

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

ORIGINAL

09-1231

In Re:	:	Case No. 08-077
Complaint against	:	
Keith Brown Attorney Reg. No. 0025640	:	Findings of Fact,
	:	Conclusions of Law and
	:	Recommendation of the
Respondent	:	Board of Commissioners on
	:	Grievances and Discipline of
	:	the Supreme Court of Ohio
Dayton Bar Association	:	
Relator	:	

This matter was referred to Master Commissioner, Judge W. Scott Gwin, on April 6, 2009, 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).

FILED

JUL 07 2009

CLERK OF COURT
SUPREME COURT OF OHIO

PROCEDURAL HISTORY

On October 3, 2008, a Probable Cause Panel found probable cause existed for the filing of a formal complaint. The complaint was filed with the Board on October 6, 2008, on behalf of grievant LaFern V. Smith. The complaint alleges she filed a grievance with the Relator on June 14, 2007.

The Secretary of the Board unsuccessfully attempted to serve Respondent at the attorney registration address provided to the Supreme Court of Ohio. The Secretary then served the Clerk

of the Supreme Court of Ohio pursuant to Gov. Bar R.V (11)(B).

On January 7, 2009, Relator filed an amended complaint incorporating the Smith grievance, and adding allegations on behalf of Donna Upton. Service was accomplished by serving the Clerk of Court of the Supreme Court. It included a copy of the complaint and certificate, an entry, and a notice of filing the complaint, advising Respondent his answer was due within twenty days of January 14, 2009.

Respondent has not filed an answer or any other pleading in this proceeding. On April 9, 2009, Relator filed its motion for default judgment.

FINDINGS OF FACT

LaFern Smith

Sometime in 2004, LaFern Smith and her husband attended a financial planning seminar at which they were introduced to Respondent. The Smiths retained Respondent to prepare various estate planning documents including wills, a revocable trust agreement and deeds to their real properties. The Smiths owned one parcel of real estate located in Darke County, Ohio, and two other parcels of real property located in Preble County, Ohio. The Smiths asked Respondent to take all necessary steps to insure the real estate would not become part of their probate estates. Relator charged the Smiths \$1,650: one-half payable before he began his work and the remainder payable when the documents were ready to be signed. The Smiths paid Respondent in full, and gave him copies of the deeds for the Darke and Preble properties.

On December 21, 2004, the Smiths met with Respondent and signed various documents including a revocable trust agreement and quit-claim deeds to transfer the real property into the trust.

On June 17, 2006, Mr. Smith died. After her husband's death, LeFern Smith contacted

Respondent and learned for the first time he had not recorded the quit-claim deeds transferring the Preble County real properties into the trust. Respondent charged Smith \$166.50 to correct the omission. The transfer of the Preble County properties was to have been included in the original fee of \$1,650.00.

Thereafter, Respondent sent to Smith two affidavits of surviving spouse or joint survivor, which he indicated would put her ownership of the Preble County properties on record. The affidavits were mailed to Smith already witnessed and notarized by Respondent, although Smith had not signed the documents. Smith did not execute the affidavits, and Respondent did not transfer the Preble County properties into Smith's name, or into the name of the trust.

Smith was required to hire other counsel to handle her legal affairs pertaining to the Preble County properties and her husband's estate, incurring attorney fees of approximately \$5,000, plus additional probate expenses.

Donna Upton

In late 2006, Donna Upton and her husband reviewed their insurance and estate planning needs, and their financial advisor recommended they establish an irrevocable trust. Donna Upton retained Respondent to create an irrevocable trust and to transfer the parties' real estate into the trust. Respondent created a trust document, which the Uptons signed. The Uptons paid Respondent \$2,000, in the form of two \$1,000 checks made payable to him on January 16, 2007, and February 2, 2007.

Respondent recommended the Uptons transfer their vehicles and bank accounts into the trust, and they did so. The Uptons assumed Respondent had transferred the real property into the trust as agreed, but they continued to receive tax notices for the real property, in their name instead of in the name of the trust. The Uptons made several attempts to contact Respondent to

clarify why they were receiving bills in their personal names for real estate which was to have been put into the trust. The Uptons spoke with Respondent on one occasion, and he told them he would look into the reason the property had not transferred. Respondent did not contact them again, and did not communicate with them despite many attempts on their part. After continuing to receive no response from Respondent for information concerning the status of their real property, the Uptons eventually contacted another attorney. The attorney transferred the property into the Uptons' trust on August 28, 2008.

While transferring the real property into the name of the trust, subsequent counsel discovered the declaration of trust had not been filed with the county recorder. The declaration was then filed at an additional cost of \$150.00 to \$200.00.

The purpose for creating an irrevocable trust was so the Uptons would eventually move into a nursing home and receive Medicaid benefits with a minimum effect on their assets. The transfer of the property into the trust was delayed for one and one-half years, and the Uptons believe the delay has postponed the time they may be eligible for Medicaid benefits without significant adverse financial effect.

Respondent did not return any portion of the \$2,000, part of which was payment for transferring the real property into the trust.

CONCLUSIONS OF LAW

Respondent's conduct with regard to the Smiths occurred prior to February 1, 2007, and is governed by Ohio's Code of Professional Responsibility. Respondent's conduct with regard to the Smith matter violated the following provisions of the Code:

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

DR 1-102(A)(5) [engaging in conduct prejudicial to the administration of justice];

DR 1-102(A)(6) [engaging in conduct adversely reflecting on the lawyer's fitness to practice law]; and

DR 6-101(A)(3) [neglecting an entrusted legal matter].

Relator alleges a violation of DR 2-106(A) [collecting an illegal or clearly excessive fee], and DR 6-101(A)(1) [handling a legal matter the lawyer knows or should know he is not competent to handle], because Respondent retained money he had not earned, and charged an additional fee to complete matters for which the original fee had been paid, thereby failing to provide competent legal services.

The Master Commissioner finds the record does not contain clear and convincing evidence of violations of DR 2-106 (A) or DR 6-101(A)(1).

Respondent's conduct with regard to the Upton matter occurred both prior to and after February 1, 2007, and his conduct is therefore governed by both the Code of Professional Responsibility and the Rules of Professional Conduct. Respondent's conduct with regard to the Upton matter violated the following provisions:

Rule 1.1 [failing to provide competent representation to a client];

Rule 1.3 [failing to act with reasonable diligence and promptness in representing a client] and DR 6-101(A)(3) [neglecting an entrusted legal matter];

Rule 8.4 (d) and DR 1-102(A)(5) [engaging in conduct prejudicial to the administration of justice];

Rule 8.4 (h) [engaging in conduct adversely reflecting on the lawyer's fitness to practice law] and DR 1-102(A)(6) [engaging in conduct adversely reflecting on the lawyer's fitness to practice law].

Relator argues Respondent's conduct with respect to the Uptons also violated:

DR 2-106(A) and Rule 1.5 [collecting a clearly illegal or excessive fee], for accepting a fee but failing to perform all the legal services.

The Master Commissioner finds the facts do not contain clear and convincing evidence that Respondent violated DR 2-106 and Prof. Cond. R. 1.5.

MITIGATING FACTORS

Respondent was admitted to the practice of law in the State of Ohio in 1981, and has no prior disciplinary record. Relator states one of Respondent's addresses appears to be an alcohol and/or drug dependency treatment center, but Relator was unable to ascertain any facts showing Respondent suffers from any alcohol or substance abuse related condition.

AGGRAVATING FACTORS

The case presents at least four aggravating factors as set forth in Section 10 (B)(1) of the Rules and Regulations Governing the Procedure on Complaints and Hearings before the Board of Commissioners on Grievance and Discipline:

- (d) multiple offenses;
- (e) lack of cooperation in the disciplinary process;
- (h) vulnerability of and resulting harm to victims of the misconduct; and
- (i) failure to make restitution.

RECOMMENDED SANCTION OF RELATOR

Relator recommends Respondent receive a two-year suspension from the practice of law.

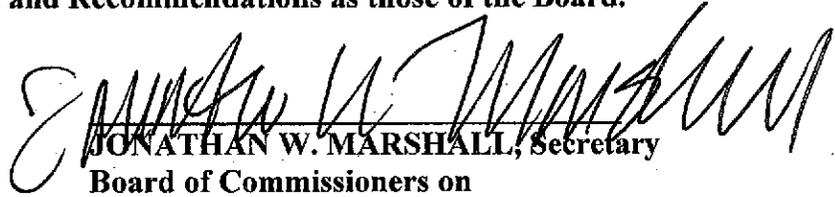
RECOMMENDATION OF MASTER COMMISSIONER

The Master Commissioner recommends Respondent be indefinitely suspended from the practice of law.

RECOMMENDATION

Pursuant to Gov. Bar Rule V(6)(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on June 12, 2009. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Master Commissioner and recommends that Respondent, Keith Brown, be suspended from the practice of law in the State of Ohio indefinitely. The Board further recommends that the cost of these proceedings be taxed to 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