

ORIGINAL

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

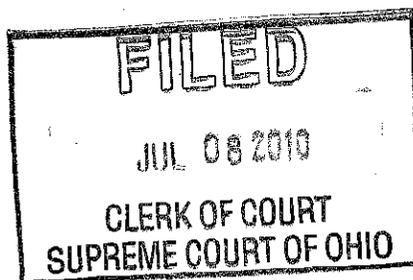
10-1199

In Re: :
Complaint against : **Case No. 09-071**
John P. Hildebrand : **Findings of Fact,**
Attorney Reg. No. 0068874 : **Conclusions of Law and**
: **Recommendation of the**
Respondent : **Board of Commissioners on**
: **Grievances and Discipline of**
Cleveland Metropolitan Bar Association : **the Supreme Court of Ohio**
Relator :

On March 2, 2010, this matter was referred to Jeffrey T. Heintz, a Master Commissioner of the Board of Commissioners on Grievances and Discipline (Board) by the Board Secretary, for disposition of the default judgment motion pursuant to Gov. Bar R.V(6)(F)(2). Master Commissioner Heintz then proceeded to prepare this report pursuant to Gov. Bar R.V(6)(J).

Procedural Background

Respondent holds Registration No. 0068874, and was admitted to practice on November 14, 1997. He is currently under suspension for failure to register as required by Gov. Bar.R.VI. Relator's complaint was filed on August 17, 2009, after having been



certified by a Board probable cause panel on August 14, 2009. Service of the complaint upon Respondent was 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 August 21, 2009, by "M.A. Szoradi." On October 9, 2009, Relator sent by certified mail a notice to Respondent of its intention to file a motion for default judgment on the complaint. The receipt for this letter was signed by "R. Williams." On February 24, 2010, Relator filed its motion for default and the matter was referred to the Master Commissioner.

Findings of Fact

Relator alleges sixteen counts of misconduct arising out of Respondent's representation of three individuals: (i) Jeanette Riffle; (ii) Arthur Gardner; and (iii) Jeffery Chapman. In each instance, Relator alleges that Respondent accepted a retainer fee, failed to provide any meaningful professional services, failed to advise his clients with respect to the progress of his work, failed to timely deliver files to his clients upon request and failed to cooperate with the subsequent investigation by Relator into his conduct. Specifically, Relator charges that Respondent violated:

1. Prof. Cond. R.1.3 in that he failed to act with reasonable diligence in connection with his services for Riffle, Gardner and Chapman (Counts One, Seven and Twelve of the Complaint);
2. Prof. Cond. R.1.4(a)(3) and (4) in that he failed to failed to consult with his clients and keep them reasonably informed about the status of their matters (Counts Two, Eight and Thirteen of the Complaint);

3. Prof. Cond. R.1.5(a) in that he charged an excessive fee in connection with his representation of Riffle, Gardner and Chapman (Counts Three, Nine and Fourteen of the Complaint);

4. Prof. Cond. R.1.15 in that he failed to keep Riffle's funds safe and return Riffle's property to her (Count Four of the Complaint);

5. Gov. Bar R.V(4)(G) in that he failed to cooperate with Relator's investigation with respect to the Riffle, Gardner and Chapman matters (Counts Five, Ten and Fifteen of the Complaint);

6. Prof. Cond. R.8.1(b) in that he failed to respond in a disciplinary investigation (Counts Six, Eleven and Sixteen of the Complaint);

Relator's investigation into Respondent's alleged misconduct began in 2008, and until the fall of 2009 Respondent corresponded with Relator, its investigators, and bar counsel. He offered various excuses for the complaints filed by the grievants. Respondent did not, however, respond to subpoenas and other efforts that Relator undertook to obtain copies of Respondent's files, or other documents which might verify any of the rationalizations he advanced to excuse his behavior. The evidence reveals that Respondent charged Riffle \$5900 in attorney fees (Rel. Ex.C), Gardner \$625 in attorney fees (Rel. Ex.B), and Chapman \$200 in attorney fees (Rel. Ex. F). Since the filing and service of the complaint, Respondent has not been heard from.

Attached to Relator's motion are affidavits from Riffle, Gardner, Chapman, Jeanette Hummel (a witness in the Riffle matter), Ronald Chapman (a witness in the Chapman

matter) and Heather Zirke, Relator's Assistant Counsel, which support the allegations of misconduct and the motion. In all three of these cases, Respondent charged a legal fee and never performed any of the legal work he promised. 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 Assn. v. Sebree*, 104 Ohio St. 3d 448, 2004-Ohio-6560 and *Cincinnati Bar Assn. v. Newman*, 124 Ohio St.3d 505, 2010-Ohio-928.

Conclusions of Law

Based on the information submitted in support of the motion, Relator has proven all of the allegations of Counts One through Sixteen by clear and convincing evidence and the Master Commissioner recommends that the Board so find.

Mitigation, Aggravation and Sanction

Section 10 of the Board of Commissioners on Grievances and Discipline Regulations ("BCGD Proc. Reg.") sets forth guidelines for imposing lawyer sanctions, and provides factors to be considered in aggravation and in mitigation of punishment. The aggravating factors under BCGD Proc.Reg.10(B)(1) in the record are as follows. Respondent committed multiple violations of the rules. His misconduct caused harm, economic and otherwise, to his clients, particularly to Riffles, whose appeal rights were jeopardized. His failure to forthrightly deal with the consequences of his misconduct was deceitful. Since his most recent registration suspension, he has accepted three criminal appointments in Cuyahoga County (see Motion, Exhibit I, correspondence from Cuyahoga County Prosecutor's office

dated January 8, 2010). Respondent has failed to cooperate in these proceedings as required by Gov. Bar R. V(4)(G) and he has knowingly failed to respond to these proceedings in violation of Prof. Cond. R. 8.1. Prior to his current suspension for failure to register as required by Gov. Bar R. VI, Respondent was suspended twice before, both times in 2005, for failure to register and for failure to meet the requirements regarding continuing legal education. There are no discernible mitigating factors in the record.

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. There, 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. After the filing of the complaint, Respondent 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, 2006-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 it might otherwise impose. See e.g., *Akron Bar Assn. v. Wittbrod*, 2009 Ohio St.3d 394, 2009-Ohio-3549.

Relator recommends that Respondent be disbarred, citing *Cleveland Bar Assn. v. Helfgott*, 109 Ohio St.3d 360, 2006-Ohio-2579. This is the most severe sanction possible, and in some default cases, the Supreme Court has refused to impose it, electing instead an

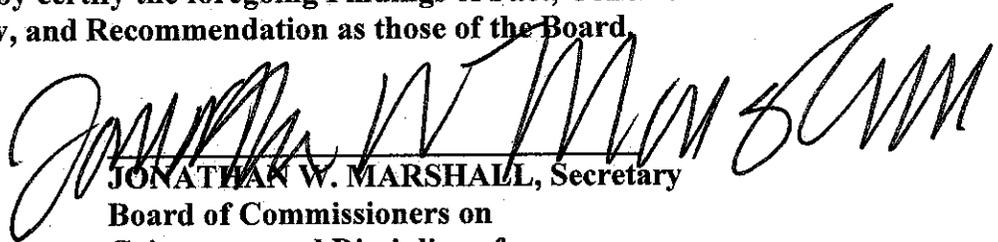
indefinite suspension, for example, due to “scant evidence of harm to his [Respondent’s] clients and Respondent’s destitute circumstances.” *Cleveland Bar Assn. v. Douglas*, 113 Ohio St. 3d 221, 2007-Ohio-1536. Here, however, there are troubling unanswered questions with respect to Respondent’s fitness to practice law. They might have been resolved had he chosen to participate in these proceedings, but he did not. These concerns are exacerbated by the fact that Respondent has apparently continued to practice law notwithstanding his registration suspension. Beyond a failure to cooperate, such behavior evidences disdain for the grievance process and establishes a selfish or dishonest motive. Under the circumstances, this case is similar to *Helfgott*, where the Court found: “We agree that respondent violated all of the Disciplinary Rules cited in the board’s report, and we agree with relator’s recommended sanction of disbarment. Respondent’s neglect of his client’s interests and his inattentiveness to their inquiries, his dishonest assurances to his clients about his efforts on their behalf, his failure to return his clients’ fees after neglecting their cases, and his repeated failure to provide any information to relator during the investigation of his misconduct warrant the most severe sanction that we can impose.” 109 Ohio St.3d at 362.

Given the harm Respondent inflicted on his clients and his evident persistence in practicing law while under a suspension, disbarment is warranted. Accordingly, the Master Commissioner concurs with Relator and recommends that Respondent be permanently disbarred from the practice of law and that he pay the costs of these proceedings.

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 June 11, 2010. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Master Commissioner and recommends that Respondent, John Patrick Hildebrand, be permanently disbarred 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 Recommendation as those of the Board.


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