

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

**10-1460**

<b>In Re</b>	:	
<b>Complaint against</b>	:	<b>Case No. 10-017</b>
<b>Frank X. Gresley</b>	:	<b>Findings of Fact,</b>
<b>Attorney Reg. No. 0079530</b>	:	<b>Conclusions of Law and</b>
	:	<b>Recommendation of the</b>
<b>Respondent</b>	:	<b>Board of Commissioners on</b>
	:	<b>Grievances and Discipline of</b>
<b>Cleveland Metropolitan Bar Association</b>	:	<b>the Supreme Court of Ohio</b>
	:	
<b>Relator</b>	:	

The relator Cleveland Metropolitan Bar Association and the respondent Frank X. Gresley have filed with the Board Secretary their written stipulations of all the facts and violations of the Prof. Cond. Rules and of Gov. Bar R. V(4)(C) alleged in relator's complaint together with their recommendation for sanction.

The hearing panel consisted of Judge Otho Eyster, John Siegenthaler and retired Judge Thomas Bryant, Chair. None of the panel members resides in the appellate from which this matter arose or served as the probable cause panel in this case.

By order of the panel chair, the oral hearing of this cause previously scheduled for September 21, 2010 has been cancelled and the matter deemed submitted in writing pursuant to BCGD Proc. Reg. 3(C).

<b>FILED</b>
AUG 18 2010
CLERK OF COURT SUPREME COURT OF OHIO

### **Findings of Fact and Conclusions of Law**

Upon review of the pleadings and the written stipulations of the parties, the panel adopts the written stipulations of facts, mitigating circumstances, and admitted violations of the Prof. Cond. Rules and of Gov. Bar R. V(4)(C) alleged in relator's complaint, finds them to be clear and convincing evidence of the facts and rule violations alleged and therefore includes them in this report by attachment and reference as if rewritten in this report. Respondent in this case accepted fees and then did not complete the legal work undertaken in seven separate counts and also failed to cooperate in relator's investigation.

### **Matters in Mitigation and Recommended Sanction**

The panel considered the provisions of BCGD Proc. Reg. 10(A), (B)(1) and (2), and adopted paragraphs numbered 20(a) through (g) of the parties' written stipulations as applicable aggravating and mitigating circumstances.

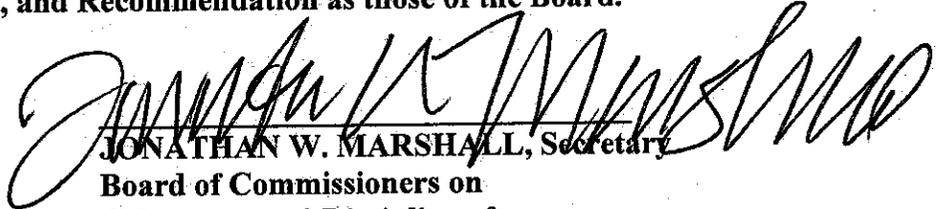
### **Recommended Sanction**

The panel has considered the sanction recommended by the party's stipulation, and considering the violations of the Prof. Cond. Rules found and in view of the aggravating and mitigating circumstances found, the panel recommends that respondent be suspended from the practice of law for a period of twenty-four months with the final six months stayed on condition that respondent make a full accounting to each of his clients named in the complaint for the fees they paid to him, make full restitution to his clients for unearned fees, that respondent return to the clients the files and materials to which they are entitled, and that he engage in no other professional misconduct.

**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 August 13, 2010. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Panel and recommends that Respondent, Frank X. Gresley, be suspended for a period of two years with six months stayed upon conditions contained in the panel report including the appointment of a monitor by Relator to ensure that Respondent makes restitution. 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**



3. Invoices arrived from Respondent for January and February showing that Respondent had charged \$300 for the initial meeting and 3/4/hr. for drafting an answer to the divorce complaint. The February invoice reflected a balance of \$1,026.25 remaining on the retainer, but it was sent with a letter dated April 10, 2009 which carried a "Re Debt Collection" caption and demanded a check even though it reflected a substantial credit balance on the retainer.

4. Over the next several weeks, Respondent failed to appear at a spousal support hearing at which Mr. Brilla was present. When Brilla complained, Respondent scheduled an appointment, but again Respondent did not attend. Since that time, Mr. Brilla has demanded the return of his file and an accounting for the time expended and the balance on his retainer, together with payment of that balance. He has placed innumerable telephone calls to Respondent's office and cell phone, none of which have been returned. Brilla has not had funds sufficient to retain another attorney.

(Applicable to Count Two of Complaint)

5. On April 10, 2009, Timothy and Gail Wunderle, husband and wife, of Parma, Ohio, retained Respondent to file a Chapter 13 bankruptcy on their behalf. On April 22, 2009, they met Respondent in his office and signed various papers which he promised to file the next day. Two weeks later, they realized they were still being inundated by dunning letters and calls from a number of creditors, many of whom asserted late charges and penalties on their accounts. Mr. and Mrs. Wunderle left a number of messages for Respondent at his office which he never returned. Thereafter, Mr. and Mrs. Wunderle continued to call Respondent's office as many as 20 times with no response from Respondent. Shortly after that, Timothy Wunderle went to the

Respondent's office address where he was told by a receptionist that she had herself been unable to contact Respondent. Mr. Wunderle demanded the money he had paid Respondent for fees and expenses, at which point the receptionist responded that she was unable to help them and that Respondent "worked independently."

6. The file of the U. S. Bankruptcy Court for the Northern District of Ohio reflects that a Chapter 13 petition was filed on behalf of Mr. and Mrs. Wunderle on May 26, 2009, but that nothing had been filed subsequent to that. During that timeframe, Respondent failed to attend two hearings scheduled by the Bankruptcy Court.

~~7. The Wunderles retained other counsel in August 2009. Subsequently, the Bankruptcy Court ordered the Respondent to refund the Wunderles' fee, and Respondent complied through the Bankruptcy Court.~~

(Applicable to Count Three of Complaint)

8. In September 2007, Respondent was engaged by Jennifer and Paul DelGiudice to file a Chapter 13 bankruptcy petition for them which was actually filed in January 2008. A plan was confirmed and the DelGiudices complied with it without interruption through June 2009. At that point, however, Paul DelGiudice had his hours of employment drastically reduced and Mr. and Mrs. DelGiudice wanted to seek a modification of their repayment plan under Chapter 13. In June 2009, they began to call Respondent at his office and on his cell phone without ever having a call returned. In early June, Paul DelGiudice went to Respondent's office, but Respondent was not there. They asked the receptionist to take an urgent message to have Respondent contact them, but he never did so. Jennifer DelGiudice went to the office thereafter and was informed that no one had seen or heard from Respondent for several weeks. Mrs. DelGiudice

requested the receptionist to return her file but was told that the receptionist had no authority to deal with Respondent's filing cabinets.

9. Thereafter, Mr. and Mrs. DelGiudice had persisted in trying to contact Respondent. In mid-July, they were informed that his office telephone had been disconnected and his cell phone was answered with a message that the mailbox was full. A few days later, Respondent contacted them and told them that their only recourse was to convert their existing Chapter 13 case into a Chapter 7 and that Respondent would file the necessary paperwork the next day. He has never done so, and they have not heard from him since mid-July. These clients do not have funds to hire another attorney and start over.

(Applicable to Count Four of Complaint)

10. Andrew and Michele Shepard of Lakewood, Ohio contacted Respondent and retained him in December 2008, to represent them in proceedings to obtain permanent custody of two children of Andrew Shepard through a first marriage for whom they then had temporary custody. Respondent sent Mr. and Mrs. Shepard copies of several pleadings he had filed, but when Mr. and Mrs. Shepard attempted to contact Respondent toward the end of March 2009, Respondent no longer returned telephone messages left on his voicemail at the office.

11. In July 2009, a hearing had been scheduled on the Shepards' Motion for Change of Custody and although Mr. and Mrs. Shepard attended, Respondent was not present, forcing the Court to reschedule the evidentiary hearing for more than 60 days later.

12. Despite frequent calls to Respondent's office and cell phone, they have never heard from Respondent since the failed hearing in June 2009. In writing, they have demanded the return of their file which includes photographs of the children intended for introduction in evidence.

13. Andrew and Michele Shepard paid Respondent \$1,500 at the outset of the engagement and he promised a monthly accounting of his time. They have never received one and they have no idea what portion of the fee they are entitled to as a refund, although they have demanded it.

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(Applicable to Count Five of Complaint)

14. Ana Lucia Gabriel of North Olmsted, Ohio retained Respondent in the Spring of 2007. At that time, she had been making payments under a Chapter 13 plan approved by the U. S. Bankruptcy Court in 2002, but had encountered various discrepancies in accounting for payments and creditor claims under the plan. Additionally, she was in a dispute with the holder of her home mortgage who was seeking an order of relief from the automatic bankruptcy stay in order to pursue a foreclosure case. Respondent agreed to counsel Mrs. Gabriel and take necessary action to resolve these issues.

15. It is unclear how much in fees Ms. Gabriel paid Respondent. Respondent advised her that she needed to file a new Chapter 13 petition rather than correct the existing 2002 case and he did file a new petition in 2008, but Ms. Gabriel complained of several inaccuracies in the refiled petition. She attempted to contact Respondent by letter and by telephone at his office concerning the discrepancies, but never received any response. After complaining to Relator, on July 30, 2009, she sent written notice to

Respondent terminating his engagement and requesting return of her file. She has learned nothing in response to this letter and has not heard from Respondent.

(Applicable to Count Six of Complaint)

16. In 2008, Russell Seegert engaged Respondent to defend him in a divorce case in Portage County. In 2009, however, Mr. Seegert was laid off and fell behind in payments to creditors who began to harass him for payment. In March 2009, Mr. Seegert again retained Respondent this time to file a bankruptcy action on his behalf. He paid Respondent \$900 as a fee, but did not realize until August that Respondent had taken no action on his behalf. When Mr. Seegert attempted to contact Respondent, he learned that the cell phone had been shut off and after going to Respondent's office, he learned that Respondent had not appeared at his office in months. Respondent has never refunded any portion of the \$900 fee paid by Mr. Seegert for which no work was ever performed.

(Applicable to Count Seven of Complaint)

17. On July 29, 2008, Geraldine Buescher, an older woman residing in Parma, Ohio, retained Respondent to file a Chapter 7 bankruptcy case on her behalf. Respondent sought and was paid \$935 which included a credit counseling fee and certain court costs. After the initial meeting with Respondent, Ms. Buescher never met or heard from him again despite frequent telephone calls and visits to his office, none of which led to any contact with Respondent. Ms. Buescher lives with her adult son, Terry, and on two occasions, Terry Buescher visited the office on a Saturday morning and waited in the parking lot hoping to encounter Respondent, but that never occurred. Respondent has done no work on Ms. Buescher's behalf and has not refunded any portion of the fees paid to him.

(Applicable to Count Eight of Complaint)

18. In each of the instances detailed above, Relator, by certified mail and telephone messages, requested Respondent to respond in writing to grievances submitted by those clients. Except for one occasion when Relator requested Respondent's explanation of the grievances in a telephone conversation, Respondent has failed and continues to fail to provide any response in writing or otherwise. On the one occasion in which Respondent did answer a telephone inquiry from Relator's counsel, Respondent advised that he was preparing a response and planned to mail it in promptly. No such response was ever provided.

19. Relator obtained and served a subpoena duces tecum issued by the Board of Commissioners, requiring Respondent to appear for a deposition on October 1, 2009, and to produce on that date all of his files relating to his representation of David Brilla, Timothy and Gale Wunderle, Jennifer and Paul DelGiudice, Andrew and Michele Shepard, Ana Lucia Gabriel, Russell Seegert and Geraldine Buescher, together with documents relating to his lawyer trust account and professional liability insurance. At Respondent's request, the deposition was continued for two weeks to October 15, 2009, but on that date, Respondent failed to appear without any notice or excuse by virtue of which he was in contempt of the Board of Commissioners on Grievances and Discipline.

**MITIGATING AND AGGRAVATING CIRCUMSTANCES**

20. Pursuant to BCGD Proc. Reg. 10, the parties hereby stipulate to the following aggravating and mitigating circumstances:

- a. Respondent's failure to communicate with multiple clients constitutes a pattern of misconduct;

- b. Respondent's conduct resulted in harm to vulnerable clients.
- c. Respondent's failure to return and/or account for retainers paid by his clients evidences a selfish motive;
- d. Respondent initially failed to cooperate in the disciplinary process and failed to honor a Board subpoena for a deposition scheduled for October 15, 2009;
- e. Respondent has no prior disciplinary record;
- f. Respondent has relinquished his bankruptcy court electronic case filing privileges for one year effective in March 2010, and has complied with other ~~sanction orders of the bankruptcy court, including to disgorge his fees to one grievant;~~  
and
- g. Following an initial failure to cooperate in the disciplinary process, Respondent has cooperated with Relator's counsel, after the Complaint was certified.

### VIOLATIONS

21. The parties stipulate that Respondent's acts or omissions recited in Paragraphs 2 through 19 of this Stipulation of Facts and Recommendation as to Sanction constitute violations of the following provisions of the Ohio Rules of Professional Conduct and Rules for the Government of the Bar of Ohio:

- a. Rule 1.3 by failing to represent Respondent's clients with diligence and effectiveness and/or by abandoning their cases as alleged in Counts 1 through 7 of the Certified Complaint and admitted in Paragraphs 2 through 19 of this Stipulation;
- b. Rule 1.4 by failing to communicate with clients on a regular and timely basis and by failing to respond to reasonable inquiries from clients as alleged in

Counts 1 through 7 of the Certified Complaint and admitted in Paragraphs 2 through 19 of this Stipulation;

c. Rule 1.15 by failing to deliver to his clients their files, personal records or other materials as they requested following the terminations of their representation, all as alleged in Counts 1, 3, 4 and 5 of the Certified Complaint and admitted in Paragraphs 2, 8, 12 and 15 of this Stipulation;

d. Rule 1.16(d) by failing, upon termination of the representation, to take reasonable steps to protect the clients' interests as alleged in Count 5 of the Certified Complaint and admitted in Paragraphs 10 through 13 of this Stipulation;

e. Rule 1.16(c) by failure to refund to his clients the portion of fees paid in advance but not earned, or to account to the clients for such fees as alleged in Counts 1, 4, 5, 6, and 7 of the Certified Complaint and admitted in Paragraphs 4, 13, 16 and 17 of this Stipulation;

f. Rule 8.4(c) by engaging in conduct involving dishonesty or fraud as alleged in Count 7 of the Certified Complaint as admitted in Paragraph 17 of this Stipulation;

g. Rule 8.4(d) by engaging in conduct prejudicial to the administration of justice by failing to appear at hearings and conferences scheduled by the courts in which he represented clients as alleged in Counts 1, 2, 3 and 5 of the Certified Complaint as admitted in Paragraphs 4, 6 and 11 of this Stipulation;

h. Rule 8.4(h) by engaging in conduct reflecting adversely on Respondent's fitness to practice law as alleged in all Counts of the Certified Complaint and admitted in Paragraphs 1 through 17 of this Stipulation; and

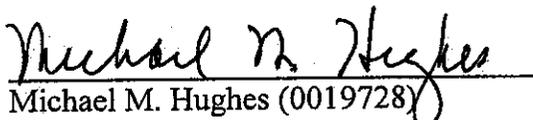
i. O.R.C.P. Rule 8.1(b) and Gov. Bar Rule V(4)(G) by failing to cooperate in the investigation by Relator of the disciplinary violations as alleged in Count 8 of the Certified Complaint and admitted in Paragraph 18 and 19 of this Stipulation.

**SANCTION RECOMMENDATION**

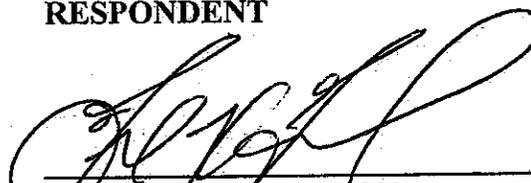
22. Relator Cleveland Metropolitan Bar Association and Respondent Frank X. Gresley jointly recommend that the following sanction be imposed in this case:

That Respondent be suspended from the practice of law for two years with the final six months of such suspension to be stayed on condition that Respondent make a full accounting to his clients for the fees paid by them which were not earned; that Respondent make full restitution to his clients for unearned fees, and that Respondent return to the clients the files and materials to which they are entitled.

**FOR RELATOR**

  
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