus L. Poole.

The Relator alleged and the Respondent stipulated that to the following disciplinary violations: 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 failing to seek the lawful objectives of his client]; DR 7-101(A)(2) [intentionally failing to carry out a contract of employment]; DR 9-102(B)(4) [failure to promptly return client funds and property]; and Gov. Bar. R. V (4)(G) [failing to cooperate in the investigation].² In addition, Relator voluntarily stipulated that Respondent had not violated DR 9-102 (A), DR 1-102 (A)(4) and DR 7-101 (A)(3). The Relator asked for a sanction of one year suspension with 6 months stayed. The Respondent requested that the complaint be dismissed or that he be given a public reprimand.

On or about April 22, 2008, the Board of Commissioners issued their Findings of Fact, Conclusions of Law and Recommendation. The Supreme Court of Ohio issued its Show Cause Order on April 30, 2008. The Panel recommended, and the Board adopted the following sanctions: That the Respondent be suspended from the practice of law for a period of twenty-four months with eighteen months stayed for probation. Further, that after Respondent return to

¹ Since that time, the Cuyahoga County Bar Association has merged with the Cleveland Bar Association forming an entity now entitled the Cleveland Metropolitan Bar Association.

²Prior to the hearing, both parties stipulated that there was no violations on behalf of the Respondent of DR 7-101(A)(3) [intentionally prejudice or damage his client]; DR 1-101 (A)(4) [conduct involving dishonestly, fraud, deceit or misrepresentation]; and DR 9-102 (B)(4) [failure to deposit client funds into a separate, identifiable account]. As a result, those stipulations were thrown out.

practice, he be placed on eighteen months probation observing any specified conditions under the supervision of Relator. The Respondent objects to the recommended sanctions.

STATEMENT OF FACTS

A. DELORES CRAWFORD

Sometime in 2004, Ms. Brenda Brown approached the Respondent, Marcus L. Poole, to determine if a Judicial Release would be available for one of her relatives, Mr. Dana Crawford,³ who was incarcerated. If a Judicial Release was determined to be an available mechanism, it was Mr. Poole's intention to file a Motion for Judicial Release. Ms. Brown then tendered him a total of \$200.00 cash. Mr. Poole was co-counsel in the originating criminal matter involving Mr. Crawford.

After receipt of the monies, Mr. Poole performed legal research, as well as consulted with Judge Kathleen Sutula regarding Mr. Crawford's incarceration. Sometime thereafter, Mr. Poole determined that Judicial Release was not an option available to Dana Crawford at the time. He eventually represented the same to Brenda Brown who was, at the time, still insistent that her relative was eligible for Judicial Release in 2004. It was not until sometime in 2005 that Ms. Brown informed Mr. Poole that the money she gave him on behalf of Dana Crawford had actually come from her mother, Delores Crawford. It is unknown if Brenda Brown represented to her mother, Ms. Crawford, that Mr. Poole stated that Judicial Release was not an available Forum in 2004.

Ms. Delores Crawford filed a complaint with the Cuyahoga County Bar Association Lawyer-Client Committee in August 2005. She wanted a refund of the \$200.00 that she paid to

³ For a short period of time, Ms. Brenda Brown worked as a clerk for attorneys with whom the Respondent used to share office space.

her daughter, Brenda, because a Judicial Release had not been filed on Dana Crawford's behalf. It is unknown whether Ms. Crawford understood what work Mr. Poole had actually done on Dana Crawford's behalf in researching the viability of the Judicial Release at that time. It is also unknown whether Ms. Crawford would have sought a refund had she known of obligation to refund Ms. Crawford the \$200.00 paid on Dana Crawford's behalf, he felt compelled to do so, and tendered \$200.00 to Ellen Mandell, Esq. In July 2007 to give to Ms. Crawford.

B. NICOLE THOMPSON

In late December, 2005, Nicole Thompson retained Mr. Poole to assist her in a predatory lending case where it appeared she was being defrauded by a Mortgage Company/Broker. Ms. Thompson paid Mr. Poole a retainer fee in the amount of \$1,000.00. This was all he charged her to handle this complicated matter. It is undisputed that these funds were deposited into his IOLTA account. Upon receipt of the funds, Mr. Poole began work on the case by consulting with a mortgage broker, Mr. Cameron. Both he and Mr. Cameron began researching various Mortgage lenders and also the area of liability of mortgage lenders.

In January, 2006, Ms. Thompson wrote Mr. Poole a letter demanding a refund of her retainer. Although Mr. Poole clearly could have justified most, if not all, of the monies paid by Ms. Thompson under the theory of quantum merit, he admitted that he did not perform the services that she hired him to do, and that some of her money should have been refunded to her. On July 10, 2007, Mr. Poole sent Ms. Thompson a certified letter refunding the \$1,000.00. It was returned by the post office as "unclaimed: and "unable to forward." At the trial in November, 2007, Mr. Poole's Attorney presented the \$1,000.00 money order to Relator's counsel who forwarded the funds to Ms. Thompson.

LAW AND ARGUMENT

I. THE BOARD ERRED IN ITS CONSIDERATION OF AGGRAVATING AND MITIGATING FACTORS.

- A. The Board found that “in addition to the stipulated aggravating and mitigating factors”, that Respondent was not registered to practice law with the Supreme Court of Ohio. It is assumed that the board is saying that on the date of the Grievance Hearing, that Respondent was not registered to practice law. It is technically accurate that Respondent did not pay the required registration fee on the September due date, and that on the date of the Grievance Hearing, November 2, 2007, Respondent had just recently sent in the required fee. The Board fails to indicate that this late registration did not prohibit Respondent from practicing law. While the due date for paying the registration fee was in September, failure to timely pay said fee does not result in any sanction and does not prohibit the practice of law unless there is a failure to pay the required fee by December of the relevant year (December 2007). Respondent did indeed register by December of 2007, therefore the registration date issue should not be considered in this matter.
- B. The Board also refused to accept the stipulations that the Relator stipulated to 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. Although asserted, the Board fails to identify any evidence of these violations. In the case of DR-102(A)(4), there is no evidence that Respondent was guilty of dishonesty, fraud, deceit or misrepresentation. It can only be assumed that the basis of this position is premised on the Board’s assertion in the following excerpts of its Statement of Facts. The Board’s Statement of Facts asserts that Respondent told Ms. Thompson that “the case was coming along well and that his paralegal had gathered some good evidence . . .” but that “Respondent’s file contained no notes, research or other indicia of investigation of fraud claims”. To assume even

from this version of the facts that there was dishonesty, fraud, deceit or misrepresentation requires a party to assume a great deal. This is especially in light of the fact that the Relator (1) stipulated there was no dishonesty, fraud, deceit or misrepresentation and (2) that because of said stipulation, Respondent did not present evidence as to the nuances in said claim which Respondent certainly could have had he known that the Board would not have accepted the stipulations of the parties. To assume that there was a violation in this requires the fact finder to assume that (1) that the wording in the Board's version of the Statement of Facts is exactly what was said (2) that the statement if made was made in a certain time frame (3) that the evidence or other work referred to by the Respondent was such that had to be documented for the file and (4) that no evidence of other useful material could not be derived from just reading and reviewing the large file that Ms. Thompson provided Respondent. Respondent states that the Board erred in adding DR 1-102(A)(4)] had been violated and that it should be considered an aggravating factor.

- C. The Board erred in not finding as a mitigating factor that Respondent did not act out of selfish or dishonest motives, rather, his violations and lack of cooperation were the result of personal problems. It is clear from other stipulations that this should have been considered a mitigating factor. Paragraphs 28 and 29 of the stipulations cite Respondent's personal problems and health conditions as mitigating factors. Paragraph 29 of the Stipulations indicates that Respondent "suffered from serious physical illness and depression, requiring medical treatment and hospitalization, during the period of time when the fee dispute and grievance matters were filed". This supports a finding that that Respondent did not act out of selfish or dishonest motives. There was no evidence presented that Respondent acted out of selfish or dishonest motives. The only arguable basis for not considering as a mitigating factor that Respondent did not act out of selfish or dishonest motives, is to assume that the Board is correct that, Respondent did, in the Thompson matter violate DR 1-102(A)(4) [engage in dishonesty, fraud, deceit or misrepresentation]. Such a position would be inconsistent with previous findings by the court. In *Disciplinary Counsel v. Fumich*, 116 Ohio St.3d 257,

2007-Ohio-6040, the Respondent had concealed for two years the fact that a Medical Malpractice suit he was to file (seeking \$500,000.00 in damages) on behalf of a client had been dismissed. After the two years the Respondent told his client that he had a \$16,000.00 settlement agreement in the Medical Malpractice Case. The client agreed to the settlement and executed the required documents to close the file. The Respondent then paid the client \$16,000.00 from his personal funds. In that case, the Board and this Court agreed that a mitigating factor was that the Respondent in the case did not act out of selfish or dishonest motives. If the Respondent in the *Fumich* case can be found to not have acted out of selfish or dishonest motives then it follows that the Respondent, in this case, whose acts were much less purposeful and calculating, certainly did not act out of selfish and dishonest motives. Respondent states that it is clear that Respondent did not act out of selfish or dishonest motives and as such, this should have been considered a mitigating factor.

II. THE BOARD'S RECOMMENDATIONS FOR SANCTIONS ARE EXCESSIVE AND ARE NOT CONSISTENT WITH SANCTIONS IMPOSED IN SIMILAR CASES.

The Board in this matter recommends a sanction that Respondent be suspended from the practice of law for twenty-four months with eighteen months suspended upon conditions contained in the panel report. Such a sanction is excessive under the circumstances and is not consistent with prior decisions made by this Court. The violations herein are not heinous and do not represent intentional wrongdoing by the Respondent. The monetary amounts involved were minimum. In the Crawford, matter there was \$200.00 in fees that were at stake and there was initially some question as to who actually paid said fees to the Respondent. In the Thompson matter there was \$1000.00 paid to Respondent. In neither case did the Respondent's actions result in any harm to the client. In Crawford, this lack of harm was deemed a mitigating factor in

paragraph 23 of the Stipulations. With respect to Ms. Thompson, there was no evidence presented at the hearing or at any other time that Ms. Thompson suffered any harm as the result of Respondent's actions.

A. Violation of Gov. Bar R. V(4)(G):

The mitigating factors adopted by the Board were a major factor in Respondent's failure to "cooperate" in violation of Gov. Bar R. V(4)(G). The personal issues arising from the personal tragedies in Respondent's life and his own physical and emotional ailments are the real culprits in this case. The mitigating factors detailed in paragraphs 28 and 29 of the Stipulations clearly support a finding that any violation based on the violation of this Rule is subject to the stipulated mitigating factors.

In Columbus Bar Assn. v. Peden, 2008-Ohio-2237 (5/15/09), the Respondent attorney failed to initially cooperate with the disciplinary investigation. Peden, similar to the case at bar, was experiencing some medically related problems and depression that the Board and Court recognized as contributing to his lack of cooperation. Peden eventually began to cooperate in the grievance process, as did Respondent Poole. The primary reason for the lack of cooperation of the Respondent in Peden, as in the within matter, was the Respondent's emotional state at the time of the initiation of the investigation. Both the Court and the Board were sensitive to that issue and concluded by suspending the Respondent's license for six months, with the entire term stayed.

B. Other Violations

In addition, the Board erred in not recognizing that there has been no pattern of violations found in this matter. Respondent has been licensed to practice law since 1978, 30 years ago. This is the

first instance in which he has been faced with such allegations. It would appear to be no coincidence that these two matters arise at the same time that Respondent faced new challenges in his life. The sanction recommended is not consistent with similar cases.

In Dayton Bar Assn. v. Sebree, 96 Ohio St. 3rd 50 (2002), this Court and the Board found that the Respondent attorney violated DR-101(A)(3) (neglecting an entrusted legal matter), DR 7-101(A)(1) (intentional failure to seek the lawful objectives of his client) and DR 7-101(A)(2) (intentional failure to carry out a contract of employment). As a result, this Court suspended the Respondent attorney for six months with six months stayed. Sebree, like the instant case, did not involve heinous actions on the part of the Respondent attorney and it was recognized that factors such as time management and practice management were contributing factors to the violations. In the present case, the Respondent's personal issues played a role in the violations. Also, see Fumich, supra where the Respondent attorney purposely misled clients regarding the disposition of a medical malpractice action and even caused clients to believe that a settlement had been arranged. In that matter this court's sanction was a twelve-month suspension with the entire suspension stayed. If these matters required leniency, then the matter before the court at present requires the same considerations.

Other cases addressed similar but more substantial violations and yet they resulted in more reasonable sanctions. In Akron Bar Assn. v. Markovich, 117 Ohio St. 3rd 313, (2008), the Respondent was charged with violations in seven different cases and attempted to have his client drop the grievance by offering the client \$200.00. The Respondent attorney was found to have violated DR 6-101(A)(3) [neglect of an entrusted legal matter], DR 6-102 [a lawyer shall not attempt to exonerate himself or limit his liability to a client for personal malpractice], DR 1-102(A)(4) [a lawyer shall not engage in conduct involving misrepresentation] and DR 1-

102(A)(6) [a lawyer shall not engage in conduct that adversely reflects on the lawyer's fitness to practice law. These violations were committed through seven cases and included actions such as misleading the court and opposing counsel by filing an unapproved dismissal order, commingling funds, taking loans from clients and more. Despite these actions, this Court suspended the Respondent attorney in this case one year with six months suspended. The case at bar presents less egregious behavior and much of that is directly mitigated by factors agreed to in the Stipulations. Yet, despite that fact, the Board in this case advocates a two-year suspension with 18 months stayed. While the Markovich case is not an exact duplicate of the present matter, it is close enough to draw some reasonable comparisons. The mere number of cases involved in the violations in Markovich makes that matter substantially more egregious. Yet the Court in Markovich issued a one-year suspension with six months stayed. Apparently, the Court took into account (1) that the goal of the proceedings is to protect the public and not to punish and (2) considered that the Respondent attorney had recognized his failures and was on a course to correct the problems. In the present case, the violations cover two cases that were close in time proximity, and happened at the same time the Respondent was experiencing personal challenges. The less egregious actions in this case should be dealt with much less harshly than in the Markovich case.

Again, in Portage County Bas Assn. v. Sabarese, 102 Ohio St. 3rd 269, 2004-Ohio-2697, the Court issued a sanction of a six month suspension with six months stayed. In the Sabarese case, the Court took into account the Respondent's personal problems. In that matter, the Respondent attorney was found to have violated multiple disciplinary rules, including, as in the present case: DR 6-101(A)(3) and DR 9-102(A). Also see Cuyahoga County Bar Assn. v. Peto, 115 Ohio St. 3rd 421, 2007-Ohio-5250, where the Respondent attorney received a one-year suspension with

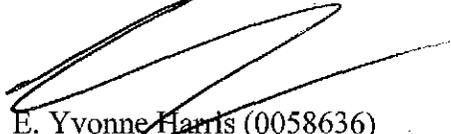
six months stayed. As in the present case it was found that Respondent had violated DR 6-101(A)(3), DR 7-101(A)(2) and DR 9-102(B)(4). Unlike the present case however, the Respondent attorney had not fully refunded the required funds to the clients and had had been previously suspended .

CONCLUSION

The Board's finding did not adequately consider all mitigating factors and consisted of Aggravating factors that lacked a basis in fact. From the existing stipulations, it is apparent that the Respondent in this case did not act out of selfish and dishonest motives, and there was no basis for finding, despite Stipulations to the contrary, that Respondent violated DR 1-102(A)(4) [conduct involving dishonesty, fraud, deceit or misrepresentation]. These factors alone compel the Court to modify the Board's recommendation of sanctions.

In addition, the recommended sanctions are inconsistent with previous cases, where behavior that is more egregious is treated less harshly. It is established that the purpose of these proceedings is not to punish, but to protect the public. As indicated above the violations being addressed herein took place within a short period of time when Respondent's health, emotional stability and other factors affected his actions. Because Respondent has operated over 28 years as an attorney without disciplinary actions, it seems that such problems are unlikely to be repeated. Pursuant to the above, Respondent maintains that a fair sanction would be a six-month suspension with the entire term stayed. If, due to the personal issues that beset Respondent during these events that the Respondent would be willing to participate in any psychological maintenance, law practice management program or other program designed to help Respondent from the acts detailed herein.

Respectfully submitted



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CERTIFICATION OF SERVICE

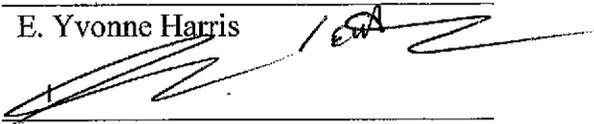
I certify that a copy of the foregoing Objection To Findings of Fact and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, was sent via ordinary U.S. Mail and certified Mail [return receipt requested] this 20th day of May 2008, to the following:

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Attorneys For Respondent

APPENDIX

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

In Re:	:	
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
	:	
Relator	:	
	:	

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).

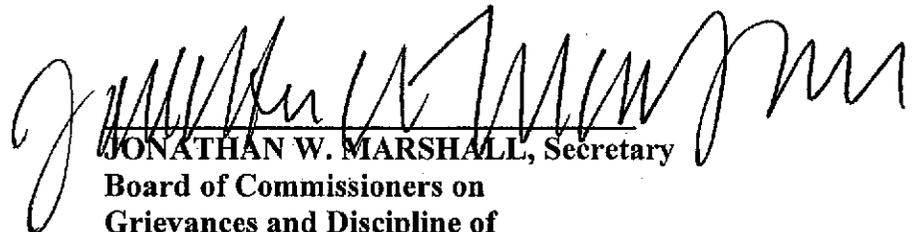
BOARD RECOMMENDATION

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

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

<p><i>In re.</i>)</p> <p><i>Complaint Against</i>)</p> <p>MARCUS POOLE, ESQ.)</p> <p style="padding-left: 100px;">Respondent.)</p> <p style="padding-left: 100px;">and)</p> <p>CUYAHOGA COUNTY BAR ASSN)</p> <p style="padding-left: 100px;">Relator.)</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>CASE NO. 06-042</p> <p> </p> <p> </p> <p>STIPULATIONS</p>
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FILED
OCT 25 2007

BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

Now comes Relator, Cuyahoga County Bar Association ("CCBA"), by and through counsel, and Respondent Marcus Poole, through counsel, and hereby stipulate the following:

1. In August 2005, Delores Crawford filed a complaint with the CCBA Lawyer-Client Relations Committee, (hereinafter "LCR"), seeking reimbursement of \$200.00 which she ~~was~~ ^{was paid to} paid to Respondent ^{on her behalf} for the preparation and prosecution of a Motion seeking judicial release of her grandson, Dana Crawford, from prison. Respondent did not do the work for which he was retained, and Crawford discharged him, seeking a full refund. Respondent ^(at the time) believed ^{he was employed by Brenda Brown} Delores Crawford's daughter. He did not find out until later ^{that Ms. Crawford provided the monies.}
 2. Respondent was notified by Theodore Munn, Jr., 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. 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 sock 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. *RM*
~~Respondent's personal medical conditions constitute mitigating factors.~~ *RM*

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.

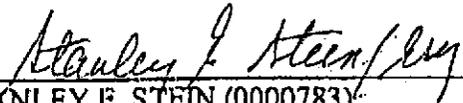
33. Respondent's complete failure to cooperate the fee dispute process and his delayed participation in the grievance processes constitute aggravating factors.

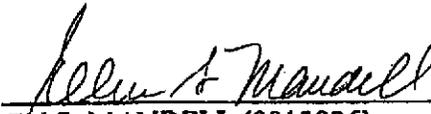
34. Respondent acknowledges his ethical violations and has shown remorse for his conduct. This constitutes a mitigating factor.

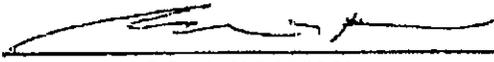
35. Respondent did not act out of selfish or dishonest motives; rather, his 
 violations and lack of cooperation were the result of personal problems which have been
 ameliorated.

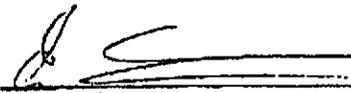
Respectfully submitted,

CUYAHOGA COUNTY BAR ASSOCIATION
 CERTIFIED GRIEVANCE COMMITTEE

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

By: 
 ELLEN S. MANDELL (0012026)
 Bar Counsel

By: 
 MARCUS L. POOLE (0040030)
 Respondent

By: 
 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:

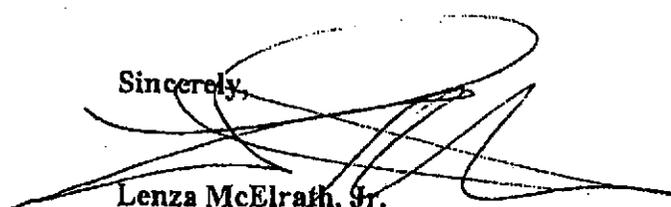
I was licensed to practice in Minnesota (1977), Illinois (1980) and Ohio (1984). Recently, I had the privilege of working with Mr. Marcus Poole in a criminal case involving two relatives of mine. During this four-month period, I had an opportunity to observe Mr. Poole and his understanding and research 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.

0025794I



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 Erieview 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, Esq.

OT:mwg