

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

09-2301

FILED
DEC 22 2009
CLERK OF COURT
SUPREME COURT OF OHIO

In Re:	:	
Complaint against	:	Case No. 09-046
Gerald Thomas Noel	:	Findings of Fact,
Attorney Reg. No. 0063972	:	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 November 13, 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).

PROCEDURAL HISTORY

Respondent Gerald T. Noel, Jr., Ohio Supreme Court Attorney Registration No. 0063972, was admitted to the practice of law in Ohio on November 14, 2004.

This matter was first brought to the attention of relator on August 12, 2008, as the result of a letter sent to relator by Janice E. Yates, Chief Deputy Clerk of the United States Court of Appeals for the Sixth Circuit. Yates's letter alleged that respondent had neglected the direct criminal appeal of Gary L. Jackson.

Subsequently, on or about February 19, 2009, the Columbus Bar Association

transferred a grievance that they had received from Tanya Goolsby concerning respondent to relator. Goolsby's grievance alleged that respondent neglected her personal injury matter and failed to provide her with a copy of her file.

On September 11, 2008, relator sent a Letter of Inquiry via certified mail to respondent at 857 South High Street, Columbus, OH 43206, concerning the grievance that was filed against him by Janice Yates. Relator's letter requested that respondent postmark his response to the letter of inquiry no later than September 25, 2008.

On October 2, 2008, relator sent a Second Letter of Inquiry to respondent via certified mail because it had not yet received a response to its First Letter of Inquiry. Relator requested that respondent reply to the Second Letter of Inquiry "immediately upon receipt."

Respondent did not reply to relator's Second Letter of Inquiry; therefore, on October 21, 2008, relator called respondent. Relator left a message for respondent, but respondent did not return relator's phone call. On November 4, 2009, relator sent a Third Letter of Inquiry to respondent. The Third Letter of Inquiry required respondent's response be received in relator's office no later than November 17, 2008. Although respondent's office signed for this certified letter, respondent did not reply to the Third Letter of Inquiry.

Relator, through its investigator, Michael Kozanecki, hand delivered a subpoena to respondent on December 1, 2008 noticing him for a deposition on December 18, 2008. Respondent appeared for his deposition.

On or about January 12, 2009, relator sent a draft complaint concerning Yates's grievance to respondent and gave him until January 26, 2009, to provide a response to the

draft complaint. Respondent provided a response to the draft complaint on February 5, 2009; however, he provided a response only after relator called him and inquired whether he intended to provide a response to the draft complaint.

On or about February 19, 2009, the Columbus Bar Association transferred to Disciplinary Counsel a grievance that it had received from Tanya Goolsby regarding respondent. The Columbus Bar Association received Goolsby's grievance on or about October 14, 2008.

On October 21, 2008, the Columbus Bar Association sent a letter via certified mail to respondent concerning Goolsby's grievance. This letter requested that respondent reply to Goolsby's grievance within 10 days of receiving the letter. Because they did not receive a response to their October 21, 2008 letter, the Columbus Bar Association sent a second letter via certified mail to respondent on or about November 19, 2008. On or about December 27, 2008, the Columbus Bar Association's second letter was returned to them because respondent failed to claim the letter. Because the Columbus Bar Association did not receive a response to either of the letters that they sent respondent, they served him with a subpoena noticing him for a deposition at their offices on February 6, 2009.

Respondent appeared for his deposition with the Columbus Bar Association, which was conducted by Attorney Pamela Maggied and Professor Arthur Greenbaum.

On March 19, 2009, relator sent an email to respondent requesting information concerning both grievances. On March 20, 2009, respondent also left a message with respondent's assistant requesting a return phone call. On March 23, 2009, respondent left a voice mail for relator stating that he had received both the email and the message from

his assistant, and that he would supply the requested information no later than the week of March 30, 2009.

On March 26, 2009, relator sent a letter to respondent requesting additional information concerning the Goolsby grievance. Respondent did not reply to this letter by the requested date of April 10, 2009.

On April 20, 2009, relator sent respondent a letter via certified mail requesting that he respond to the March 26, 2009 letter. Respondent provided a response to relator's March 26, 2009, letter on May 4, 2009; however, he stated that he would provide additional information by May 8, 2009. To date, respondent has not provided any additional information to relator.

On May 12, 2009, relator notified respondent of its intent to file a formal complaint against him for consideration at the June 2009 Board meeting and provided respondent with a copy of a draft complaint. Respondent was given until May 22, 2009, to respond. Although respondent received the draft complaint, respondent did not provide a response to the draft complaint.

On June 15, 2009, relator filed a formal complaint against respondent with the Board. On the same day, the Board certified the complaint and served respondent with a certified copy of the complaint.

The Board received proof of service of the complaint on respondent on August 15, 2009. On October 5, 2009, relator received a letter from Jonathan Marshall, Secretary of the Board, stating that respondent was in default for failing to file an answer to the formal complaint.

No Answer to the Complaint has been filed by, or on behalf of, respondent.

On November 13, 2009, 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). Janice Yates's August 11, 2008 letter to relator
- 2). Columbus Bar Association's February 19, 2009 letter to relator
- 3). Tanya Goolsby's grievance
- 4). First Letter of Inquiry (September 11, 2008)
- 5). Certified Mail Receipts from September 11, 2008 Letter of Inquiry
- 6). Second Letter of Inquiry (October 2, 2008)
- 7). Certified Mail Receipts from October 2, 2008 Second Letter of Inquiry
- 8). Third Letter of Inquiry (November 4, 2008)
- 9). Relator's January 12, 2009 letter to respondent
- 10). Respondent's February 5, 2009 letter to relator
- 11). Columbus Bar Association's October 21, 2008 letter to respondent
- 12). Columbus Bar Association's November 19, 2008 letter to respondent
- 13). Columbus Bar Association's returned letter
- 14). Columbus Bar Association's subpoena to respondent
- 15). Transcript from respondent's deposition with the Columbus Bar Association
- 16). Relator's March 19, 2009 email to respondent
- 17). Transcription of respondent's March 23, 2009 voicemail
- 18). Relator's March 26, 2009 letter to respondent
- 19). Relator's April 20, 2009 letter to respondent

- 20). Respondent's May 4, 2009 letter to relator
- 21). Notice of Intent
- 22). Certified' Mail Receipt from Notice of Intent
- 23). June 15, 2009 Notice to Respondent of Filing of Complaint
- 24). October 5, 2009 Letter from Jonathan Marshall
- 25). Docket for Southern District of Ohio Case No. 2:06-cr-00269
- 26). Transcript from Gary Jackson's April 7, 2008 sentencing hearing
- 27). April 9, 2008 Notice of Appeal
- 28). Sixth Circuit Rule 101 (a)
- 29). Affidavit from Michelle Davis
- 30). Transcript from respondent's December 18, 2008 deposition
- 31). Affidavit from Janice Yates
- 32). Janice Yates' July 15, 2008 letter to respondent
- 33). August 1, 2008 Order dismissing Gary Jackson's appeal
- 34). Gary Jackson's November 6, 2008 letter to relator
- 35). Docket from Case No. 04 CV 005573
- 36). June 15, 2006 fee agreement between respondent and Ms. Goolsby
- 37). Docket from Case No. 06 CV 009327
- 38). Franklin County Court of Common Pleas Local Rule 31
- 39). September 19, 2006 Motion for Judgment on the Pleadings
- 40). October 12, 2006 Opposition to Motion for Judgment on Pleadings
- 41). Attorney Loughry's October 19, 2006 Reply
- 42). October 21, 2006 Entry transferring case to Original Trial Judge

- 43). First Set of Interrogatories and First Requests for Production of Documents
- 44). Affidavit from Attorney Loughry, which was filed in Case No. 06 CV 009327
- 45). Attorney Loughry's January 24, 2007 letter to respondent
- 46). Respondent's January 29, 2007 fax
- 47). Tanya Goolsby's Initial Response to Defendant's Interrogatories
- 48). Attorney Loughry's January 30, 2007 letter
- 49). Affidavit from Michael Loughry
- 50). Attorney Loughry's February 14, 2007 letter
- 51). Attorney Loughry's March 7, 2007 email
- 52). Defendant's March 9, 2007 Motion to Compel Plaintiff to Respond to Discovery
- 53). March 30, 2007 Judgment Entry granting Motion to Compel
- 54). Attorney Loughry's April 3, 2007 letter to respondent
- 55). April 19, 2007 Motion for Sanctions
- 56). Attorney Loughry's August 16, 2007 email to respondent
- 57). September 13, 2007 Agreed Judgment Entry Granting Defendant's Motion for Sanctions
- 58). Respondent's August 24, 2007 letter to Attorney Loughry
- 59). December 6, 2007 Motion to Dismiss for Failure to Prosecute
- 60). Attorney Loughry's December 13, 2007 letter to respondent
- 61). February 4, 2008 Notice of Failure to Prosecute
- 62). February 26, 2008 Entry of Dismissal
- 63). Tanya Goolsby's August 11, 2008 letter to respondent
- 64). Attorney Myers' July 14, 2008 letter to Tanya Goolsby
- 65). Attorney Myer's July 14, 2008 letter to respondent

- 66). Attorney Myers' August 6, 2008 letter to Tanya Goolsby
- 67). Affidavit from Stanley Myers
- 68). Attorney Myers' August 6, 2008 letter to respondent
- 69). Affidavit from Tanya Goolsby
- 70). Attorney Myers' December 19, 2008 letter to Attorney Loughry
- 71). Docket from Sixth Circuit Case No. 08-3449 and correspondence from The Sixth Circuit Court of Appeals for Case No. 08-3449

FINDINGS OF FACT

COUNT ONE

Gary L. Jackson Matter

In early 2007, respondent began representing Gary L. Jackson against several drug charges in Southern District of Ohio Case no. 2:06-CR-00269. On April 7, 2008, Judge James L. Graham sentenced Jackson to 168 months in prison.

After issuing his sentence, Judge Graham informed Jackson of his right to appeal his conviction and sentence and have the costs of the appeal paid for by the government. He further informed Jackson that if requested, the Clerk of the District Court would file his Notice of Appeal for him. Judge Graham asked Jackson to consult with respondent and advise the court whether he wanted the Clerk to file a Notice of Appeal for him. On behalf of Jackson, respondent replied, "Yes, Your Honor. He would request that the Clerk would file his notice of appeal and would actually request the Court to appoint counsel." In response, Judge Graham stated, "All right. Very well. The Sixth Circuit will appoint counsel, and we will instruct our clerk to file the notice of appeal for him."

On April 9, 2008, the Clerk of the District Court filed Jackson's Notice of Appeal

with the Sixth Circuit Court of Appeals. Pursuant to Sixth Circuit Rule 101(a), respondent was counsel of record for Jackson on appeal. Sixth Circuit Rule 101(a) states that, "Trial counsel in criminal cases, whether retained or appointed by the district court, is responsible for the continued representation of the client on appeal until specifically relieved by this court."

Jackson's appeal was assigned to Michelle Davis, a case manager at the Sixth Circuit Court of Appeals Clerk's Office. On or about May 12, 2008, Davis called respondent and informed him that he still had to pay Jackson's filing fee and file a Form of Appearance and Transcript Purchase Order.

Respondent informed Davis that Judge Graham had purportedly allowed him to withdraw from Jackson's representation. He stated that he would contact the district court and obtain a copy of the order granting his withdrawal and declaring Gary Jackson indigent. Despite his assurance that he would do so, respondent never followed through with Davis.

On June 3, 2008, Davis called respondent again because he still had not paid Jackson's filing fee or filed the required forms. Davis could not reach respondent on June 3, 2008, and respondent did not return Davis's phone call. On June 9, 2008, Davis called respondent for a third time regarding the filing fee and the required forms. Despite this reminder, respondent did not take any action on Jackson's appeal, nor did he provide the Sixth Circuit with any documentation showing that he had been allowed to withdraw at the district court level and/or that Gary Jackson had been declared indigent.

On July 10, 2008, Davis informed Janice Yates, Chief Deputy Clerk for the Sixth Circuit Court of Appeals, of the status of Jackson's appeal and her efforts to contact

respondent. Sometime between July 10, 2008, and July 15, 2008, Yates left a voicemail for respondent, but respondent did not return Yates's phone call. On July 15, 2008, Yates wrote a letter to respondent informing him of his "continuing obligation under Sixth Circuit Rule 101(a) to represent Jackson until relieved by the Court of Appeals."

In her letter, Yates informed respondent that if he intended to continue representing Jackson, he should immediately make financial arrangements with the court reporter and pay the filing fee; however, if he did not intend to represent Jackson, he should inform Jackson to promptly retain new counsel and/or file the necessary paperwork with the district court to establish Jackson's pauper status allowing the Sixth Circuit to appoint counsel under the Criminal Justice Act.

Although respondent's office received Yates's letter, respondent did not take any action on behalf of Jackson. On August 1, 2008, the Sixth Circuit dismissed Jackson's appeal for want of prosecution and notified respondent of the dismissal by e-mail. Respondent did not inform Jackson that his appeal had been dismissed.

On August 11, 2008, Yates sent relator a letter stating that the court had dismissed Jackson's appeal because respondent failed to pay the filing fee, failed to file any of the required forms, or respond to phone calls or a letter from the clerk's office. As detailed above, relator sent respondent three letters of inquiry regarding Yates's grievance, but respondent did not respond to any of relator's letters. On December 1, 2008, relator hand-delivered a subpoena to respondent notifying him of a deposition on December 18, 2008. Respondent appeared for his deposition.

At his deposition with relator, respondent admitted to having at least one, maybe two, conversations with Michelle Davis or someone else from the Sixth Circuit, during

which he was instructed on what he needed to do to withdraw as Gary Jackson's appellate counsel. Respondent further admitted that he did not follow through with those instructions or return Davis or Yates's phone calls because Gary Jackson was not on his "high-priority burner anymore."

At his deposition, respondent also minimized responsibility for his conduct. He stated that when he reviewed Mr. Jackson's file in preparation for his deposition with relator, he noticed several documents in the file, including the letter from Yates, which he had not seen before. He stated that his part-time secretary, Amanda Rose, must have put the documents in Jackson's file without showing them to him because she believed that the file was "closed." He further stated that he only remembered reading one of the three letters from relator, and that although his office received the letters, either his secretary, or the building receptionist, Leslie Todd, may not have given him the other letters. Finally, he stated that although he knew he should have responded to inquiries from the relator, he failed to do so because he did not feel as if he had "created" the situation with Jackson, and therefore, he did not assign as high a priority to the matter as he should have. At the end of the deposition, respondent was advised to respond to any future letters or phone calls from relator.

On January 12, 2009, relator sent respondent a copy of a draft complaint concerning Yates's grievance. Because relator did not receive a response to the draft complaint, relator called respondent on January 28, 2009. During this conversation, respondent informed relator that he had fired Amanda Rose not only because of the Jackson matter, but also because of several other issues. He also stated that Gary Jackson and his family had contacted him and requested his assistance with filing an appeal of his

federal sentence.

Respondent confirmed parts of his conversation with relator in his February 5, 2009, response to the draft complaint. In his response, respondent stated that Gary Jackson and his family had contacted him and asked for his assistance in filing an appeal. Respondent stated that he knew some attorneys who specialized in federal appeals and that he would contact them to see if any of them would accept Jackson's appeal. In the alternative, he would ask these attorneys for guidance in handling a federal appeal so that he could properly file an appeal for Jackson. To date, no action has been taken on Jackson's appeal.

In this same letter to relator, respondent also stated that his part-time secretary, Amanda Rose, no longer worked for him and that he and Javier Armengau (an attorney with whom respondent shares office space) were looking for a full-time receptionist/ secretary to share between them.

CONCLUSIONS OF LAW

COUNT ONE

Gary L. Jackson Matter

Respondent's conduct with regard to Count One: The Gary L. Jackson Matter has violated the following provisions of the Rules of Professional Conduct:

Prof. Cond. R. 1.3 [requiring a lawyer to act with reasonable diligence and promptness in representing a client];

Prof. Cond. R. 8.4 (d) (a lawyer shall not engage in conduct that is prejudicial to the administration of justice).

COUNT TWO

Tanya Goolsby Matter

On or about May 26, 2002, a Central Ohio Transit Authority (COTA) bus that was being operated by Duane Marc Shaw hit Tanya Goolsby's car. On May 25, 2004, Goolsby, through counsel, filed a personal injury lawsuit against COTA and Shaw; however, she voluntarily dismissed her complaint on July 22, 2005. On or about June 15, 2006, Goolsby retained respondent on a contingent fee basis to represent her in re-filing the personal injury matter against COTA and Shaw. On July 20, 2006, respondent re-filed Goolsby's complaint in the Franklin County Court of Common Pleas; however, pursuant to Local Rule 31.02, he failed to notify the court that he was re-filing a case that had been previously dismissed. The case was assigned to Judge Michael Holbrook.

Because the complaint did not indicate that it was a re-filed complaint, the defendants, through their counsel, Michael S. Loughry, filed a Motion for Judgment on the Pleadings on September 19, 2006. The defendants claimed that the complaint was barred by the Statute of Limitations because it was filed over four years after the date that Goolsby was allegedly injured. Respondent opposed this motion on behalf of Goolsby; however, he did not file his opposition brief until October 12, 2007 - 10 days after the brief was due. In his opposition brief, respondent indicated that this was a re-filed complaint, thus making the Motion for Judgment on the Pleadings moot. The court never ruled on the Motion for Judgment on the Pleadings, and ultimately transferred the case to Judge David Fais's docket - the judge who had initially handled the case.

On December 11, 2006, the defendants served respondent with their "First Set of Interrogatories" and "First Requests for Production of Documents." Goolsby's discovery responses were due January 8, 2007. On January 24, 2007, 16 days after the responses

were due, Attorney Loughry sent respondent a letter inquiring into the status of Goolsby's discovery responses. On January 29, 2007, respondent replied to Attorney Loughry's letter by fax stating that he had just received Goolsby's responses and that he would be forwarding them to Attorney Loughry in the next few days. Respondent, in fact, had only received Goolsby's responses on January 26, 2007.

On January 30, 2007, Attorney Loughry replied to respondent's January 29, 2007 fax. In his letter, Attorney Loughry provided several possible dates on which he wished to take Goolsby's deposition. He asked respondent to advise him of which date worked best with his schedule. He also stated that he looked forward to receiving Goolsby's discovery responses soon, but that he definitely needed them before the deposition.

Respondent did not reply to Attorney Loughry's January 30, 2007 letter; therefore, Attorney Loughry scheduled Goolsby's deposition for March 9, 2007. Attorney Loughry notified respondent of Goolsby's deposition by letter on February 14, 2007. In this same letter, Attorney Loughry also informed respondent that he had not received Goolsby's discovery responses yet and that if he did not receive them in the next 10 days, he would file a motion to compel discovery with the court.

On March 7, 2007, Attorney Loughry sent respondent an email stating that he was canceling Goolsby's deposition because he had not yet received her discovery responses and therefore, he could not properly prepare for the deposition. In the same email, Attorney Loughry informed respondent that he would be filing a motion to compel discovery with the court.

On March 9, 2007, Attorney Loughry filed a "Motion to Compel Plaintiff to Respond to Discovery." On March 30, 2007, the court granted Attorney Loughry's

Motion to Compel Discovery and ordered Goolsby to provide responses to the defendant's discovery requests on or before April 16, 2007. On April 3, 2007, Attorney Loughry sent respondent a copy of the court's entry. Respondent did not comply with the court's order and did not provide the requested discovery responses by April 16, 2007.

On April 19, 2007, Attorney Loughry filed a motion for sanctions. Attorney Loughry also filed a personal affidavit in support of this motion. On May 7, 2007, respondent hand delivered Goolsby's interrogatory responses to Attorney Loughry's office, but he did not produce any documents in response to the defendant's Request for Documents.

The final pre-trial hearing in Goolsby's case was scheduled for July 16, 2007. When respondent did not appear for this hearing, Attorney Loughry called respondent's office. Respondent answered the phone, apologized for his absence, and stated that the pre-trial was not on his calendar. Respondent appeared at the pre-trial hearing shortly thereafter.

When respondent arrived at the pre-trial hearing, he brought a stack of documents with him. Copies of these documents were hand-delivered to Attorney Loughry on July 19, 2007; however, they were only partially responsive to the defendant's document requests. On August 16, 2007, Attorney Loughry emailed respondent a list of ten documents/records that he still required.

On or about August 24, 2007, respondent signed an "Agreed Judgment Entry Granting Defendants' Motion for Sanctions filed April 19, 2007." As part of this agreement, Goolsby was ordered to produce the ten remaining documents. These documents were to be produced no later than November 30, 2007. On or about August

24, 2007, respondent sent the signed Agreed Judgment Entry to Attorney Loughry. In his cover letter, respondent stated that he would provide the requested documents as soon as possible, but no later than November 30, 2007. The Agreed Judgment Entry was filed with the court on September 13, 2007.

Respondent did not provide the requested documents by November 30, 2007; therefore, Attorney Loughry filed a Motion to Dismiss for Failure to Prosecute on December 6, 2007. He mailed a copy of his Motion to Dismiss to respondent on December 13, 2007. Respondent failed to respond to the Motion to Dismiss. On February 4, 2008, the court warned respondent that if a response to the Motion to Dismiss was not filed within the next 10 days, the case would be dismissed with prejudice. Respondent did not reply to the court's February 4, 2008 warning, nor did he file a response to the defendant's Motion to Dismiss. On February 26, 2008, the court dismissed Goolsby's case for failure to prosecute.

Respondent did not notify Goolsby of the court's dismissal until she called him on April 4, 2008. Even then, he failed to inform her that a dismissal with prejudice prohibited her from filing the case again. Instead, respondent told Goolsby that he did not believe she would find another attorney to take her case.

During the April 4, 2008, phone call, Goolsby arranged to pick up her file from respondent on April 11, 2008. On April 11, 2008, Goolsby called respondent's office to confirm her file pick-up, but the receptionist informed her that respondent was not at the office and that he had her file with him. According to respondent, the file was actually at the office, although it was not where it was usually located. After April 11, 2008, respondent did not make any efforts to return Goolsby's file to her.

In July 2008 Goolsby contacted Attorney Stanley Myers regarding a potential malpractice suit against respondent. Attorney Myers informed Goolsby that he would have to review her file before making a final decision on whether to accept her case. Attorney Myers sent respondent a letter on July 14, 2008, requesting a copy of Goolsby's file. Respondent did not reply to Attorney Myer's July 14, 2008 letter, and he did not provide Attorney Myer's with a copy of Goolsby's file. On August 6, 2008, Attorney Myers sent a second letter to respondent regarding Goolsby's file. Respondent did not reply to this letter either. On August 11, 2008, Goolsby wrote a letter to respondent requesting that he contact her and let her know when she could pick up her file or provide a copy of the file to Attorney Myers. Respondent did not contact or reply to Goolsby's August 11, 2008 letter, and he did not provide Goolsby or Attorney Myers with a copy of Goolsby's file. Attorney Myers eventually obtained documents pertaining to Goolsby's case from Attorney Loughry.

In mid-October 2008, Goolsby filed a grievance against respondent with the Columbus Bar Association. As detailed above, the Columbus Bar Association sent respondent two letters via certified mail concerning Goolsby's grievance. Respondent did not provide a response to the first letter, and did not even claim the second letter thus causing the Columbus Bar Association to subpoena respondent for a deposition on February 6, 2009.

During his deposition with the Columbus Bar Association, respondent admitted that he did not provide the defendants with Goolsby's discovery responses in a timely fashion, did not file a response to the defendants' motion to dismiss, did not notify Goolsby of the court's dismissal until April 4, 2008, and did not make any efforts to

return Goolsby's file to her.

For administrative reasons, the Columbus Bar Association transferred Ms. Goolsby's file and grievance to relator in February 2009. On March 19, 2009, relator sent an email to respondent requesting contact information for respondent's former secretary Amanda Rose. On or about March 20, 2009, relator left a message with respondent's receptionist requesting that respondent call relator. On March 23, 2009, respondent left the following voicemail message for relator:

Hi Karen, this is Atty. Gerald Noel returning your call, I got your call and your email and actually it's 4:45 on Monday. I've actually been in Court all day. Yeah, I can get you Amanda's contact information, actually I think she just moved, her dad evicted her or something, but I still have her mother's information, I'm going to contact them and have her contact you. Um, I actually will be out of town all this week, I'm here today but I'll be gone; I'm leaving tomorrow morning for Texas and won't be back till next week. Hopefully I'll be able to make this work from while I'm in Texas, so if not, I will actually drop by her house, where I believe I still know where she lives, and get ahold of her next week at the latest. You can give me a call back, since I will be out of town you can call me on my cell, 286-6999, or to leave me a msg. you can leave one on my office number 444-6635. I will be checking my office messages while I'm gone. Bye. (Ex. 19.)

On March 26, 2009, relator sent respondent a letter requesting additional information about his representation of Goolsby. Respondent did not respond to this letter by the requested date of April 10, 2009. On April 20, 2009, relator sent respondent a letter by certified mail reminding him to respond to the March 26, 2009 letter. Amanda Rose signed for this letter on April 23, 2009, even though respondent had told relator on February 5, 2009, that Amanda Rose no longer worked for him and had implied the same in his March 23, 2009 voicemail. Relator did not receive a response to its March

26, 2009 letter until May 4, 2009. In respondent's May 4, 2009 letter, he stated that he would supplement his response with all available documentation by May 8, 2009. To date, respondent has not provided any further information to relator.

On May 6, 2009, relator called respondent's office and Amanda Rose answered the phone. She explained that in early December 2008, she became ill and was only working for respondent one or two days a week; however, she stated that she never officially quit her job. She further stated that in late February 2009 or early March 2009, she began working for respondent on a regular basis again.

CONCLUSIONS OF LAW

COUNT TWO

Tanya Goolsby Matter

The respondent's conduct with regard to this matter, which occurred before February 1, 2007 violated the following provision of the Code of Professional Responsibility:

DR 6-101(A) (3) [Neglecting an entrusted legal matter];

Respondent's conduct, which occurred on and after February 1, 2007, has violated the following provisions of the Rules of Professional Conduct:

Prof. Cond. R. 1.3 [requiring a lawyer to act with reasonable diligence and promptness in representing a client];

Prof. Cond. R. 1.15(d) [requiring return of funds or other property that the client is entitled to receive];

Prof. Cond. R. 3.4 (c) [a lawyer shall not knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on a good faith basis that no valid

obligation exists];

Prof. Cond. R. 8.1(a) [In connection with a disciplinary matter, a lawyer shall not knowingly make a false statement of fact];

Prof. Cond. R. 8.1(b) [a lawyer shall not knowingly fail to respond to a demand for information from a disciplinary authority];

Prof. Cond. R. 8.4 (d) [a lawyer shall not engage in conduct that is prejudicial to the administration of justice];

Gov. Bar R. V(4)(G) [Duty to Cooperate]

MITIGATING FACTORS

Respondent has no prior disciplinary record.

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 on the disciplinary process;
- (h) Vulnerability of and resulting harm to victims of the misconduct; and
- (g) Refusal to acknowledge the wrongful nature of conduct.

RECOMMENDED SANCTION OF RELATOR

Relator recommends that respondent be suspended from the practice of law for two years, with six-months stayed, on condition that respondent engage in no further misconduct and that he complete at least six (6) hours of continuing legal education in law office management.

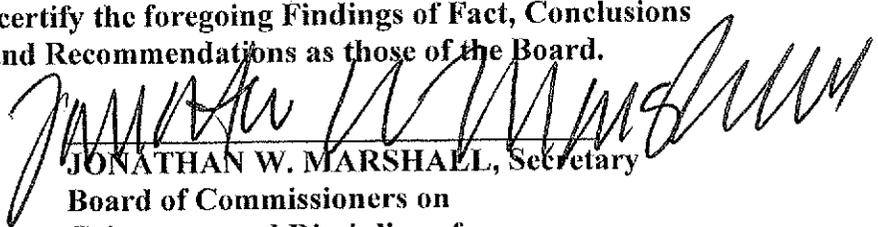
RECOMMENDATION OF MASTER COMMISSIONER

In light of the multiple offenses resulting in actual prejudice to the clients and to the administration of justice and Respondent's failure to cooperate with the disciplinary investigation, the Master Commissioner concurs in the recommendation of suspension from the practice of law for two years, with six (6) months stayed, on condition that respondent engage in no further misconduct and that he complete at least six (6) hours of continuing legal education in law office management.

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. However, after careful consideration of the actual misconduct in the record, the Board recommends that the Respondent, Gerald Thomas Noel, be suspended from the practice of law in the State of Ohio for a period of two years with eighteen months stayed upon the conditions contained in the 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**