

ORIGINAL

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

In Re:	:	09-2284
Complaint against	:	Case No. 09-044
William Eric Minamyer Attorney Reg. No. 0015677	:	Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio
Respondent	:	
Butler County Bar Association	:	
Relator	:	

**FILED**  
 DEC 18 2009  
 CLERK OF COURT  
 SUPREME COURT OF OHIO

On October 5, 2009, this matter was referred to Jeffrey T. Heintz, a Master Commissioner of the Board of Commissioners on Grievances and Discipline (“Board”) by the Secretary of the Board, for disposition pursuant to Gov. Bar R. V(6)(F)(2). Master Commissioner Heintz proceeded to prepare this report pursuant to Gov. Bar R. V(6)(J).

**Procedural Background**

Respondent holds Registration No. 0015677, and was admitted to practice on May 23, 1979. Relator’s Complaint was filed on June 15, 2009, after having been certified by a probable cause panel of the Board on June 12, 2009. Service of the Complaint upon Respondent directed to his last known residence, which is the address that he provided to the Office of Attorney Registration. The certified mail receipt was signed on June 19, 2009, by “Debra Minamyer” who is presumably related to Respondent. On August 13, 2009, the Secretary of the Board notified Relator that Respondent was in default and had

not filed an answer. Thereafter, on October 1, 2009, Relator filed its Motion for Default (“Motion”) and the matter was referred to the Master Commissioner.

### **Findings of Fact**

Relator alleges four counts of misconduct, all of which relate to Respondent’s representation of Dionne Davis in a home improvement dispute with Fred Jackson and Mink Construction Company regarding remodeling work performed at Ms. Davis’s residence. In support of the Motion, Relator on October 5, 2009, submitted a Memorandum and attached Exhibits. Included among the Exhibits is the transcript (“Tr.”) of a hearing conducted by Relator prior to the filing of its Complaint.

Respondent’s representation of Ms. Davis began when he was sharing office space with another attorney, and continued after he terminated that relationship and began working out of his home. Respondent filed a complaint in the Butler County Common Pleas Court on behalf of Ms. Davis in April 2006, and the defendants filed an answer and counterclaim. A Report Hearing (in the nature of a scheduling conference) was scheduled by the Court for September 5, 2006, and served on the parties (Respondent was served at the address he put on his complaint: 11085 Montgomery Road) but Respondent did not attend. On September 15, the Court entered a Pretrial Order setting dates for the completion of discovery, filing dispositive motions, mediation, and for final pretrial and trial. The docket and the court file reflect that these orders were served on Respondent at the Montgomery Road address and they were imaged and entered on the Butler County electronic docket system for access on the internet. Mediation was held on March 15, 2007, in which Respondent participated, but the mediation was not successful. Thereafter,

counsel for the defendants sought leave to withdraw. Respondent received notice of that motion (which was sent to the Montgomery Road address), and unsuccessfully opposed it.

Thereafter, Respondent failed to file a pretrial statement or appear at the scheduled pretrial on August 30, 2007.<sup>1</sup> Jackson filed a motion to dismiss the complaint, which Respondent failed to oppose, and the complaint was dismissed on September 18.

Respondent learned of the dismissal on September 22. He notified Ms. Davis that she need not appear for the trial, but did not tell her why. Davis repeatedly tried to contact Respondent regarding the status of her case between September and December, 2007, without success. On December 13, 2007, Ms. Davis received from the Court a statement of court costs due, and learned for the first time that her complaint had been dismissed. Ms. Davis filed a grievance against Respondent on January 13, 2008, to which Respondent replied by letter on March 14. On June 19, 2008, Relator took sworn testimony from both Respondent and Ms. Davis and Respondent had the opportunity to, and did, cross examine Ms. Davis.

In both his reply and at Relator's pre-complaint hearing, Respondent advanced various excuses for his inactivity: misdirection of his mail (Tr. 27), an incompetent secretary (Tr. 46), moving his office (Tr. 38), illness (Tr. 31) and the like. He offers no substantiation for any of this, and his testimony lacks credibility. He admits that he failed to advise his client that he carries no malpractice insurance (Tr. 65). He rationalizes this by asserting that his relationship with Ms. Davis originated when he was sharing office

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<sup>1</sup> There is reference in Respondent's hearing testimony (Tr. 25, *et seq.*) to notes from the Court file in the Davis case regarding a telephone call to the Court placed by Respondent on August 30, and an inference that Respondent sought to excuse his failure to attend the final pretrial by claiming that he was on duty with the military reserves. Respondent was not in the military at the time, and testified that he has no recollection of making this call.

space with another lawyer, who had the required insurance. When he left that office-sharing arrangement, he says, he took Ms. Davis with him as a client but failed to advise her that he carried no insurance himself.

Ms. Davis testified that she paid Respondent money for court costs and money for fees (Tr. 80), and Respondent's cross examination of her confirms that fact (Tr. 89).<sup>2</sup> Respondent's cross examination of Ms. Davis at the bar hearing suggests that these fees were earned by him in exchange for services that he provided.

In his reply to Relator's initial grievance inquiry, Respondent professed to be "dumbfounded" that the Davis lawsuit had been dismissed without his knowledge. Nonetheless, since the date of Relator's pre-complaint hearing in June 2008, he has not offered any defense to these proceedings.<sup>3</sup>

As set forth above, Relator undertook a comprehensive investigation into Respondent's conduct, including taking sworn testimony. Based on the foregoing, and pursuant to Gov.Bar R. V (6)(F)(1)(b), the Motion is supported by "[s]worn or certified documentary prima facie evidence in support of the allegations made." *See Dayton Bar Association v. Sebree*, 104 Ohio St. 3d 448, 2004-Ohio-6560.

### **Relator's Allegations**

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<sup>2</sup> In his testimony, Respondent claims to have had a contingency fee arrangement with Ms. Davis which, pursuant to R.C. 4705.15 must be in writing. Respondent claims to have complied with this requirement, but could not produce a copy of the agreement. Ms. Davis, in her testimony (Tr. 78), asserts that the only writings involved in her relationship with Respondent were the checks that she wrote to him for services. The possible failure to comply with R.C. 4705.15 is not the basis of any allegation of misconduct against Respondent.

<sup>3</sup> On September 18, 2008, shortly before the expiration of one year from the dismissal of the Davis complaint. Respondent filed a motion for relief from judgment on Davis's behalf, notwithstanding their currently adversarial relationship.

Relator alleges that Respondent has committed the following violations of the Code of Professional Responsibility (“Code”) and the Ohio Rules of Professional Conduct (“Rules”)<sup>4</sup>:

**A. COUNT ONE – MALPRACTICE INSURANCE**

Former DR 1-104; Prof. Cond. R. 1.4(c): Minamyler was not covered by a policy of malpractice insurance during his representation of Davis and failed to notify Davis of that fact.

**B. COUNT TWO – NEGLIGENCE OF A LEGAL MATTER**

Former DR 6-101; Prof. Cond. R. 1.3: Minamyler failed to act with reasonable diligence in representing Davis, in that he failed to inform himself of dates that had been set by the Court regarding, inter alia, disclosure of expert witnesses, pretrial statement and the pretrial date.

**C. COUNT THREE – FAILURE TO COMMUNICATE WITH CLIENT**

Prof. Cond. Rule 1.4(a)(3) and 1.4(a)(4): Minamyler failed to inform Davis of the status other case when the case was dismissed on September 26, 2007, and she did not learn of the dismissal until she herself called the Judge’s office after receiving, in mid-December, 2007, a notice of court costs due.

**D. COUNT FOUR – ENGAGING IN DISHONEST CONDUCT**

Former DR 1-102(A)(4); Prof. Cond. R. 8.4(c): Minamyler acted dishonestly when he failed to inform Davis of the status of the case when the case was dismissed on September 26, 2007.

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<sup>4</sup> The time frame relevant to these proceedings overlaps the effective time for the Code, and the effective date of the Rules.

### **Conclusions of Law**

Based on the information submitted in support of the Motion, Relator has proven all of the alleged rule violations of Counts One through Four by clear and convincing evidence and the Master Commissioner recommends that the Board so find.

### **Mitigation, Aggravation and Sanction**

Section 10 of the Board's Procedural Regulations sets forth guidelines for imposing lawyer sanctions, and provides factors to be considered in aggravation, and in mitigation of punishment. Here, Respondent committed multiple violations of the Code of Professional Responsibility and the Rules of Professional Conduct. His misconduct caused harm, economic and otherwise, to his client. His failure to notify Ms. Davis of the dismissal of her complaint, and to forthrightly deal with the consequences, was deceitful. He has failed to cooperate in these proceedings as required by Gov. Bar R. V(4)(G). There is no evidence of mental disability or substance abuse. Although Respondent makes reference to illness in his deposition, and to suffering from depression, he offers no substantiation of either.

In *Cleveland Bar Assn. v. Berk*, 114 Ohio St. 3d 478, 2007-Ohio-4264, the Supreme Court ordered a stayed suspension for a respondent who failed to attend court hearings and meet court deadlines. In that case, however, the respondent fully cooperated with the disciplinary process, and engaged in a course of rehabilitation designed to prevent reoccurrences of misconduct. Here, the opposite has occurred. Respondent has abandoned even his limited efforts to participate in these proceedings. The Supreme Court has repeatedly held that the primary purpose of disciplinary sanctions is not to punish the offender but to protect the public. *Disciplinary Counsel v. Agopian*, 112 Ohio St. 3d 103,

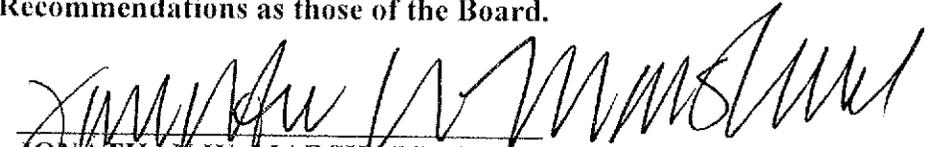
2005-Ohio-6510. Even when a lesser sanction might ordinarily be warranted, where there are unresolved issues regarding a respondent, the Court has imposed a more severe sanction than might otherwise be the case. *See e.g. Akron Bar Assn. v. Wittbrod*, 122 Ohio St.3d 394, 2009-Ohio-3549. Here, troubling unanswered questions exist with respect to Respondent's fitness to practice law. They might have been resolved had he chosen to participate in these proceedings, but he did not, and accordingly, an actual suspension from the practice of law is appropriate.

Relator suggests a one-year suspension, with one year's probation thereafter, during which Respondent is to be monitored by a supervising attorney appointed by Relator. The Master Commissioner concurs and recommends that Respondent be suspended from the practice of law for one year, and, upon reinstatement, that he be placed on one year's probation during which time he is monitored by a supervising attorney appointed by Relator.

#### 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 December 3, 2009. The Board adopted the Findings of Fact and Conclusions of Law of the Master Commissioner. It recommends, however, based on the record in this matter, that the Respondent, William Eric Minamyser, be suspended from the practice of law for a period of two years with one year stayed for probation and the appointment of a monitor. 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.**

A handwritten signature in black ink, appearing to read "Jonathan W. Marshall", written over a horizontal line.

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