DOCKET SHEET
DISCIPLINARY CASES

10-0693

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☐ Final Report [Rule V, Sec. 6(L)]

☐ Entry [Rule V, Sec. 5(A)(2)]*

☐ Final Report re: Reinstatement [Rule V, Sec. 10(G)(5) and (6)]

☐ Other

RESPONDENT

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(Indicate whether the Board was able to serve respondent at this address. If not, include any other address where respondent may be reached.)

Last Date of Service

Business Phone

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*If filing an Entry pursuant to Gov. Bar. R. V, Sec. 5(A)(2), please indicate whether the matter should be referred to ☐ the Office of Disciplinary Counsel or to a ☐ local certified grievance committee for further investigation. If the matter should be referred to a certified grievance committee, please include the committee's full name and address below.

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ORIGINAL

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

10-0693

In Re:	:	
Complaint against	:	**Case No. 09-039**
Rita Johnson **Attorney Reg. No. 0065959**	:	**Findings of Fact,** **Conclusions of Law and**
Respondent,	:	**Recommendation of the** **Board of Commissioners on**
Cleveland Metropolitan Bar Association	:	**Grievances and Discipline of** **the Supreme Court of Ohio**
Relator.	:	
	:	

This matter was heard on January 15, 2010 in Columbus, Ohio before a panel consisting of members Charles E. Coulson of Painsville, Martha L. Butler of Columbus, and Joseph L. Wittenberg of Toledo, chair of the panel. None of the panel members resides in the appellate district from which this matter arose or served on the probable cause panel in this case. Relator was represented by Timothy A. Marcovy and Thomas Marotta. Respondent was represented by Alvin E. Matthews, Jr. Respondent was present at the hearing.

FILED
APR 21 2010
CLERK OF COURT
SUPREME COURT OF OHIO

INTRODUCTION

Rita R. Johnson was admitted to the practice of law in Ohio on May 13, 1996, and is subject to the Supreme Court Rules for the Government of the Bar of Ohio, the Ohio Rules of Professional Conduct, and its predecessor, the Code of Professional Responsibility.

Respondent graduated from Cornell University with a Bachelor's degree and then from

the University of California Hastings of College of Law.

In 2007, Respondent was appointed the Clerk of Court/Court Administrator for Garfield Heights Municipal Court and has not practiced law since that time. She testified that she is not allowed to practice law while in that position with Garfield Heights Municipal Court. (Tr. 90)

Two of Respondent's clients filed grievances against her in 2008. Arthur Pullum filed a grievance against her on March 10, 2008 and Alida Walker filed a grievance against her on June 2, 2008.

On March 25, 2009, Relator, the Cleveland Metropolitan Bar Association, filed its complaint against Respondent alleging that Respondent committed professional misconduct, both before and after February 1, 2007.

The following rule violations were alleged in the Arthur Pullum matter:

1. DR 6-101(A)(3) [A lawyer shall not neglect a legal matter entrusted to him];

2. Prof. Cond. R. 1.1 [A lawyer shall provide competent representation to a client];

3. 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 assertion that no valid obligation exists];

4. Prof. Cond. R. 1.3 [A lawyer shall act with reasonable diligence and promptness in representing a client];

5. Prof. Cond. R. 1.16(c) [If permission for withdraw from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a proceeding before that tribunal without its permission].

In the Walker matter, the following rule violations were alleged:

1. Prof. Cond. R. 1.1 [A lawyer shall provide competent representation to a client];

2. Prof. Cond. R. 1.3 [A lawyer shall act with reasonable diligence and promptness in representing a client];

3. Prof. Cond. R. 1.16(d) [As part of a termination of representation, a lawyer shall take steps, to the extent reasonably practical, to protect a client's interest].

Relator dismissed the alleged violations of Prof. Cond. R. 1.1 in the Pullum and the Walker matters.

FINDINGS OF FACT

All material facts in this matter have been stipulated by the parties and are set forth in the stipulations attached to this report.

Respondent, Rita R. Johnson, at all relevant times, was in the private practice of law with the Cleveland firm of Saffold and Johnson. This matter arises from her representation in two unrelated attorney-client matters.

Arthur Pullum Matter

Respondent was hired by Arthur Pullum to defend him, his wife, and his company, AAP Staff Services ("AAP"), in a civil contract action filed in U.S. District Court, Northern District of Ohio. Respondent also filed a counterclaim in this action. As set forth in detail in the stipulations, during the course of this litigation, Respondent failed to appear at an initial case management conference, failed to serve timely initial disclosures, failed to serve discovery requests, and failed to provide discovery responses. (Stip. 4, 9) Further, Respondent failed to take any depositions, failed to arrange for her clients to be deposed, and failed to appear at the deposition of non-parties. (Stip. 9, 10)

Further, on January 9, 2007, Respondent filed a motion to withdraw as attorney which the court denied as untimely. Subsequently, on February 26, 2007, Plaintiff filed a motion to dismiss the counterclaim of Elizabeth Pullum and for default judgment on the complaint against

Mrs. Pullum and defendant AAP. Respondent failed to respond to either the motion to dismiss the counterclaim of Elizabeth Pullum or the motion to enter a default, and as a result, both motions were granted. (Stip. 14, 15)

Thereafter, the court entered an Order scheduling a status conference as to Arthur Pullum for May 1, 2007 stating that, "[i]f Defendant fails to appear, and a hearing will proceed on the issue of damages as to all three defendants." Despite receiving this Order, Respondent did not notify Mr. Pullum of the May 1, 2007 status conference, and Respondent herself did not appear at the status conference. (Stip. 18, 19) On May 3, 2007, the court entered a default judgment against Arthur Pullum and, after hearing, awarding judgment against all three defendants in the amount of $331,239.80. (Stip. 20)

Alida Walker Matter

As set forth in the stipulations, Respondent was hired by Alida Walker to represent her in an employment discrimination action against the city of Cleveland. Respondent filed a complaint on behalf of Ms. Walker in Cuyahoga County Court of Common Pleas. As in the Pullum case, Respondent failed to respond to discovery request in a timely manner, and as a result, the city filed a motion to dismiss which Respondent did not oppose. (Stip. 26) The motion was granted on July 3, 2007, and the case was dismissed without prejudice. (Stip. 30) In its Order, the court noted that, "Plaintiff has failed to prosecute this case in a timely manner." (Stip. 33)

Respondent re-filed Walker's case in the Cuyahoga County Common Pleas Court. (Stip. 34) The city of Cleveland thereafter removed this case to the Federal District Court for the Northern District of Ohio. On or about January 16, 2008, Respondent filed a motion to withdraw

as counsel. The District Court granted this motion and dismissed the case without prejudice, "with the proviso that Plaintiff may reinstate this action on or before March 21, 2008." (Stip. 36) Respondent did not inform her client of this deadline and the matter was never re-filed. (Stip. 37-38)

Respondent has admitted in the Pullum matter, by her stipulations and her testimony, that she violated the following Disciplinary Rules and Rules of Professional Conduct:

1. DR 6-101(A)(3).
2. Prof. Cond. R. 3.4(c).
3. Prof. Cond. R. 1.3.
4. Prof. Cond. R. 1.16(c).

(Stip. 39-42) and (Tr. 38-45)

Respondent has admitted in the Walker matter, by her stipulations and her testimony that she violated the following Rules of Professional Conduct:

1. Prof. Cond. R. 1.3.
2. Prof. Cond. R. 1.16(d).

(Stip. 41, 42) and (Tr. 57-60)

Conclusions of Law as to the Arthur Pullum Matter

Based on Respondent's testimony and her stipulations, the panel finds by clear and convincing evidence that Respondent violated the following:

1. DR 6-101(A)(3) [A lawyer shall not neglect the legal matter entrusted to him]. This violation is based upon Respondent's failure to appear at the initial case management conference and failure to serve initial disclosures by the court ordered deadline;

2. Prof. Cond. R. 3.4(c) [A lawyer shall not knowingly disobey an obligation

under the rules of tribunal, except for an open refusal based on a good faith assertion that no valid obligation exists]. This violation is based on Respondent's failure to comply with discovery requests of the plaintiff by the court ordered deadline.

3. Prof Cond. R. 1.3 [A lawyer shall act with reasonable diligence and promptness in representing a client]. Respondent's failure to respond to the motion to dismiss and the motion for default judgment violate this Rule.

4. Prof. Cond. R. 1.16(c) [If permission for withdraw from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a proceeding before that tribunal without its permission]. Respondent's failure to complete any work on behalf of Pullum, his wife or company after the judge had denied her motion to withdraw violated this rule, as she for all practical purposes withdrew from representation despite the court's ruling.

Conclusions of Law as to the Walker Matter

Based on Respondent's testimony and stipulations, the panel finds by clear and convincing evidence that Respondent violated the following:

1. Prof. Cond. R. 1.3 [A lawyer shall act with reasonable diligence and promptness in representing a client]. This violation is based upon Respondent's failure to seek extensions before deadlines and failure to conduct discovery;

2. Prof. Cond. R. 1.16(d) [As part of the termination of representation, a lawyer shall take steps, to the extent reasonably practical, to protect a client's interest]. This violation is based upon Respondent's failure to notify Walker of the March 21, 2008 deadline to reinstate her case.

Mitigation and Aggravation

Respondent was previously disciplined by the Supreme Court of Ohio on August 26, 2009. *Cuyahoga County Bar Assn. v. Johnson*, 123 Ohio St.3d 65, 2009-Ohio-4178. In the prior disciplinary case, Respondent was found to have violated several disciplinary rules including neglect of an entrusted legal matter, intentionally failing to carry out a contract of employment and intentionally failing to seek a client's lawful objectives. In addition, a violation

was found because Respondent did not carry malpractice insurance in the specified amount and did not obtain the client's written acknowledgement. In the prior disciplinary case, Respondent stipulated to the facts and violations. The Supreme Court publically reprimanded Respondent. Chief Justice Moyer and Justice O'Conner dissented and would have imposed a six month suspension, all stayed.

While the matters in this case were going on, the matters in Respondent's first disciplinary case were in the investigation stage. While it does appear to the panel that some overlap between the instant case and the prior case has occurred, nevertheless, Respondent knew or at least should have known that she was being investigated for conduct similar to that which she has stipulated in this case. Respondent argues that the prior disciplinary case should not be an aggravating factor, because in Respondent's opinion, that case could have been brought at the same time with the instant case. Respondent should have had a heightened knowledge or awareness that her conduct was falling below the standards set by the Code and the Rules of Professional Conduct and yet her conduct continued. Therefore, the panel finds the previous discipline an aggravating factor. BCGD Proc. Reg. 10(B)(1)(a).

Even though Respondent was not charged with notifying her clients that she did not have malpractice insurance, this can be taken into account as an aggravating factor. (Tr. 79)

With respect to damages to the clients of Respondent, it is impossible to determine if any client was damaged, as no evidence was offered by Relator to that effect.

Respondent testified that she was under a lot of stress, had family and personal matters and testified that she "got a therapist and got medication and so forth." (Tr. 46-48) However, there are no affidavits, reports from a psychologist, psychiatrist, therapist or counselor and no medical records that have been introduced to substantiate Respondent's testimony. Therefore,

the panel refuses to accept Respondent's testimony that she suffered from stress and personal matters as a mitigating factor.

The Respondent cooperated during the disciplinary proceedings, admitted and apologized for her ethical breaches, and expressed remorse for the consequences to her clients. The panel finds no evidence of a dishonest or selfish motive.

Sanction

In determining the appropriate sanction, this panel gave consideration to the guidelines for mitigation and aggravation.

Relator and Respondent both stipulated and agreed that an appropriate sanction would be a one year suspension with the entire period stayed, subject to any conditions deemed appropriate by the Board and the Supreme Court. The panel does not accept the stipulated sanction.

As stated in the introduction of this report, in 2007 Respondent was appointed the Clerk of Court/Court Administrator for Garfield Heights Municipal Court and has not practiced law since then. She testified that she is not allowed to practice law while in that position with Garfield Heights Municipal Court. (Tr. 90) She testified that if she practiced law again, it would not be as a sole practitioner or in a small firm. It would be in a setting where she would have a complete support staff. (Tr. 93)

Respondent testified that she currently sees a therapist about twice a month and is on medication to help manage the stress in her life. (Tr. 90, 91) While no actual evidence, other than Respondent's testimony, was presented that she is suffering from stress and has personal problems, the panel will take this into account in determining the appropriate sanction.

Recent cases decided by the Supreme Court of Ohio with conduct similar to that of Respondent have resulted in actual suspensions. *Columbus Bar Assn. v. Dice*, 120 Ohio St.3d 455, 2008-Ohio-6787 and *Columbus Bar Assn. v. DiAlbert*, 120 Ohio St.3d 37, 2008-Ohio-5218.

In *Dice*, the respondent delayed filing an appellate brief and failed to appear for an oral argument on behalf of another client. Also, the respondent did not cooperate in the investigation which is not the case in our matter. Dice did not have any prior disciplinary record. The Court ordered a one-year suspension with six months stayed.

In *DiAlbert*, the respondent failed to file a client's personal injury lawsuit and then lost the client's case to the statute of limitations. The respondent also had a prior disciplinary matter for which he had been given a six month suspension with all the suspension stayed. The Court ordered a two year suspension with 18 months stayed on the conditions that he comply with a three year OLAP contract, make restitution, and upon reinstatement serve a two year monitored probation.

Respondent's conduct in this matter of neglecting legal matters entrusted to her, failure to comply with discovery requests of the plaintiff by the court ordered deadline, failure to respond to the motion to dismiss and the motion for default judgment in the Pullum case, her failure to complete any work on behalf of Pullum, his wife or company after the judge had denied her motion to withdraw, is troubling. In addition, Respondent's failure to seek extensions before deadlines, failure to conduct discovery and to notify her client of the March 21, 2008 deadline to reinstate her case in the Walker matter along with Respondent's prior disciplinary record warrant an actual suspension.

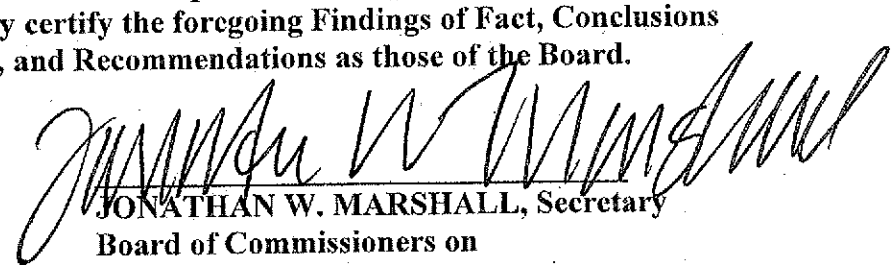
Therefore, the panel recommends that Respondent be suspended for one year with six months stayed upon the following conditions: (1) Respondent enter into an OLAP contract to

manage her stress and personal problems prior to the termination of the six month suspension; (2) Respondent be in compliance with her OLAP contract prior to her reinstatement and (3) upon reinstatement to practice law, serve a two year monitored probation in accordance with Gov. Bar R. V(9).

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 April 9, 2010. The Board adopted the Findings of Fact and Conclusions of Law of the Panel. However, based on the record in this matter, it recommends that Respondent, Rita Johnson, be suspended from the practice of law for one year with six months stayed and that she enter into an OLAP contract of three years to learn to monitor her stress and personal problems and that she be in compliance with her OLAP contract prior to her reinstatement in the State of Ohio. 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

BEFORE THE BOARD OF COMMISSIONERS

ON GRIEVANCES AND DISCIPLINE

OF

THE SUPREME COURT OF OHIO

FILED
JAN 15 2010
BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

In re: *Complaint against:* Rita Johnson, Esq. (0065959) ***RESPONDENT*** Cleveland Metropolitan Bar Association ***RELATOR***	)	No.09-039 STIPULATIONS AND PROPOSED SANCTION

Now come the Relator and Respondent, by and through counsel and stipulate as follows:

1. Rita R. Johnson, was admitted to the practice of law in Ohio on May 13, 1996, and as such is subject to the Supreme Court Rules for the Government of the Bar of Ohio, the Ohio Rules of Professional Conduct, and its predecessor, the Code of Professional Responsibility.

2. Two of Respondent's clients filed grievances against her in 2008; The Cleveland Bar Association received Arthur Pullum's grievance on March 10, 2008, and The Cleveland Metropolitan Bar Association received Alida Walker's grievance on June 2, 2008.

3. In or around June 2006, Arthur Pullum hired Respondent to defend himself, his wife, Elizabeth Pullum, and his company, AAP Staff Services ("AAP"), in a civil contract action filed in U.S. District Court, Northern District of Ohio. This case is captioned *Advance Payroll Funding v. AAP Staff Services, Inc.*, Case Number 1:06-cv-01313-PAG. ("the federal litigation"). Respondent also filed a counterclaim in this action.

4. On or about September 8, 2006, Respondent failed to appear, via telephone, in the initial case management conference.

5. On or about September 12, 2006, the Court issued a Case Management Order setting the following deadlines: January 8, 2007 for discovery; April 8, 2007 for expert discovery; and May 8, 2007 for dispositive motions.

6. In October of 2006, Arthur Pullum filed bankruptcy in the U.S. Bankruptcy Court for the Southern District of Mississippi.

7. Subsequently, the federal litigation was stayed as to Arthur Pullum only.

8. Respondent failed to serve initial disclosures by the Court-ordered deadline of January 8, 2007.

9. Respondent failed to serve discovery requests, or provide discovery responses by the given deadline of January 8, 2007.

10. Respondent failed to take any depositions, failed to arrange for her clients to be deposed, and failed to appear at the depositions of non-parties.

11. On or about January 9, 2007, after Arthur Pullum filed for Chapter 13 bankruptcy in Mississippi, Respondent filed a Motion to Withdraw as Attorney. The Court denied this motion as untimely.

12. On or about February 26, 2007, Plaintiff in the federal litigation filed a Motion to Dismiss the Counterclaim of Elizabeth Pullum and Enter Default on the Complaint against Mrs. Pullum and defendant AAP.

13. The Motion to Dismiss the Counterclaim of Elizabeth Pullum and Enter Default on the Complaint of February 16, 2007 was served upon and received by Respondent.

14. Respondent failed to respond to the Motion to Dismiss the Counterclaim of Elizabeth Pullum or the Motion to Enter Default.

15. The Court granted both of the above motions on April 20, 2007.

16. On or about March 26, 2007, the Plaintiff filed a Motion to lift the automatic stay as to Mr. Pullum on the grounds that the bankruptcy case had been dismissed. The Court granted this Motion on March 27, 2007.

17. The Court entered an Order scheduling a status conference as to Arthur Pullum for May 1, 2007, stating that, "[i]f defendant fails to appear, and a hearing will proceed on the issue of damages as to all three defendants."

18. Respondent received the above-referenced Order.

19. Respondent did not notify Mr. Pullum of the May 1, 2007 Status Conference, and Respondent herself did not appear at the Status Conference.

20. On May 3, 2007, the Court entered default judgment against Arthur Pullum and, after hearing, awarded judgment against all three defendants in the amount of $331,279.80.

21. On or about April 29, 2005, Alida Walker hired Respondent on a contingency basis to represent her in an action against the City of Cleveland.

22. On or about October 14, 2005, Respondent filed a complaint on behalf of Ms. Walker in Cuyahoga County Court of Common Pleas. This case was captioned *Alida Walker v. City of Cleveland,* Case Number CV-05-575004.

23. The Court in Case No. CV-05-575004 set a discovery deadline of November 30, 2006.

24. Respondent filed two Motions to Extend Discovery, which were granted.

25. Defendant City of Cleveland filed two Motions to Compel Discovery which were served upon and received by respondent.

26. These Motions were unopposed by respondent and granted.

27. On or about February 21, 2007, Judge Corrigan ordered that no further extensions be granted.

28. On May 2, 2007, Respondent filed a third Motion to Extend Discovery. On July 3, 2007, this motion was denied as moot.

29. Respondent filed another Motion to Extend Discovery on May 17, 2007. On July 3, 2007, this Motion was likewise denied as moot.

30. On May 31, 2007, Defendant filed a Motion to Dismiss Ms. Walker's Complaint.

31. This Motion was served upon and received by respondent.

32. On July 3, 2007, respondent filed a Motion for leave to file a Response to the Motion to Dismiss, *instanter*. On the same day, the court denied this motion.

33. Also on July 3, 2007, the Court granted the Defendant's unopposed Motion to Dismiss, stating that, "Plaintiff has failed to prosecute this case in a timely manner." The dismissal was without prejudice.

34. Subsequently, on September 5, 2007, Respondent re-filed Ms. Walker's case as *Alida Walker v. City of Cleveland*, Cuyahoga Common Pleas Case No. CV-07-634833. The

City of Cleveland thereafter removed this case to the Federal District Court for the Northern District of Ohio.

35. On or about January 16, 2008, Respondent filed a Motion to Withdraw as Counsel in the federal case.

36. The District Court granted this motion and dismissed the case, without prejudice, "with the proviso that Plaintiff may re-instate this action on or before March 21, 2008."

37. Respondent did not inform Ms. Walker of the March 21, 2008 deadline for re-filing.

38. The case was not re-filed prior to the expiration of the District Court's deadline.

39. As to Count 1 of the Complaint, Respondent admits her conduct violated Disciplinary Rule 6-101(A)(3) of the Code of Professional Responsibility [neglect of a legal matter].

40. As to Count 3 of the Complaint, Respondent admits her conduct violated Rule 3.4(c) of the Ohio Rules of Professional Conduct [knowingly disobeying an obligation under the rules of a tribunal].

41. As to Counts 4 and 7 of the Complaint, Respondent admits her conduct violated Rule 1.3 of the Ohio Rules of Professional Conduct [failure to act with reasonable diligence and promptness in representing a client].

42. As to Counts 5 and 8 of the Complaint, Respondent admits her conduct violated Rule 1.16(c) of the Ohio Rules of Professional Conduct [withdrawing from representation without permission of a tribunal] and Rule 1.16(d) of the Rules of Professional Conduct [failure to protect s client's interest].

43. The parties stipulate as to the admissibility of all documents contained in Respondent's client files in the Pullum and Walker matters produced in response to Relator's Request for Production of Documents.

44. The parties stipulate as the admissibility of the records of the respective courts in the Pullum and Walker matters, including dockets, orders and journal entries, as well as to the admissibility of any pleadings or documents filed with said courts.

45. The Relator agrees to dismiss Counts 2 and 6 of the Complaint.

46. Respondent cooperated throughout Relator's investigation.

47. The parties stipulate that Respondent was the subject of a prior disciplinary action, *Cuyahoga County Bar Association v. Johnson*, 123 Ohio St. 3d 65, 2009-Ohio-4178, and received a public reprimand therein.

48. Based upon the above stipulations, and subject to Respondent's testimony and the evidence presented at trial, the parties agree that an appropriate sanction would be a 1 one year suspension with the entire period stayed, subject to any conditions deemed appropriate by the Board and the Court.

RELATOR:

Cleveland Metropolitan Bar Association:

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RESPONDENT:

Rita R. Johnson

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