

IN THE SUPREME COURT OF OHIO

Disciplinary Counsel,

Relator,

John Joseph Chambers, Esq. (0064627)

Respondent.

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CASE NO. 2008-1991

RELATOR'S ANSWER
TO RESPONDENT'S
OBJECTIONS TO THE
BOARD OF
COMMISSIONERS'
REPORT AND
RECOMMENDATION

RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS TO THE BOARD OF
COMMISSIONERS' REPORT AND RECOMMENDATION

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Relator.

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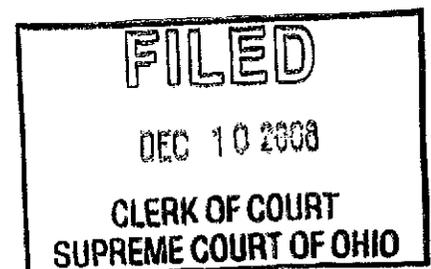


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IN THE SUPREME COURT OF OHIO

John Joseph Chambers :
22649 Lorain Road :
Fairview Park, OH 44126 :

Attorney Reg. No. 0064627 :

Respondent, :

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:

:

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

Relator. :

CASE NO. 2008-1991

**RELATOR'S ANSWER TO
RESPONDENT'S OBJECTIONS TO
THE BOARD OF COMMISSIONERS'
REPORT AND RECOMMENDATIONS**

**RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS TO THE BOARD OF
COMMISSIONERS' REPORT AND RECOMMENDATIONS**

Now comes relator, Disciplinary Counsel, and hereby submits its answer to respondent's, John J. Chambers', objections to the Report and Recommendations filed by the Board of Commissioners on Grievances and Discipline ("the board").

STATEMENT OF FACTS

On November 4, 2008 relator filed objections the board's report and recommendations, specifically with respect to the recommended sanction. Relator hereby incorporates the facts set forth in its objection brief on pages 2 through 6.

RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS

Proposition of Law 1

The decision as to whether to remand a disciplinary case to the board lies within the discretion of the Court.

Respondent's objection brief marks his first participation in this disciplinary proceeding, other than one phone call to relator during its investigation. In his brief, respondent, also for the first time, purports to offer information in mitigation regarding his alleged chemical dependency and mental health issues.

As is fully set forth in relator's answer to respondent's second proposition of law, his attempt to offer mitigation evidence at this stage of the proceedings is improper. However, relator leaves to the discretion of the Court whether to remand the case to the board for further consideration of the issue of mitigation only.

Proposition of Law 2

The procedural rules governing disciplinary actions do not permit a party to present evidence of mitigation for the first time after this Court issues a show cause order.

Relator's investigation of respondent began in June 2006 after it received a grievance against respondent filed by Michael D. Wilmore. On May 1, 2007 respondent made his only contact with relator during the investigation by calling relator after being served with a subpoena

to appear for a deposition. Respondent requested an extension of time by which to file a response to the Wilmore grievance, which was granted. Respondent never replied.

In July 2007, relator received a second grievance filed against respondent by Thomas G. Stump. Respondent never replied to any of relator's letters of inquiry in this matter.

On November 27, 2007 relator filed a formal disciplinary complaint against respondent based upon the Wilmore grievance. An amended complaint was filed on December 10, 2007 including allegations relating to the Stump grievance. Once again, respondent failed to respond, and a motion for default was filed on September 9, 2008.

On October 16, 2008, the board granted relator's motion for default and recommended that respondent be suspended for a period of one year, with six months stayed upon conditions. As previously stated, relator has filed objections to the sanction, as it believes respondent's misconduct warrants an indefinite suspension.

Now, over two years after relator's investigation began, respondent seeks to offer evidence in mitigation including his own affidavit, and affidavits of medical practitioners with respect to respondent's alleged alcoholism and mental health problems. These affidavits were presented for the first time as exhibits to respondent's objections to the board's report. Relator has never had an opportunity to examine respondent or the medical practitioners regarding these issues.

This Court has previously held that a respondent may not submit evidence in the first instance to this Court in a disciplinary matter. In *Columbus Bar Assn. v. Sterner*, 77 Ohio St.3d. 164, 1996-Ohio-324, 672 N.E. 2d 633, this Court refused to accept James Sterner's evidence of mitigation, a claimed attention deficit disorder. Sterner sought to introduce the mitigation evidence for the first time in his brief and in oral argument opposing the board's recommendation

of disbarment after a default motion had been filed. *Id.* at 167. This Court held that "Rule V has no provision for the introduction of evidence in the brief filed in this court or in the oral argument to this court. Only in the most exceptional circumstances would we accept additional evidence at that late stage of the proceedings." *Id.* at 167. The *Sterner* court explained:

If respondent has any objection here, it must be to the findings and recommendations of the board. The entire record sent to us from the board consists of the pleadings, the default motion, the affidavits, and other material filed in support of the motion, and the findings of fact and recommendations of the board after respondent failed to answer, otherwise plead, or appear before the panel. Matters in excuse and the mitigation do not appear in that record, nor do exceptional circumstances exist that would allow such evidence to be introduced for the first time by way of a brief or oral argument in response to the order to show cause.

Id. at 168.

In *Sterner*, this Court upheld the board's recommendation that *Sterner* be disbarred from the practice of law in the state of Ohio.

This Court reached the same conclusion in *Columbus Bar Assn. v. Finneran*, 80 Ohio St.3d. 428, 1997-Ohio-286, 687 N.E.2d. 405. In that case, *Finneran* also attempted to present evidence for the first time in his objections to the board's recommendations after a motion for default had been filed. This Court cited *Sterner*, *supra*, and refused to accept the evidence.

If this Court accepts the evidence respondent has belatedly submitted, it is impossible for relator to respond to the allegations of mitigation. Relator has had no opportunity to cross examine respondent or his medical providers, or even consider whether to have an independent medical exam or present rebuttal witnesses or experts. Relator has thus been placed in a position where it is unable to address whether respondent's mitigation evidence is meritorious.

The cases cited by respondent are not relevant to the case at bar. Respondent cited four cases¹ for the proposition that the disciplinary system is designed to protect the public, not punish attorneys. Albeit true, that is not an issue here. The evidence establishes that respondent ignored requests from relator regarding two grievances, promised he would respond to one but never did, and usurped the authority of this Court in an attempt to avoid any responsibility for his conduct by intimidating an individual into resolving a civil lawsuit. Respondent's conduct can only be characterized as damaging to public confidence and to the public's perception of the legal profession. It also places into question his ability to represent clients. These are the reasons relator believes an indefinite suspension is warranted.

Three cases² are cited by respondent solely for the proposition that a lesser sanction can be justified when an abundance of mitigation evidence exists. Again, this assertion is true, but since relator has never been made aware of these issues until now, it has not had any opportunity to determine the validity of the evidence.

Contrary to this case, none of the cases cited by respondent involve a default. In all of the cited cases, the respondent either appeared at a hearing and/or stipulated to various facts and allegations. Thus, the relators in the cited cases knew the respondents' positions, had a chance to evaluate and question the respondents and their witnesses and proceed accordingly. Not so here.

In this case, respondent had ample opportunity to participate in the disciplinary investigations, provide evidence to relator, answer the complaint, or appear before a panel to present whatever documentation or testimony he so desired. With exception of one phone call

¹ *Akron Bar Assn. v. Catanzarite*, 119 Ohio St.3d 313, 2008-Ohio-4063, 893 N.E. 2d 835, *Disciplinary Counsel v. Agopian*, 112 Ohio St.3d 103, 2006-Ohio-6510, 858 N.E. 2d 368, *Disciplinary Counsel v. O'Neill*, 103 Ohio St.3d 204, 2004-Ohio-4704, 815 N.E. 2d 286, *Ohio State Bar Assn. v. Weaver* (1975), 41 Ohio St.2d 97, 322 N.E. 2d 665.
² *Disciplinary Counsel v. Eisenberg* (1998), 81 Ohio St.3d 295, 1998-Ohio-472, 690 N.E. 2d 1282, *Dayton Bar Assn. v. Kinney* (2000), 89 Ohio St.3d 77, 2000-Ohio-445, 728 N.E. 2d 1052, *Disciplinary Counsel v. Markijohn*, 99 Ohio St.3d 489, 2003-Ohio-4129, 794 N.E. 2d 24.

seeking an extension of time to respond to one of relator's many letters of inquiry (to which he never did respond), respondent did nothing until he received the notice to show cause from this Court. To permit respondent to submit evidence at this stage of the proceedings would set a dangerous precedent and may encourage respondents to ignore the requirements of the Rules for the Government of the Bar as well as the procedural rules of this Court.

CONCLUSION

Only now, when the sanction for respondent's misconduct is at issue, has he chosen to participate in this disciplinary process and submit evidence purporting to mitigate his conduct. Respondent is asking to bypass the disciplinary system. Accordingly, relator submits that respondent's belated mitigation evidence not be considered and that an indefinite suspension from the practice of law be ordered.

Respectfully submitted,


Jonathan E. Coughlan (0026424) (0040142)



Carol A. Costa (0046556)
Assistant Disciplinary Counsel
Counsel of Record
Office of Disciplinary Counsel
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(614)461-0256

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Relator's Answer to Respondent's Objections to the Board of Commissioners' Report and Recommendations was served via U.S. Mail, postage prepaid, upon respondent's counsel, Mary L. Cibella, 614 West Superior Avenue, Suite 1300, Cleveland, Ohio, 44113, and upon Jonathan W. Marshall, Secretary, Board of Commissioners on Grievances and Discipline, 65 South Front Street, 5th Floor, Columbus, Ohio, 43215 this 10th day of December, 2008.



Carol A. Costa
Counsel for Relator

RECEIVED

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

OCT 16 2008

**DISCIPLINARY COUNSEL
SUPREME COURT OF OHIO**

In Re: :

Complaint against : **Case No. 07-098**

John Joseph Chambers : **Findings of Fact,**
Attorney Reg. No. 0064627 : **Conclusions of Law and**
: **Recommendation of the**
Respondent : **Board of Commissioners on**
: **Grievances and Discipline of**
Disciplinary Counsel : **the Supreme Court of Ohio**

Relator :

This matter was referred to Master Commissioner Judge W. Scott Gwin on September 10, 2008 by the Secretary of the Board pursuant to Gov. Bar Rule V(6)(F)(2) for ruling on the Relator's motion for default judgment. Master Commissioner Gwin then proceeded to prepare a report pursuant to Gov. Bar Rule V (6)(J).

PROCEDURAL HISTORY

Respondent John Joseph Chambers, of Fairview Park, Ohio, Attorney Registration No. 0064627, was admitted to the practice of law in Ohio in 1995.

On July 5, 2006, Relator sent a letter of inquiry to Respondent regarding a grievance filed by Michael David Wilmore. Donna M. Babinec signed the certified mail return receipt on July 7, 2006. Respondent did not reply to this letter of inquiry.

On August 3, 2006, Relator sent a second letter of inquiry to respondent at his business address listed in attorney registration records. A "Cathy (last name unclear)" signed the certified mail return receipt on August 7, 2006. Respondent did not reply to

Appendix A

this second letter of inquiry.

On March 1, 2007, a third letter of inquiry was sent to Respondent at both his business and home addresses listed in the attorney registration records. Both certified mail return receipts were signed. Although the signatures are illegible, the printed name reflects that John Chambers received both on March 12, 2007. Respondent never replied to either of these letters of inquiry.

On April 11, 2007, Relator served a subpoena upon Respondent by leaving it with an employee at Respondent's business address listed in attorney registration records. The subpoena required respondent to appear at a deposition at Relator's office on May 4, 2007, and to bring his complete file regarding the Wilmore matter.

On or about May 1, 2007, respondent called Relator's office, requesting an extension of time by which to respond to the letters of inquiry. Based upon this telephone call, Respondent's deposition was cancelled, and he was given until May 30th to respond to the letters of inquiry. Relator received no response.

On June 20, 2007, Relator forwarded a letter to Respondent at his business address listed in the attorney registration records, advising that Relator's investigation was completed, and that Relator determined that sufficient evidence existed to establish probable cause that Respondent committed ethical violations. Relator again received no response.

On September 17, 2007, Relator sent a letter of inquiry to respondent at his business address listed in the attorney registration records regarding a grievance filed by Thomas G. Stump. Donna M. Babinec signed the certified mail return receipt on September 20, 2007. Respondent did not reply to this letter of inquiry.

On October 12, 2007, a second letter of inquiry was sent to respondent's business and home addresses listed in the attorney registration records. Lee Anne Chambers signed the certified mail return receipt for the letter of inquiry sent to respondent business address on October 20, 2007. The certified mail sent to Respondent home address was returned as "unclaimed." Respondent did not reply to the second letter of inquiry.

A notice of intent and a copy of a proposed disciplinary complaint were forwarded to Respondent on November 15, 2007, and Respondent was advised that a response should be received no later than November 27, 2007. Respondent did not respond to the notice of intent.

On January 29, 2008, Relator sent a letter to Respondent at his business address listed in attorney registration records. This letter again requested a response to allegations relating to the Stump grievance. Respondent signed the certified mail return receipt on February 2, 2008. Respondent did not reply.

Respondent failed to file an answer or otherwise plead to both the original and amended complaints filed by Relator.

On September 9, 2008, Relator moved for a default judgment against the Respondent.

Prima facie documentary evidence in support of the allegations made regarding the misconduct of Respondent is set forth in the following:

1. Formal Complaint filed December 10, 2007
2. Amended Complaint filed April 2, 2008
3. Letter from the Secretary for the Board of Commissioners on Grievances and Discipline dated January 28, 2008

4. Letter from the Secretary for the Board of Commissioners on Grievances and Discipline dated June 3, 2008
5. Letter of Inquiry of July 5, 2006 with certified mail return receipt
6. Letter of Inquiry dated August 3, 2006 with certified mail return receipt
7. Letters of Inquiry dated March 1, 2007 with certified mail return receipts
8. Subpoena served upon respondent on April 11, 2007
9. Affidavit of Attorney Carol A. Costa, Esq.
10. Relator's letter to Respondent of June 20, 2007
11. Letter of Inquiry dated September 17, 2007 with certified mail return receipts
12. Letters of Inquiry dated October 12, 2007 with certified mail return receipt
13. Letter dated January 29, 2008 with certified mail return receipt
14. Notice of Intent
15. Grievance of Michael David Wilmore
16. Grievance of Thomas G. Stump
17. Letter to Relator from Stump of December 11, 2007
18. Letter to Relator from Stump of December 28, 2007
19. Letter to Relator from Stump of January 17, 2008
20. Docket, *Thomas Stump v. John J. Chambers, et al.*, Case No. CV-07-624477, Cuyahoga County Court of Common Pleas

FINDINGS OF FACT

COUNT ONE – MICHAEL D. WILMORE

On or about June 6, 2006, Grievant, Michael D. Wilmore, filed a Complaint with the Relator. Mr. Wilmore, who was incarcerated at the time, provided a letter dated

August 16, 2005 from the Respondent to Mr. Wilmore. In that letter, Respondent informed Mr. Wilmore that he had not received the agreed upon retainer to represent Mr. Wilmore in an attempt to gain an early release from prison.

In his grievance, Mr. Wilmore stated that a James and Barbara Smith paid the retainer in September 2005. Mr. Wilmore alleged that Respondent took no action on his behalf.

As previously noted, on July 5, 2006, Relator sent a letter of inquiry to Respondent regarding the grievance filed by Mr. Wilmore. Donna M. Babinec signed the certified mail return receipt on July 7, 2006. Respondent did not reply to the letter of inquiry.

On August 3, 2006, Relator sent a second letter of inquiry to Respondent at his business address listed in the attorney registration records. A "Cathy (last name unclear)" signed the certified mail return receipt on August 7, 2006. Respondent did not reply to the second letter of inquiry.

On March 1, 2007, a third letter of inquiry was sent to respondent at both his business and home addresses listed in attorney registration records. Both certified mail return receipts were signed. Although the signatures are illegible, the printed name reflects that John Chambers received both on March 12, 2007. Respondent never replied to either of these letters of inquiry.

On April 11, 2007, Relator served a subpoena upon Respondent by leaving it with an employee at respondent's business address listed in the attorney registration records. The subpoena required Respondent to appear at a deposition at Relator's office on May 4, 2007, and to bring his complete file regarding the Wilmore matter.

On or about May 1, 2007, Respondent called Relator's office, requesting an extension of time by which to respond to the letters of inquiry. Based upon this telephone call, Respondent's deposition was cancelled, and he was given until May 30th to respond to the letters of inquiry.

Relator received no response.

COUNT TWO – THOMAS G. STUMP

On December 7, 2006, the Cleveland Municipal Court found Respondent guilty of misdemeanor assault, arising out of an altercation with Thomas G. Stump. Respondent was sentenced to one year of probation.

On May 15, 2007, Stump filed a civil lawsuit against Respondent in the Cuyahoga County Court of Common Pleas.

On or about July 10, 2007, Relator received a grievance against Respondent from Mr. Stump.

The grievance alleged Respondent assaulted Stump because of Stump being called to testify in a juvenile court matter involving Respondent's children.

On December 11, 2007, Relator received a letter from Stump requesting that his grievance be withdrawn in order that Stump could pursue civil remedies against Respondent.

On December 28, 2007, Relator received a letter from Stump advising that Stump refused to settle any of his claims with Respondent.

In correspondence dated December 11, 2007 from Respondent to Stump's attorney in the civil matter, Respondent advised Stump's attorney that in order to settle the matter:

"Mr. Stump must immediately dismiss the pending complaint he filed with the Disciplinary Counsel of the Supreme Court of Ohio and agree not to file any additional grievances against me (I have attached a letter of withdrawal for your approval)."

Respondent enclosed a proposed settlement/release that stated:

"The plaintiff will immediately send the attached correspondence to Carol A. Costa, Assistant Disciplinary Counsel of the Ohio Supreme Court, and withdraw grievance number A7-1825. In [sic] the Ohio Supreme Court imposes any discipline against Defendant John Chambers due to the allegations set forth in grievance number A7-1825, or considers the allegations set forth in plaintiff's grievance in any way as an aggravating factor in any future disciplinary proceedings against Defendant John Chambers, the plaintiff agrees to be subject to a lawsuit for defamation, and specifically waives the applicable statute of limitations. In lieu of filing a separate suit alleging defamation, however, defendant John Chambers, at his sole option, may compel liquidated damages from the plaintiff in the amount of \$15,000."

On January 17, 2008, Relator received a letter from Stump again requesting to withdraw his grievance, as Stump's claim against Respondent was "purely civil in nature."

On January 18, 2008, Stump's civil lawsuit against Respondent was settled and dismissed.

CONCLUSIONS OF LAW

Respondent's conduct with regard to the Michael D. Wilmore matter violated the following provisions of the Ohio Rules of Professional Conduct.

Letters of Inquiry sent in July and August 2006:

Gov. Bar R. V (4)(G) [Duty to Cooperate in a Disciplinary Investigation].

Letter and subpoenas issued in March, April, May and June 2007:

Prof. Cond. Rule 8.1(b): "In connection with a bar admissions application or in connection with a disciplinary matter, a lawyer shall not do any of the following:

"(b) in response to a demand for information from an admissions or disciplinary authority, fail to disclose a material fact or knowingly fail to respond, except that this rule does not require disclosure of information otherwise protected by Rule 1.6."

Gov. Bar R.V (4)(G) [Duty to Cooperate in a Disciplinary Investigation].

Respondent's conduct with regard to the Thomas G. Stump matter violated the following provisions of the Rules of Professional Conduct:

Prof. Cond. Rule 8.1(b): "In connection with a bar admissions application or in connection with a disciplinary matter, a lawyer shall not do any of the following:

"(b) in response to a demand for information from an admissions or disciplinary authority, fail to disclose a material fact or knowingly fail to respond, except that this rule does not require disclosure of information otherwise protected by Rule 1.6."

Prof. Cond. Rule 8.4(a) (No lawyer shall violate or attempt to violate the Ohio Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another);

Prof. Cond. Rule 8.4(d) (No lawyer shall engage in conduct that is prejudicial to the administration of justice);

Prof. Cond. Rule 8.4(h) (No lawyer shall engage in any other conduct that adversely reflects on the lawyer's fitness to practice law);

Gov. Bar R. V (4)(G) [Duty to Cooperate in a Disciplinary Investigation].

MITIGATING FACTORS

Respondent has no prior disciplinary record.

AGGRAVATING FACTORS

At least four of the nine aggravating factors set forth in Section 10 (B) (1) the Rules and Regulations Governing the Procedure on Complaints and Hearings before the Board of Commissioners on Grievance and Discipline, are present here:

- (d) Multiple Offenses;
- (e) Lack of Cooperation in the Disciplinary Process;
- (g) Refusal to acknowledge the Wrongful Nature of Conduct;
- (h) Vulnerability of and Resulting Harm to Victims;

RECOMMENDED SANCTION OF RELATOR

Relator recommends the sanction of indefinite suspension.

RECOMMENDATION OF MASTER COMMISSIONER

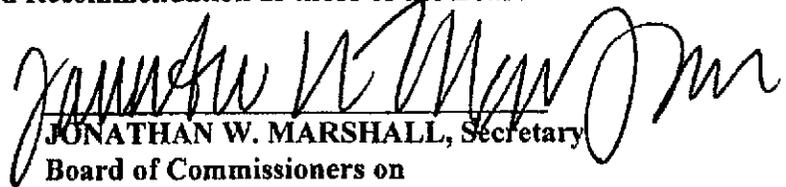
In light of the multiple offenses involving an actual prejudice to the client and to the administration of justice and because of the Respondent's failure to cooperate in the disciplinary investigation, the Master Commissioner recommends that Respondent be suspended from the practice of law for a period of one year with six (6) months stayed on the condition that Respondent (1) successfully complete an approved anger management program, and (2) complete six months of monitored probation pursuant to Gov.Bar R. V(9), and (3) pays the costs of these proceedings.

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 October 3, 2008.

The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Master Commissioner and recommends that the Respondent, John Joseph Chambers, be suspended from the practice of law in the State of Ohio for a period of one year with six months stayed upon the conditions contained in the Master Commissioner's 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 Recommendation as those of the Board.

A handwritten signature in black ink, appearing to read "Jonathan W. Marshall", is written over a horizontal line. The signature is cursive and extends to the right of the line.

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