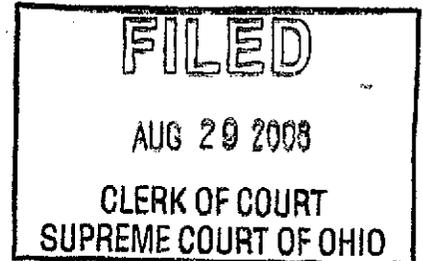


BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO

08-1729



In Re: :
Complaint against: : **Case No. 07-074**
Sherry Darlene Davis, : **Findings of Fact,**
Attorney Reg. No. 0068036 : **Conclusions of Law and**
: **Recommendation of the**
Respondent : **Board of Commissioners on**
: **Grievances and Discipline of**
Disciplinary Counsel : **the Supreme Court of Ohio**
: :
Relator :

INTRODUCTION

{¶1} This matter was heard on May 13, 2008 in Columbus, Ohio, before a panel consisting of members Lisa M. Lancione Fabbro, David E. Tschantz and Judge Arlene Singer, Chair. None of the panel members resides in the district from which the complaint arose or served as a member of the probable cause panel that reviewed the complaint. Respondent appeared pro se and Attorney Stacey Solochek Beckman represented relator, Disciplinary Counsel.

PROCEDURAL BACKGROUND

{¶2} The complaint was filed October 8, 2007 alleging the following violations of the Ohio Code of Professional Responsibility, Ohio Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio:

Count I Ohio Code of Professional Responsibility

DR 1-102 (A) (4)- engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

DR. 1-102 (A) (6)- engage in any other conduct that adversely reflects on his fitness to practice law;

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 entered into with a client for professional services;

DR 7-101 (A) (3)-intentionally prejudice or damage his client during the course of the professional relationship;

Count II Ohio Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio:

Rule 8.1 (b)-in response to a demand for information from a disciplinary authority knowingly fail to respond;

Rule 8.4 (d) - engage in conduct that is prejudicial to the administration of justice;

Gov. Bar R. V(4)(G)-no lawyer shall neglect or refuse to assist or testify in an investigation or hearing.

{¶3} After two attempts to serve respondent by certified mail, which were both returned as unclaimed, respondent was served through the Clerk of Court on November 21, 2007. She did not file her answer until January 14, 2008.

{¶4} A prehearing telephone conference was held on February 29, 2008 at which time the formal hearing date was set.

{¶5} Stipulations were signed, and submitted on the 12th day of May 2008, a copy of which is attached as exhibit A.

FINDINGS OF FACT

{¶6} The findings of fact that have been stipulated to by the parties contained in Exhibit A. are incorporated herein.

CONCLUSIONS OF LAW

{¶7} The respondent has admitted and has stipulated to violations of all conduct as alleged in the complaint. The panel, not bound to accept such stipulations if not factually supported, has reviewed the stipulations of fact and testimony of the respondent. The panel unanimously finds by clear and convincing evidence that respondent committed all the rule violations as charged:

Count I Ohio Code of Professional Responsibility

DR 1-102 (A) (4)-engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

DR 1-102 (A) (6)-engage in any other conduct that adversely reflects on his fitness to practice law;

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 entered into with a client for professional services;

DR 7-101 (A) (3)-intentionally prejudice or damage his client during the course of the professional relationship.

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Gov. Bar R. V(4)(G)-no lawyer shall neglect or refuse to assist or testify in an investigation or hearing.

AGGRAVATION AND MITIGATION

{¶8} The parties have stipulated to the following mitigating factors, pursuant to BCGD Proc. Reg. Sec. 10 (B) (2): (a) absence of prior disciplinary record and (e) character and reputation.

{¶9} Although the panel has no independent evidence of respondent's character and reputation, we accept the stipulation of that factor.

{¶10} Pursuant to BCGD Proc. Reg. Sec. 10 (B)(1), the panel finds the following aggravating factors: (b) dishonest or selfish motive; (c) a pattern of misconduct; (d) multiple offenses; (e) lack of cooperation in the disciplinary process; and (h) vulnerability and resulting harm to victim.

{¶11} While the misconduct involved only one client, the respondent has engaged in a pattern of misconduct over the course of seven years. Respondent's client was severely injured in a motor vehicle accident. Respondent settled the case for the \$25,000 policy limit with the tortfeasor's insurance company, but the client's own insurance company denied his claim for underinsurance, asserting non-compliance with the provision requiring notification before settlement. (The amount of underinsurance coverage was \$100,000.) Respondent was notified of this denial in November, 1999. What followed was six years of neglect, lying, and fabrication by Respondent. Respondent's former client lost an opportunity for pursuing a claim against his insurance company or promptly recovering what may have been a malpractice claim against respondent, thus denying any chance of restitution until filing suit and settling with respondent in December, 2006.

{¶12} Pursuant to BCGD Proc. Reg. Sec. 10 (B)(2), the panel finds the following mitigating factors: (a) absence of prior disciplinary record and (e) character and reputation.

{¶13} Respondent testified to extreme remorse and embarrassment. She was a relatively new attorney who had, while raising a child as a single parent, completed college and law school and was afraid that she would lose everything because of this mistake. She testified that she

should have owned up to her mistake and not lied. Respondent discussed this with her teenage daughter who testified on behalf of respondent.

SANCTION

{¶14} Relator and respondent stipulated to a two-year suspension with eighteen months stayed, and that a monitoring attorney be appointed.

{¶15} Ordinarily an attorney will receive an appropriate actual suspension from the practice of law for violation of DR 1-102 (A) (4). *Disciplinary Counsel v. Fowerbaugh*, 74 Ohio St.3d 187, 1995-Ohio-261. Evidence offered in mitigation may, however, justify something less than an actual suspension. *Dayton Bar Assn. v. Kinney*, 89 Ohio St.3d 77, 78, 2000-Ohio-445. The false information Kinney gave to the Ohio Dept of Liquor Control regarding the purchase price of his client's bar was found not to have changed the outcome of the application and was an isolated incident. Kinney received a six month stayed suspension.

{¶16} In *Disciplinary Counsel v. Manning*, 111 Ohio St.3d 349, 2006-Ohio-5794, Manning failed to file a medical malpractice action, repeatedly lied to his clients, prepared a false release and settlement agreement, and even paid money out of his own account to his clients to cover up his neglect. The aggravating factors were a dishonest motive and pattern of misconduct. The mitigating factors were lack of a prior disciplinary record, full and free disclosure and cooperative attitude and 3 supportive character letters. Manning was given a two year suspension from the practice of law, with no time stayed. The court compared *Fowerbaugh* and *Disciplinary Counsel v. Insley*, 104 Ohio St.3d 424, 2004-Ohio-6564, when imposing the suspension. Fowerbaugh received a six month suspension for conduct taking place over several months. Insley received an indefinite suspension for (unlike Manning) forging signatures of a judge and a magistrate, and not cooperating in the disciplinary proceedings. The Court cited

Manning's 3 ½ years of intricate lying to his client as "unacceptable for a member of a profession in which loyalty, candor and diligence are essential." *Manning* at ¶ 14.

{¶17} The panel also considered *Disciplinary Counsel v. Carroll*, 106 Ohio St.3d 84, 2005-Ohio-3805, in which the Court ordered a 6 month stayed suspension where Carroll submitted false time sheets resulting in criminal charges. However, Carroll fully cooperated. In *Disciplinary Counsel v. Markijohn*, 99 Ohio St.3d 489, 2003-Ohio-4129, Markijohn did not contribute to his firm's retirement plan for 4 years, but claimed he did, filed false tax returns and caused his firm to file false returns. But because of mitigating factors and because he did not lie to a client or court, he received a six month stayed suspension. (The Court held citing *Kinney*.)

{¶18} Even though respondent's actions took place over 7 years, this is an isolated incident involving only one client and respondent's lack of experience and mentoring may have contributed to her deviation from the high standards of our profession.

{¶19} The panel recommends that respondent's license to practice law be suspended for 2 years, with the last 18 months stayed on condition that she be monitored by a lawyer acceptable to relator, that she take 6 hours of continuing legal education in Ethics and Professionalism in addition to the required CLE, and that she provide proof of malpractice insurance or is otherwise in compliance with R. 1.4 (c).

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 August 15, 2008. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Panel and recommends that the Respondent, Sherry Darlene Davis, be suspended for two years with the last eighteen months stayed upon the panel's conditions. 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 Recommendation 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**

In Re: :
Sherry Darlene Davis :
Attorney Registration No. 0068036 :
407 Short Street :
PO Box 1128 :
Waverly, OH 45690, :

Respondent, :

v. :

Disciplinary Counsel :
250 Civic Center Drive, Suite 325 :
Columbus, Ohio 43215-7411, :

Relator. :

BD. NO. 07-074

AGREED STIPULATIONS

FILED

MAY 12 2008

BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

AGREED STIPULATIONS

Relator, Disciplinary Counsel, and respondent, Sherri D. Davis, do hereby stipulate to the following facts, mitigating factors, violations of the Code of Professional Responsibility and sanction as well as to the admission and authenticity of the attached exhibits.

STIPULATED FACTS

1. Respondent, Sherry Darlene Davis, was admitted to the practice of law in the state of Ohio on November 10, 1997.

COUNT I

2. On October 8, 1998, Ryan Gillette was seriously injured in a motor vehicle accident. At the time of the accident, Gillette was insured by Grange

Insurance and had underinsured coverage of \$100,000. The driver of the vehicle that caused the accident was insured by Progressive Insurance.

3. Shortly thereafter, Gillette contacted respondent regarding assistance. Respondent and the law firm of Bannon, Howland & Dever Co., L.P.A. ("Bannon, Howland"), where respondent was an associate, agreed to represent Gillette.
4. On August 6, 1999, respondent settled Gillette's claim with Progressive Insurance for the driver's policy limit, \$25,000. Gillette continued to have an underinsured motorist claim with Grange that respondent was to be pursuing on his behalf.
5. On September 1, 2004, respondent wrote to Gillette rescheduling a previously scheduled meeting for September 3, 2004 to September 18, 2004. According to the letter, respondent was unable to meet with Gillette as originally planned because she was appearing as a guardian ad litem in a matter in Ross County Court of Common Pleas. Respondent included a copy of a subpoena purportedly served upon her that required her appearance on September 3, 2004.
6. According to the docket for *State v. Stephens*, the case in which respondent was to appear to testify, no subpoenas were issued to respondent at any time during the pendency of the case and a subpoena dated August 31, 2004 was not issued to respondent by the Ross County Court of Common Pleas in the *Stephens* case.

7. Additionally, in respondent's September 1, 2004 letter, respondent attempted to address Gillette's concerns regarding the underinsured motorist's claim and explained that she had filed his case in federal court. Respondent's representation regarding Gillette's case was false; respondent never initiated a claim on Gillette's behalf in federal court.
8. On September 30, 2004, respondent wrote to Gillette again, canceling a previously scheduled appointment and indicating that she would be in contact with him to reschedule their meeting shortly.
9. On November 8, 2004, respondent wrote to Gillette and cancelled his appointment for the following day. In this letter, respondent indicated that she had been working with another firm in Cincinnati on his case, but that Gillette would not owe them any attorney fees because she would pay them from the insurance proceeds that they received on Gillette's behalf. Respondent continued, noting that the firm in Cincinnati was well-known for handling "bad faith" claims against insurance companies and that she had previously worked with them on a case where they obtained a \$100,000 judgment. Respondent's statements to Gillette were false.
10. On March 22, 2005, Gillette wrote to the managing partner at Bannon, Howland and explained the difficulties that he had encountered during respondent's representation.
11. In response to Gillette's letter, respondent wrote to Gillette on April 1, 2005. In her letter, she enclosed a letter purportedly sent to Gillette on May 9, 2000. The May 9, 2000 letter suggested that respondent did not believe

that Gillette's claim had a value greater than the \$25,000 previously received and that if Gillette disagreed with respondent he should contact another attorney. Gillette never received the May 9, 2000 letter on or about May 9, 2000 and until he received respondent's April 1, 2005 letter, he had never seen the letter purportedly sent on May 9, 2000.

12. Gillette subsequently contacted Attorney Stanley L. Myers.

13. On January 18, 2006, Myers learned that a claim for Gillette's loss was originally submitted to Grange Insurance on July 29, 1999, but that because the matter had been settled with Progressive in August 1999, without notice to Grange as required by Gillette's policy, Grange was denying the claim. Grange sent a letter of denial to respondent on November 23, 1999.

14. Respondent never advised Gillette that Grange had denied his claim.

15. On September 28, 2006, Gillette initiated a civil lawsuit against respondent in the Scioto County Court of Common Pleas.

16. The parties settled the lawsuit on or about December 12, 2006.

COUNT II

17. On January 22, 2007, relator forwarded a letter of inquiry relating to the above-referenced matter by certified mail to respondent. Respondent received the letter on January 23, 2007.

18. On February 5, 2007, respondent wrote to relator and requested an extension of time until March 5, 2007 in which to respond to relator's letter. Relator granted the request.

19. On March 23, 2007, when relator did not receive respondent's reply to the letter of inquiry, relator wrote respondent and requested that she respond to the allegations by April 6, 2007.
20. On April 5, 2007, respondent wrote to relator and again requested an extension of time until May 7, 2007 to respond to relator's letter of inquiry. Relator granted respondent's request, but indicated that no further extensions of time would be granted.
21. On May 4, 2007, respondent wrote to relator and requested that counsel for relator meet with respondent to discuss the grievance. Relator agreed, and a meeting was scheduled for May 24, 2007 at 10:00 AM at relator's office.
22. On May 24, 2007, respondent wrote to relator and indicated that she would be unable to meet with relator as her child had an event at school that respondent only became aware of the prior evening. Respondent assured relator that she would call relator later that day to reschedule the meeting. Contrary to her assurances, respondent never contacted relator to reschedule the meeting.
23. On June 22, 2007, relator had a subpoena issued to respondent requiring respondent to appear in relator's office on July 17, 2007. Although respondent received the subpoena on June 25, 2007, respondent did not appear in relator's office as required or contact relator about her failure to appear.

**STIPULATED VIOLATIONS OF THE CODE OF PROFESSIONAL
RESPONSIBILITY AND STIPULATED SANCTION**

Respondent admits that his conduct as alleged in Count I violated the Code of Professional Responsibility, specifically, DR 1-102 (A)(4) [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation]; DR 1-102 (A)(6) [a lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law]; DR 7-101 (A)(1) [a lawyer shall not intentionally fail to seek the lawful objectives of his client]; 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]; and, DR 7-101 (A)(3) [a lawyer shall not intentionally prejudice or damage his client during the course of the professional relationship].

Additionally, respondent admits that his conduct as alleged in Count II violated the Ohio Rules of Professional Conduct, specifically, Rule 8.1 (b) [a lawyer shall not in response to a demand for information from a disciplinary authority knowingly fail to respond]; and, Rule 8.4 (d) [it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice] as well as Gov. Bar R. V (4)(G) [no lawyer shall neglect or refuse to assist or testify in an investigation or hearing].

Relator and respondent recommend that the board impose a two-year suspension, with eighteen months stayed with conditions, against respondent. Among the conditions, the parties request that a monitoring attorney be appointed to monitor respondent's law practice.

STIPULATED MITIGATING FACTORS

Relator and respondent stipulate that respondent's conduct involved the following mitigating factors as listed in BCGD Proc. Reg. § 10 (B)(2):

- (a) absence of prior disciplinary record; and,
- (e) character and reputation.

STIPULATED EXHIBITS

- Exhibit 1 Full Release of All Claims with Indemnity dated July 26, 1999.
- Exhibit 2 Letter from Sherry D. Davis to Ryan Gillette dated September 1, 2004.
- Exhibit 3 Docket, *State of Ohio v. Donald A. Stephens*, Ross County Court of Common Pleas, Case No. 01CR000134.
- Exhibit 4 Letter from Sherry Davis to Ryan Gillette dated September 30, 2004.
- Exhibit 5 Letter from Sherry D. Davis to Ryan Gillette dated November 8, 2004.
- Exhibit 6 Letter from Ryan Gillette to Managing Partner dated March 22, 2005.
- Exhibit 7 Letter from Sherry D. Davis to Ryan Gillette dated April 1, 2005.
- Exhibit 8 Letter from Davida A. Spriggs to Stanley L. Myers dated January 18, 2006.
- Exhibit 9 Letter from Dreama Crabtree to Sherry D. Davis dated November 23, 1999.
- Exhibit 10 Complaint, *Ryan Gillette v. Bannon, Howland & Dever Co., L.P.A., et al.*, Scioto County Court of Common Pleas, Case No. 05CIA012, filed September 28, 2005.
- Exhibit 11 Amended Complaint, *Ryan Gillette v. Bannon, Howland & Dever Co., L.P.A., et al.*, Scioto County Court of Common Pleas, Case No. 05CIA012, filed March 9, 2006.
- Exhibit 12 Dismissal Entry with Prejudice, *Ryan Gillette v. Bannon, Howland & Dever Co., L.P.A., et al.*, Scioto County Court of Common Pleas, Case No. 05CIA012, filed December 12, 2006.
- Exhibit 13 Letter from Stacy Solochek Beckman to Sherry Darlene Davis dated January 22, 2007.

- Exhibit 14 Letter from Sherry D. Davis to Stacy Solochek Beckman dated February 5, 2007.
- Exhibit 15 Letter from Stacy Solochek Beckman to Sherry Darlene Davis dated February 8, 2007.
- Exhibit 16 Letter from Stacy Solochek Beckman to Sherry Darlene Davis dated March 23, 2007.
- Exhibit 17 Letter from Sherry D. Davis to Stacy Solochek Beckman dated April 5, 2007.
- Exhibit 18 Letter from Stacy Solochek Beckman to Sherry D. Davis dated April 11, 2007.
- Exhibit 19 Letter from Sherry D. Davis to Stacy Solochek Beckman dated May 4, 2007.
- Exhibit 20 Letter from Stacy Solochek Beckman to Sherry D. Davis dated May 16, 2007.
- Exhibit 21 Letter from Sherry D. Davis to Stacy Solochek Beckman dated May 24, 2007.
- Exhibit 22 Letter from Stacy Solochek Beckman to Sherry Darlene Davis dated June 22, 2007.
- Exhibit 23 Transcript of Attempted Deposition of Sherry D. Davis, *In re: Sherry Davis*, ODC Case No. A6-3193, dated July 17, 2007.

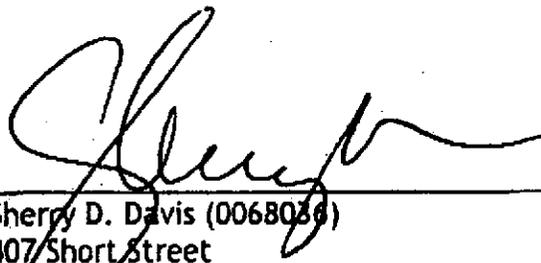
CONCLUSION

The above are stipulated to and entered into by agreement by the undersigned parties on this 12th day of May 2008.

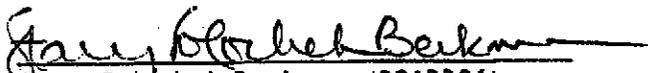
Respectfully submitted,



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Relator



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