

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

JUL 07 2010

**BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE**

In re: :
Petition for Revocation of : **SCO Case No 08-762**
Probation against: :
: **BOC Case No. 06-042**
Marcus L. Poole, :
Attorney Reg. No. 0040030 :
Respondent, : **PANEL REPORT**
Cleveland Metropolitan Bar Association, :
Relator :
:

This probation revocation matter was heard on June 15, 2010, at the Ohio Judicial Center, 65 South Front Street, Room 106, Columbus, Ohio, before a hearing panel consisting of John H. Siegenthaler, Bernard K. Bauer, and John B. Street, Chair. Monica A. Sansalone represented the Cleveland Metropolitan Bar Association. The respondent Marcus Poole was present. He was represented by E. Yvonne Harris.

None of the panel members served on the probable cause panel in the original case or resides in the appellate district from which this matter arose. This petition for revocation of probation is governed by Gov. Bar R.V(9)(E)-(H).

Prior to the hearing, the parties presented the panel with agreed stipulations and exhibits. The relator offered the stipulations and exhibits, which were accepted by the panel, and then rested its case. Respondent testified on his own behalf and offered additional exhibits that were

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admitted into evidence by the panel.

BACKGROUND

On December 4, 2008, respondent was suspended from the practice of law for a period of one year, stayed on the conditions that respondent (1) consult the Ohio Lawyers Assistance Program (OLAP) and comply with any recommendations for treatment, (2) complete a one-year probation, in which an attorney appointed by relator shall oversee his law practice, (3) comply with all other requirements of Gov. Bar R.V(9), and (4) commit no further misconduct.

Cuyahoga Cty. Bar Assn. v. Poole, 120 Ohio St.3d 361, 365, 2008-Ohio-6203.

The suspension was imposed based on a three count complaint. In count one, respondent was found to have violated DR 6-101(A)(3), (prohibiting a lawyer from neglecting an entrusted legal matter), DR 7-101(A)(1) (prohibiting a lawyer from intentionally failing to seek the lawful objectives of a client), DR 7-101(A)(2) (prohibiting a lawyer from intentionally failing to carry out a contract of professional employment), and DR 9-102(B)(4) (requiring a lawyer to promptly return property to which a client was entitled). In count two, respondent was found to have violated DR 1-102(A)(6) (prohibiting a lawyer from engaging in conduct that adversely reflects on fitness to practice law), DR 6-101(A)(3), and DR 9-102(B)(4). In count three, respondent was found to have failed to respond to letters of inquiry and other notices sent out during the investigation of the grievance in violation of Gov. Bar R.V(4)(G).

Relator now charges that respondent has violated the conditions of his probation by

- 1) failing to consult OLAP and comply with treatment recommendations;
- 2) failing to comply with monitoring requirements; and
- 3) engaging in new misconduct .

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondent has not consulted OLAP nor complied with any recommendations for treatment. Respondent did attend several meetings, but he has not entered into a contract with OLAP. Respondent stopped attending OLAP meetings when he was unable to pay the requested fees. Although required to do so by Gov. Bar R. V(9)(C)(2), he did not sign a waiver or a written release so his monitoring attorney and relator have not been able to obtain any information directly from OLAP regarding respondent's activity. Respondent admitted that he did not comply with the OLAP requirement of his probation.

Edward J. Mamone, an attorney licensed to practice law in the State of Ohio, was appointed to monitor respondent's practice during probation. Respondent had periodic telephone contact with Mamone between December, 2008, and April, 2009, but he has had no personal meetings with Mamone and has failed to provide him with the information necessary for Mamone to serve as the monitor. His failure to cooperate constitutes a violation of Gov. Bar R. V(9)(C)(1), (2), and (3).

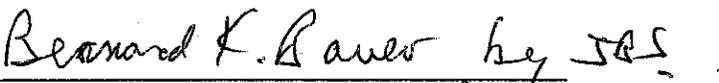
Respondent has committed new misconduct in that he was suspended from the practice of law for failing to register for the 2009-2011 biennium by an order dated November 3, 2009. He did not file a Certificate of Registration prior to the deadline of September 1, 2009, but he did attempt to file for inactive status by mailing a certificate (and \$50.00 late fee) to the Supreme Court on October 29, 2009. It was not received, however, until November 3, 2009, which was beyond the deadline of November 1. He therefore now owes a \$300.00 reinstatement fee that he has been unable to afford.

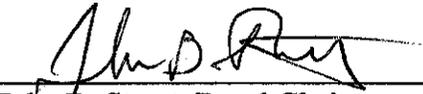
Respondent was again suspended from the practice of law for failing to comply with

continuing legal education requirements in an order dated December 23, 2009. He is not currently practicing law due to these suspensions. Respondent has had severe financial difficulties and is unable to pay the fees to reinstate his license to practice law.

Based on the stipulations, the exhibits, and the testimony of respondent, the panel finds by clear and convincing evidence pursuant to Gov. Bar R. V(9)(H) that respondent has committed a significant and a continuing violation of the conditions of his probation. The parties have agreed that the respondent violated the terms of his probation and should serve the actual suspension. They differ only as to when the suspension should start. The panel recommends that the stay of respondent's suspension be lifted and that respondent serve the entire one year suspension imposed by the Supreme Court in its order of December 4, 2008, beginning when the Supreme Court decides this matter.


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Bernard K. Bauer *by JBS*
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John B. Street, Panel Chairman