

ORIGINAL

No. 2010-1479

In the Supreme Court of Ohio

ORIGINAL ACTION ON THE DISCIPLINE OF PERSONS ADMITTED TO THE PRACTICE OF LAW
FROM THE BOARD OF COMMISSIONERS
ON GRIEVANCES AND DISCIPLINE
CASE No. 09-070

CLEVELAND METROPOLITAN BAR ASSOCIATION,

Relator,

v.

BRYAN S. FREEMAN,

Respondent.

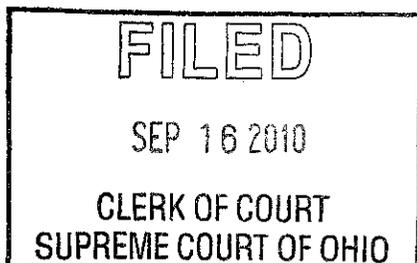
**RELATOR CLEVELAND METROPOLITAN BAR ASSOCIATION'S OBJECTION TO
FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION OF THE
BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE AND BRIEF IN
SUPPORT THEREOF**

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OBJECTION

Relator Cleveland Metropolitan Bar Association objects to the Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio that Respondent Bryan S. Freeman be indefinitely suspended from the practice of law, as Respondent's misconduct warrants that he be disbarred.

BRIEF IN SUPPORT OF OBJECTION

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I. INTRODUCTION

The Findings of Fact, Conclusions of Law and Recommendation (the “Findings”) issued by the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio (the “Board”) in this matter found that Respondent Bryan S. Freeman committed multiple violations of the Ohio Code of Professional Responsibility and the Ohio Rules of Professional Conduct. (Findings, at 20, attached hereto as Exhibit “A.”) Relator Cleveland Metropolitan Bar Association does not object to the Findings of Fact or Conclusions of Law issued by the Board, Relator objects to the Recommendation. The Recommendation adopted by the Board—an indefinite suspension—does not go far enough in protecting the public. As explained more fully below, based on the Findings of Fact and Conclusions of Law issued by the Board, Relator respectfully suggests that Respondent Bryan S. Freeman be disbarred.

II. STATEMENT OF FACTS

A. **The Board Found that Respondent Violated Numerous Disciplinary Rules by Neglecting His Duties in Representing Grievant Michael G. Sawyer.**

Grievant Michael G. Sawyer (“Sawyer”) agreed that Respondent could represent him in recovering damages he sustained in a motor vehicle accident (Findings at 5.) During his representation of Sawyer, Respondent filed a complaint in the Court of Common Pleas for Hamilton County, Ohio, which was designated Case No. A0702082081 and styled *Michael G. Sawyer v. Kenneth R. Brown, et al.* (Id.)

Sawyer did not hear back from Respondent for more than a year. (Id.) In early-September 2007, Sawyer made several attempts to contact Respondent, but Sawyer was unable to reach Respondent, and Respondent failed to return Sawyer’s phone calls. (Id.) On September 14, 2007, Sawyer sent Respondent a letter, in which Sawyer requested information

about his matter and for Respondent to return his phone calls. (Id.) The letter was not returned to Sawyer. (Id.)

On June 17, 2008, Sawyer and Respondent participated in a mediation, at which Sawyer settled his case for \$7,170.55. (Id. at 6.) Sawyer told Respondent that he would like to have his portion of the settlement proceeds within thirty days. (Id.) On July 21, 2008, Respondent informed Sawyer that he would receive a check and settlement documents in the mail shortly. (Id.) Sawyer received the check and the settlement documents on August 9, 2008, but they were dated July 21, 2008. (Id.) On the same day, August 9, 2008, Sawyer endorsed the check, signed the accompanying release and returned them to Respondent. (Id.)

During the remainder of August and through October 2008, Sawyer attempted to contact Respondent by telephone, mail and E-mail, but was unable to reach him. (Id.) Except for an E-mail that Sawyer sent Respondent in October, Respondent failed to return Sawyer's phone calls, letters and E-mails. (Id.)

On October 25, 2008, Respondent sent Sawyer a check for the settlement funds that were due him. (Id.) However, Sawyer alleged that he was harmed financially by Respondent's delay in pursuing his matter and that Respondent's conduct was emotionally difficult for him. (Id.)

Based on these facts, the Board found by clear and convincing evidence that Respondent violated: DR 6-101(A)(3), Prof. Cond. R. 1.3 and 1.4(a)(3) and (4). (Id. at 6-7.)

B. The Board Found that Respondent Violated Numerous Disciplinary Rules by Neglecting His Duties in Representing Grievant Deborah Marshall.

Grievant Deborah Marshall retained the law firm of Friedman, Domiano & Smith to recover damages for injuries she sustained in a fall on May 24, 2005. (Id. at 7.) On or about November 30, 2005, Respondent sent a letter to Marshall, in which Respondent advised that Respondent would be involved in her case. (Id.)

In June 2007,¹ Respondent filed a complaint in the Court of Common Pleas for Cuyahoga County, Ohio, which was designated Case No. CV-07-627694 and styled *Deborah Marshall v. Goldberg Cos., Inc., et al.* (Id.)¹

On or about June 6, 2008, Marshall and Respondent participated in a mediation, at which Marshall settled her case for \$10,000 plus up to \$5,000 for reimbursement of her medical bills. (Id.) Respondent submitted \$2,961 of qualifying medical bills for reimbursement, but he failed to submit an additional \$1,736.15 of qualifying medical bills for reimbursement. (Id.)

After she settled her case, Marshall alleged that she made at least six attempts to contact Respondent by telephone, but was unable to reach him, and Respondent failed to return Marshall's phone calls. (Id.) On September 22, 2008, Marshall complained to the law firm of Friedman, Domiano & Smith, that Respondent had not returned her calls for two months. (Id.) On October 7, 2008, Marshall again complained to Friedman, Domiano & Smith. (Id.)

On October 14, 2008, Respondent finally returned Marshall's phone calls and informed Marshall that he was waiting for some medical bills. Marshall asked Respondent for her settlement funds, but Respondent explained that he did not have the settlement funds. (Id.)

After Marshall made further complaints to it, Friedman, Domiano & Smith sent Marshall the funds that she was seeking from Respondent. (Id. at 8.) Nevertheless, Marshall alleged that she was financially harmed by Respondent's delay in pursuing her matter and by his failure to submit the additional \$1,736.15 of qualifying medical bills for reimbursement. Marshall also alleged that Respondent's conduct was emotionally difficult for her. (Id.)

Based on these facts, the Board found by clear and convincing evidence that Respondent violated: Prof. Cond. R. 1.3 and 1.4(a)(3) and (4). (Id.)

¹ In the Findings, the Board found that Respondent filed the complaint on July 20, 2007, but Respondent filed the complaint on June 20, 2007. (Motion for Entry of Default, Exhibit "B," Affidavit of Deborah Marshall, ¶ 5.)

C. The Board Found that Respondent Violated Numerous Disciplinary Rules by Neglecting His Duties in Representing Grievant Valeasia Harris.

In or about February 2006, Grievant Valeasia Harris retained Respondent to recover damages resulting from injuries she sustained from a motor vehicle accident in December 2005. (Id. at 9.) In December 2007, Respondent filed a complaint in the Court of Common Pleas for Cuyahoga County, Ohio, which was designated Case No. CV-07-644311 and styled *Valeasia Harris v. Carla R. Kochalko, et al.* (Id.)

Respondent did not advise Harris that he had failed to obtain good service of the complaint on some of the defendants in the case. (Id.) Respondent also did not inform Harris that Respondent intended to dismiss the case before he did so. (Id.)

Harris alleged that both before and after Respondent dismissed her case (without telling her that he was going to do so), she attempted to contact Respondent by telephone, but was unable to reach him, and Respondent failed to return Harris's phone calls. (Id.)

After Respondent dismissed Harris's case, Harris requested that Respondent deliver her file. Respondent failed to respond to Harris or promptly deliver her file. (Id.) Harris also sent certified letters to Respondent to return her calls or release her file. Respondent failed to respond to Harris's letters or promptly deliver her file. (Id.) Harris alleged that she was harmed financially by Respondent's delay in pursuing her matter and that Respondent's conduct was emotionally difficult for her. (Id.)

Based on these facts, the Board found by clear and convincing evidence that Respondent violated: Prof. Cond. R. 1.3 and 1.4(a)(1), (2), (3) and (4). (Id. at 9-10.)

D. The Board Found that Respondent Violated Numerous Disciplinary Rules by Neglecting His Duties in Representing Grievant Timothy M. Bruce.

On October 17, 2005, Grievant Timothy M. Bruce retained the Schiff Law Offices to recover damages for injuries that he sustained in a motor vehicle accident. (Id. at 10.)

Respondent was assigned to represent Bruce in the case. (Id.) On October 15, 2007, Respondent filed a complaint in the Court of Common Pleas for Cuyahoga County, Ohio, which was designated Case No. CV-07-638765 and styled *Timothy Bruce v. Lois Schmidt, et al.* (Id.) On August 27, 2008, Bruce settled his case for \$27,500. (Id.)

On or about September 1, 2008, Bruce signed an initial closing statement, which was also signed by Respondent and Attorney Schiff. (Id.) The closing statement listed eight health-care providers whom Respondent would pay from the settlement proceeds. (Id.) Shortly after the settlement, several of those health care providers advised Bruce that Respondent had not paid them. (Id.) On September 16, 2008, Bruce requested Respondent to pay the health-care providers and not to haggle about the bills so that Bruce could get his creditors “off of his back.” (Id. at 10-11.)

As of November 24, 2009, Respondent had not paid any of the health-care providers listed on the closing statement. (Id. at 11.) In addition, two medical bills, which should have been on the closing statement were not included, and those two providers are seeking reimbursement directly from Bruce. (Id.) Bruce alleged that he was harmed financially by Respondent’s delay in pursuing his matter and by not following his instructions. Bruce also alleged that Respondent’s conduct was emotionally difficult for him. (Id.)

Based on these facts, the Board found by clear and convincing evidence that Respondent violated: Prof. Cond. R. 1.3, 1.4(a)(2), (3) and (4), and 1.15(d). (Id.)

E. The Board Found that Respondent Violated Numerous Disciplinary Rules by Neglecting His Duties in Representing Grievant Harold S. Resnick.

In June 2008, Grievant Harold S. Resnick retained Respondent to recover damages resulting from injuries he sustained in a motor vehicle accident. (Id. at 12.) In early-2009, after Respondent failed to return Resnick’s phone calls, Resnick retained another attorney. (Id.)

Resnick made several attempts for Respondent to deliver his file; however, Respondent failed to comply with Resnick's requests. (Id.) Eventually, on or about March 16, 2009, Respondent delivered Resnick's file to Resnick. (Id.) Resnick alleged that he was harmed by Respondent's delay in pursuing his matter, failure to communicate with him and to promptly deliver his file. Resnick also alleged that Respondent's conduct was emotionally difficult for him. (Id.)

Based on these facts, the Board found by clear and convincing evidence that Respondent violated: Prof. Cond. R. 1.3, 1.4(a)(2), (3) and (4), and 1.15(d). (Id. at 12-13.)

F. The Board Found that Respondent Violated Numerous Disciplinary Rules by Neglecting His Duties in Representing Grievant Allison Mayle and Being Dishonest with Relator's Investigator.

Grievant Allison Mayle contacted the law firm of Friedman, Domiano & Smith to recover damages for injuries she sustained in a fall on July 1, 2005. (Id. at 13.) Friedman, Domiano & Smith referred Mayle to Attorney Schiff of the Schiff Law Offices. On January 23, 2006, Mayle retained the Schiff Law Offices. (Id.)

On June 1, 2007, Respondent filed a complaint in the Court of Common Pleas for Stark County, Ohio, which was designated Case No. 2007CV02300 and styled *Allison M. Mayle v. DOTS, LLC, et al.* (Id.) On or about February 25, 2008, Respondent settled Mayle's case for \$15,000. (Id.) On or about February 29, 2008, Respondent notified Mayle of the settlement. (Id.)

Mayle asserts that Respondent was obligated to pay the Ohio Department of Jobs and Family Services ("ODJFS") \$4,775.47 of the settlement amount for reimbursement of Medicaid payments that ODJFS had made on Mayle's behalf. (Id.) In addition, Mayle was informed that Respondent was obligated to pay Medicare an unknown portion of the settlement amount. (Id.)

After she settled her case, Mayle made several attempts to contact Respondent by telephone, but Respondent failed to return any of Mayle's phone calls. (Id. at 13-14.)

Frustrated with not being able to contact Respondent, Mayle complained to Friedman, Domiano & Smith that Respondent had not returned her calls for more than three months and that she could not understand why she had not received the proceeds from her settlement. (Id. at 14.) Mayle alleged that she was harmed by Respondent's delay in pursuing her matter, failure to communicate with her and to promptly deliver her settlement funds. Mayle also alleged that Respondent's conduct was emotionally difficult for her. (Id.)

During Relator's investigation of Mayle's grievance, Respondent misrepresented to Relator's investigator that Respondent was working with Attorney Steven Paffilas at the U.S. Department of Justice regarding the Medicare lien. (Id.) Paffilas advised Relator's investigator that he had not been working with Respondent and that there was nothing in Mayle's file to indicate that Respondent had ever contacted the Department of Justice regarding Mayle. (Id.)

Based on these facts, the Board found by clear and convincing evidence that Respondent violated: Prof. Cond. R. 1.3, 1.4(a)(2), (3) and (4), 1.15(d), and 8.4(c). (Id. at 14-15.)

G. The Board Found that Respondent Violated Numerous Disciplinary Rules by Neglecting His Duties and Being Dishonest in Representing Laura L. Markey and Engaging in Conduct Prejudicial to the Administration of Justice.

Laura L. Markey contacted the firm of Elk & Elk to represent her in an action against Belmont Properties, Inc. and others for injuries that she received. (Id. at 15.) Elk & Elk referred Ms. Markey to Attorney Schiff of the Schiff Law Offices, who then referred her to Respondent. (Id.) On December 24, 2007, Respondent filed a complaint in the Court of Common Pleas for Cuyahoga County, Ohio, which was designated Case No. CV07-645372 and styled *Laura L. Markey v. Belmont Properties, Inc., et al.* (Id.)

On July 29, 2008, the case was transferred to the Court of Common Pleas for Carroll County, Ohio. (Id. at 15-16.)

In October 2008,² the court conducted a duly-noticed pre-trial. (Id. at 15.) Respondent failed to appear for the pre-trial conference and did not seek or obtain a continuance. (Id. at 16.) Respondent also did not offer the court an excuse for its failure to appear. (Id.)

On October 15, 2008, Respondent's assistant, Lucy Higgins, sent Ms. Markey a letter on the letterhead of "The Freeman Law Office, LLC," in which Ms. Higgins wrote that Respondent "recently" participated in a pre-trial relative to her case. (Id. at 15.)

Respondent did not respond to the interrogatories and requests for production of documents of Belmont Properties, Inc. (Id. at 16.) In December 2008, the court conducted a second duly-noticed pretrial conference and a hearing on the motion to dismiss filed by Belmont Properties, Inc.³ (Id.) Respondent failed to appear, and the court unsuccessfully tried to contact him. (Id.) At the hearing, the court granted the motion to dismiss of Belmont Properties, Inc. and dismissed the case without prejudice. (Id.) Markey alleged that she was harmed by Respondent's delay in pursuing her matter. (Id.)

² The Board found that the pre-trial occurred on October 15, 2008 (Findings, at 15), but according to the Grievant, the Honorable Dominick E. Olivito, Jr., the judge assigned to case in the Court of Common Pleas for Carroll County, the pre-trial occurred on October 8, 2008. (Motion for Entry of Default, Exhibit "P," Affidavit of Dominick E. Olivito, Jr., ¶ 6.) In addition, an Order from Judge Olivito, filed October 15, 2008, explains the exact course of events:

"On October 8, 2008, the Court held an initial pretrial in this case. ***. Counsel for Plaintiff failed to appear. The Court attempted to reach Plaintiff's counsel by telephone, but was directed to his voice mail."

(Motion for Entry of Default, Exhibit "Q," Certified copy of Order, filed October 15, 2008.)

³ The Board found that the pre-trial occurred on December 22, 2008 (Findings, at 16), but according to Judge Olivito, the pre-trial occurred on December 15, 2008. (Motion for Entry of Default, Exhibit "P," Affidavit of Dominick E. Olivito, Jr., ¶ 9.) This is confirmed by a certified copy of the Transcript of Proceedings (Motion for Entry of Default, Exhibit "S") and Order from Judge Olivito, filed December 22, 2008, explaining the exact course of events: "On December 15, 2008, the Court held a hearing on Defendant's Motion to Dismiss." (Motion for Entry of Default, Exhibit "Q.")

Based on these facts, the Board found by clear and convincing evidence that Respondent violated: Prof. Cond. R. 1.3, 1.4(a)(2), (3) and (4), and 8.4(c) and (d). (Id. at 16-17.)

H. The Board Found that Respondent Violated Numerous Disciplinary Rules by Neglecting His Duties and Being Dishonest in Representing Sara N. Timoch and Engaging in Conduct Prejudicial to the Administration of Justice.

On November 19, 2008, Sara N. Timoch was charged with operating a vehicle while under the influence, driving under suspension and failure to control. (Id. at 17.) The Honorable Lisa L. Coates of the Stow Municipal Court was assigned the case, which was designated Case No. 2008TRC15267. (Id.) On December 1, 2008, at a pre-trial, Respondent, representing Timoch, told the prosecutor that Respondent would be filing a motion to suppress before the scheduled trial date of January 7, 2009. (Id.) On January 7, 2009, the court granted Respondent's request for a two-week continuance and set the trial date for January 26, 2009. (Id.) On January 26, 2009, at the time scheduled for Timoch's trial, Respondent called the court representing that he had been in a car accident and requested another continuance of the trial date. (Id.) The court granted Respondent's request and set the trial date for February 9, 2009. (Id.)

On February 9, 2009, neither Respondent nor Timoch appeared for trial. (Id.) As a result, the court issued a bench warrant for Timoch's arrest. (Id.) On February 25, 2009, Timoch turned herself into the court, informing the court that Respondent never apprised her of the trial date. (Id. at 17-18.) The court recalled Timoch's bench warrant and set a new trial date for March 9, 2009. (Id. at 18.)

On March 9, 2009, Timoch appeared for trial, but Respondent failed to appear. (Id.) Given that Timoch was facing mandatory jail time, the court granted Timoch's personal request for a continuance to retain new counsel. (Id.) The court issued an order for Respondent to appear on March 17, 2009, to show cause for his failing to appear for trial. (Id.) On March 17,

2009, Respondent appeared late for his show cause hearing and agreed to pay within two weeks the Village of Boston Heights restitution for the cost of the prosecutor's time in appearing for several missed court dates, and overtime for the police officers who appeared in court to be witnesses for the prosecution. (Id.) However, Respondent failed to pay the sanction within two weeks. (Id.)

The court set a hearing date of June 1, 2009 to hear the prosecutor's motion to compel respondent to pay the court-ordered sanction. (Id.) On June 1, 2009, Respondent failed to appear for the hearing. (Id.)

Judge Coates alleged that Respondent's failure to appear for trial or to comply with the court's orders was prejudicial to the administration of justice. (Id.)

Based on these facts, the Board found by clear and convincing evidence that Respondent violated: Prof. Cond. R. 1.3, 1.4(a)(2), (3) and (4), and 8.4(c) and (d). (Id. at 18-19.)

I. The Board Found that Respondent Failed to Cooperate in the Investigation of the Grievances Filed Against Him.

Respondent failed to cooperate with Relator in the investigation in all of the grievances filed against Respondent. (Id. at 19.) Respondent also failed to do anything substantive in the case before the Board, except delay the Board's decision on Relator's Motion for Entry of Default by moving the Board for leave to file an answer to the complaint, which he did not do. (Id. at 4-5.)

Based on these facts, the Board found by clear and convincing evidence that Respondent violated: Prof. Cond. R. 8.1 and Gov.Bar R. V(4)(G). (Id. at 19.)

J. The Board Found that One Mitigating Factor and at Least Seven Aggravating Factors are Present.

Respondent has no prior disciplinary record, but the Board found that following aggravating factors set forth in BGCD Proc.Reg. 10(B)(1) are present:

- (b) dishonest or selfish motive;
- (c) a pattern of misconduct;
- (d) multiple offenses;
- (e) lack of cooperation in the disciplinary process;
- (g) refusal to acknowledge wrongful nature of conduct;
- (h) vulnerability of and resulting harm to victims of the misconduct; and
- (i) failure to make restitution.

(Id. at 19-20.) In addition, Relator submits that sufficient evidence was presented to the Board for the Board to have found that BGCD Proc.Reg. 10(B)(1)(f) (“submission of false evidence, false statements, or other deceptive practices during the disciplinary process”) is also present. To support this finding, Relator submits that Respondent told Relator’s investigator that he was working with the Department of Justice on Mayle’s Medicare lien, which he was not.

K. The Board Recommends an Indefinite Suspension.

Despite Respondent’s pattern of misconduct, resulting harm to the many victims of his misconduct and failure to cooperate in any of the investigations Relator conducted against him, the Board recommends an indefinite suspension. (Id. at 20.) Relator objects to the Board’s recommendation in that respect only and submits that the appropriate discipline should be disbarment.

III. LAW AND ARGUMENT

A. Standard of Review

This Court, “not the board, ‘makes the ultimate conclusion, both as to the facts and as to the action, if any, that should be taken.’” *In re Complaint Against Judge Harper* (1996), 77 Ohio St.3d 211, 215, 673 N.E.2d 1253, quoting *Cincinnati Bar Assn. v. Heitzler* (1972), 32 Ohio St.2d 214, 220, 61 Ohio Op.2d 451, 291 N.E.2d 477. Indeed, this Court has repeatedly recognized that

it “is not bound by the conclusion of either the panel or the board regarding the facts or law when determining the propriety of an attorney’s conduct and the appropriate sanction,” *Disciplinary Counsel v. Furth*, 93 Ohio St.3d 173, 181, 2001-Ohio-1308, 754 N.E.2d 219, citing *Ohio State Bar Assn. v. Reid*, 85 Ohio St.3d 327, 330, 1999-Ohio-374, 708 N.E.2d 193.

B. Respondent’s Numerous Disciplinary Violations Warrants a Disbarment.

The attorney disciplinary process in Ohio is designed to “protect clients and the public, to ensure the administration of justice, and to maintain the integrity of the legal profession.” *Cleveland Bar Assn. v. Dadisman*, 109 Ohio St.3d 82, 2006-Ohio-1929, 846 N.E.2d 26, ¶ 39, quoting *Disciplinary Counsel v. Hunter*, 106 Ohio St.3d 418, 2005-Ohio-5411, 835 N.E.2d 707, ¶ 32. Accordingly, in determining the appropriate sanction for attorney misconduct, this Court considers “the duties violated, the actual or potential injury caused, the attorney’s mental state, the existence of aggravating or mitigating circumstances, and sanctions imposed in similar cases.” *Cuyahoga Cty. Bar Assn. v. Maybaum*, 112 Ohio St.3d 93, 2006-Ohio-6507, 858 N.E.2d 359, ¶ 21. As explained more fully below, this Court should increase the Board’s recommendation of an indefinite suspension to a disbarment.

1. Respondent’s misappropriation of client funds, standing alone, carries a presumptive sanction of disbarment.

Standing alone, Respondent’s misappropriation of client funds would warrant a presumptive sanction of disbarment. Misappropriation of a client’s funds “violates basic notions of honesty and integrity, and it endangers public confidence in the legal profession.” *Cleveland Bar Assn. v. Dadisman*, 109 Ohio St.3d 82, 2006-Ohio-1929, 846 N.E.2d 26, ¶ 41. As a result, misappropriation of a client’s funds carries the presumptive sanction of disbarment. E.g., *Cleveland Bar Assn. v. Dixon*, 95 Ohio St.3d 490, 2002-Ohio-2490, 769 N.E.2d 816, ¶ 15 (“Because misappropriation of client funds is among Dixon’s acts of admitted misconduct, we

must begin our consideration with the presumptive sanction of disbarment.”). The fact that Respondent combined his misappropriation of Marshall’s and Mayle’s settlement funds with other misconduct concerning the eight Grievants, including conduct involving fraud and deceit, certainly does not serve to lessen the presumptive sanction. An analysis of the appropriate sanction for Respondent’s misconduct, therefore, must begin with the presumptive sanction of disbarment.

2. Respondent’s serial neglect, numerous misrepresentations and failure to cooperate in his many investigations, also carries a presumptive sanction of disbarment.

Respondent’s serial neglect of legal matters, his numerous misrepresentations to his clients, at least one judge and Relator’s investigator, his failure to handle his clients’ funds appropriately, and his repeated failure to provide information to Relator during the investigation of his misconduct deserves the most severe sanction of disbarment. *Cleveland Bar Assn. v. Helfgott*, 109 Ohio St.3d 360, 362, 2006-Ohio-2579, 847 N.E.2d 1212, 1214, ¶ 16. In *Helfgott*, the respondent had neglected two matters and failed to return two retainers. He had also failed to cooperate with the investigation of the grievances filed against him. *Helfgott* explained:

“We have imposed a sanction of disbarment in similar cases. See, e.g., *Columbus Bar Assn. v. Moushey*, 104 Ohio St.3d 427, 2004-Ohio-6897, 819 N.E.2d 1112, ¶ 16 (explaining that the presumptive sanction is disbarment for those attorneys who accept retainers and then fail to carry out contracts of employment); *Cincinnati Bar Assn. v. Weaver*, 102 Ohio St.3d 264, 2004-Ohio-2683, 809 N.E.2d 1113, ¶ 15 (an attorney’s ‘persistent neglect of his clients’ interests, failure to perform as promised, failures to account for his clients’ money and lack of any participation in the disciplinary proceedings’ compelled his disbarment); *Green Cty. Bar Assn. v. Fodal*, 100 Ohio St.3d 310, 2003-Ohio-5852, 798 N.E.2d 1082, ¶ 32 (ordering the disbarment of an attorney who ‘routinely took his clients’ money and provided nothing in return’).”

Helfgott, at ¶ 17. Respondent's misconduct here is much worse than the misconduct shown in *Helfgott*. The Board correctly found that Respondent neglected the matters of Sawyer, Marshall, Harris, Bruce, Resnick, Mayle, Markey and Timoch. Although the respondent in *Helfgott* failed to return two retainers, Respondent's misconduct here was even more harmful. Respondent failed to pay Marshall, although Marshall eventually was paid by the law firm of Friedman, Domiano & Smith. Respondent still has not paid Bruce's healthcare providers or Mayle. Respondent failed to promptly pay Sawyer the settlement funds that were due him. Respondent's misconduct also affected the administration of justice. Moreover, to protect himself from criticism, liability or sanctions, Respondent lied to, at a minimum, Marshall, Bruce, Mayle, Relator's investigator, Markey and Judge Coates.

Respondent has engaged in the very type of serial neglect, misrepresentation, inappropriate use of client funds and conduct that is prejudicial to the administration of justice that the Ohio Supreme Court has determined merits disbarment. Moreover, Respondent has been wholly uncooperative in the disciplinary process, including filing a motion for leave to answer Relator's complaint against him for the sole apparent purpose of delay.

This Court has held that the appropriate range of discipline in these types of cases to be from indefinite suspension to disbarment. Compare *Disciplinary Counsel v. Ohlin*, 2010-Ohio-3826, ¶ 17 (indefinite suspension) and *Helfgott*, at ¶ 18 (disbarment). The misconduct that the respondent in *Ohlin* committed was far less than the misconduct that the Board found that Respondent committed here. The respondent in *Ohlin* failed to respond to a motion to dismiss and a motion for summary judgment for one of his clients, failed to inform that client of the lapse in his malpractice insurance and failed to cooperate with the disciplinary authority in investigating his misconduct. *Ohlin*, at ¶¶ 5-7. The respondent also neglected a legal matter (an

expungement of a federal criminal conviction) for a second client, intentionally failed to seek the lawful objectives of that client and failed to cooperate with the disciplinary authority in investigating his misconduct. *Ohlin*, at ¶¶ 8-12. The respondent also neglected a matter for a third client by not promptly delivering settlement funds or the file and failed to cooperate with the disciplinary authority in investigating his misconduct. *Ohlin*, at ¶¶ 13-15. The respondent also failed to cooperate in the disciplinary authority's investigation of another grievance, *Ohlin*, at ¶ 18, and failed to provide his new residence and business addresses to the Office of Attorney Services, *Ohlin*, at ¶ 19. *Ohlin* found that the respondent in that case had presented no mitigating factors under BCGD Proc.Reg. 10(B)(2) and only four aggravating factors, BCGD Proc.Reg. 10(B)(1)(d), (e), (g) and (h).

In *Helgott*, which involved only two grievances and a failure to cooperate, the Board, like here, recommended an indefinite suspension. However, the Court found that disbarment was appropriate.

“In recommending a sanction for this misconduct, the board considered the aggravating and mitigating factors listed in Section 10 of the Rules and Regulations Governing Procedure on Complaints and Hearings Before the Board of Commissioners on Grievances and Discipline (“BCGD Proc.Reg.”). The board noted one mitigating factor: respondent’s lack of any prior disciplinary record. BCGD Proc.Reg. 10(B)(2)(a). The board also found several aggravating factors: a selfish motive, a pattern of misconduct, a lack of cooperation in the disciplinary process, harm to a vulnerable victim, and the failure to make restitution. BCGD Proc.Reg. 10(B)(1)(b), (c), (e), (h), and (i). The board also noted that respondent had failed to comply with the biennial registration requirement for attorneys for the current and previous biennia. Gov.Bar R. VI(1)(A).

“Relator recommended that respondent be disbarred. The master commissioner and the board instead recommended that respondent be indefinitely suspended.

“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."

Helfgott, at ¶¶ 14-16. Here, Respondent's misconduct was at least more frequent and arguably more, but not less, severe than the misconduct committed by the respondent in *Helfgott*, and this Court should consider at least two more aggravating factors than *Helfgott* did.

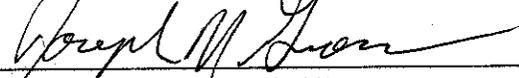
Finally, this Court does not have any reason to ameliorate Respondent's sanction for reasons not listed as mitigating factors in BGCD Proc.Reg. 10(B)(2). See *Cleveland Bar Assn. v. Douglas*, 113 Ohio St.3d 221, 2007-Ohio-1536, 863 N.E.2d 1044, ¶ 18 (lawyer who misled two clients, abandoned their claims without returning their fees and failed to respond to grievances and the disciplinary process, in part, because he lived in a homeless shelter during the disciplinary investigation and process, received indefinite suspension instead of disbarment). Unlike the respondent in *Douglas*, Respondent has continued to practice, putting his many clients and the public at risk. Respondent not only misled his clients, he misled at least one judge and Relator's investigator. Respondent flatly ignored his obligation to respond to the many grievances filed against him and to participate in the disciplinary process for no good reason. Respondent knows that he is facing disbarment, and he has done nothing about it.

This Court has a chance to warn attorneys about conducting themselves the way Respondent has conducted himself. That warning should be, "If you lie to your clients, judges or others, do not appropriately handle your clients' money, do not follow their instructions and do not cooperate in the disciplinary process against you, you face losing your privilege to practice law in this state—forever."

IV. CONCLUSION

While Relator does not object to the Board's Findings of Fact or Conclusions of Law, Relator objects to the Recommendation. Based on the Board's Findings of Fact and Conclusions of Law, Relator respectfully submits that Respondent be disbarred.

Respectfully submitted,



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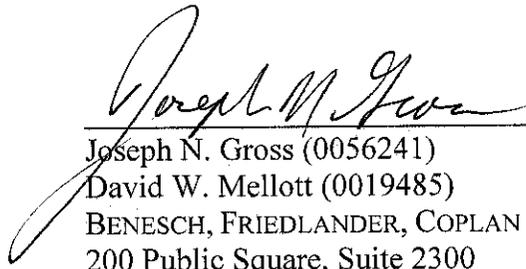
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Attorneys for Relator,

Cleveland Metropolitan Bar Association

CERTIFICATE OF SERVICE

A copy of the foregoing Relator Cleveland Metropolitan Bar Association's Objections to Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline was forwarded by regular first class U.S. mail, on this 15th day of September, 2010, to Respondent Bryan S. Freeman, at 17413 Detroit Avenue, Lakewood, Ohio 44107, and to Jonathan W. Marshall, Secretary, Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, at 65 South Front Street, 5th Floor, Columbus, Ohio 43215-3431.



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Cleveland Metropolitan Bar Association*

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

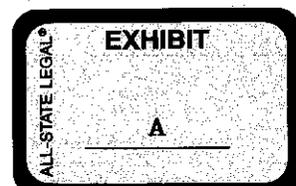
In Re:	:	
Complaint against	:	Case No. 09-070
Bryan S. Freeman	:	Findings of Fact,
Attorney Reg. No. 0070637	:	Conclusions of Law and
Respondent	:	Recommendation of the
Cleveland Metropolitan Bar Association	:	Board of Commissioners on
Relator	:	Grievances and Discipline of
	:	the Supreme Court of Ohio
	:	

This matter was referred to Master Commissioner, Judge W. Scott Gwin, on June 24, 2010, by the Secretary of the Board pursuant to Gov. Bar R. V(6)(F)(2) for a ruling on the Relator's motion for default judgment. Master Commissioner Gwin then proceeded to prepare a report pursuant to Gov. Bar R. V(6)(J).

PROCEDURAL HISTORY

Relator received grievances with regard to Respondent's representation of eight clients.

On or about August 11, 2008, Relator received a grievance from Valeasia Harris against Respondent. On August 14, 2008, Relator sent Respondent a letter via certified mail requesting his written response to the grievance filed by Harris. On August 28, 2008, Respondent requested an extension of time to submit his written response. On



September 4, 2008, Relator sent Respondent a second letter, via regular mail, requesting his response by September 18, 2008 to the Harris grievance. Respondent did not respond to the letter. On September 26, 2008, and on September 30, 2008, Relator contacted Respondent's office by telephone, regarding the Harris grievance. Respondent did not return either phone call.

On or about October 6, 2008, Relator received a grievance from Deborah Marshall against Respondent. On October 14, 2008, Relator sent a letter to Respondent via certified mail regarding the Marshall grievance, and requesting his written response by October 28, 2008. The certified mail was returned to Relator. Relator then sent the letter via regular mail and it was not returned. Respondent did not reply to the letter. On October 29, 2008, Relator sent Respondent a second letter via regular mail requesting his response to the Marshall grievance. Neither letter sent via regular mail was returned to Relator, but Respondent did not reply.

On November 5, 2008, Relator received a grievance from Michael G. Sawyer against Respondent, which was referred by the Disciplinary Counsel of the Supreme Court of Ohio. On November 17, 2008, Relator sent Respondent a letter via certified mail regarding the Sawyer grievance. The letter was signed for but Respondent did not reply.

On November 18, 2008, Relator served a subpoena duces tecum to Respondent requiring Respondent to appear at the investigator's offices on November 24, 2008, with documents related to the Marshall and Harris grievances. On November 21, 2008, Respondent requested the deposition be rescheduled to December 2, 2008. Respondent failed to appear and did not provide the requested documents.

On December 23, 2008, Relator received a grievance from Timothy Bruce against Respondent. On December 29, 2008, Relator sent a letter via certified mail regarding the grievance filed by Bruce. On January 9, 2009, Relator sent a letter via certified mail to Respondent regarding the Bruce grievance. Both letters were signed for, but Respondent did not respond to the attempts to contact him.

On or about January 5, 2009, Relator received a grievance from Harold S. Resnick against Respondent, which was referred by the Disciplinary Counsel of the Supreme Court of Ohio. On January 6, 2009, Relator sent Respondent a letter via certified mail requesting his written response to the grievance filed by Resnick. On January 9, 2009, Relator sent another letter via certified mail concerning the Resnick grievance. The letters were both signed for, but Respondent did not reply.

On or about January 7, 2009, Relator received a grievance from Allison Mayle against Respondent. The record does not indicate how Relator initially notified Respondent of the grievance, but Relator's investigator discussed the matter with Respondent at least by April 2, 2009.

On or about February 9, 2009, Relator received a grievance from Judge Dominick E. Olivito of the Carroll County Court of Common Pleas against Respondent, which was referred by Disciplinary Counsel of the Supreme Court of Ohio. On April 20, 2009, Relator sent Respondent a letter by certified mail, notifying him of Judge Olivito's grievance. Respondent replied the following day, requesting a copy of the grievance, which Relator forwarded to him. Respondent made no further response to Judge Olivito's grievance.

On April 24, 2009, Relator attempted to depose Respondent. Respondent did not

appear for the deposition. Relator telephoned Respondent at his office and on his cell phone, but Respondent did not reply. Respondent never produced the documents listed in the subpoena duces tecum for the deposition.

On or about July 2, 2009, Relator received a grievance from the Honorable Lisa L. Coates of the Stow Municipal Court against Respondent, which was referred by Disciplinary Counsel of the Supreme Court of Ohio. On July 2, 2009, Relator sent a letter via certified mail requesting his response to the grievance filed by Judge Coates. The letter was returned unclaimed.

On July 17, 2009, Relator sent Respondent a notice of intent to file a formal complaint via regular and certified mail, requesting his written response to the draft complaint. The letter sent by certified mail was delivered on August 6, 2009, and the regular mail was not returned to Relator.

On August 17, 2009, a Board Probable Cause panel found probable cause existed for the filing of a formal complaint, and certified the matter to the Board of Commissioners. Notice and a copy of the complaint was sent to Respondent at his law office, but was returned unclaimed. Thereafter, Respondent was served with the notice and complaint on October 30, 2009, by serving them on the Clerk of the Supreme Court of Ohio.

On November 18, 2009, Respondent sent Relator a notice of intent to file a motion for default via regular and certified mail, and requested a response within ten (10) days of the date of the letter. Respondent signed for the certified mail letter and the regular mail letter was not returned to Relator.

Relator filed its motion for default judgment on January 1, 2010. On January 11,

2010, the matter was referred to Master Commissioner W. Scott Gwin for a ruling on the motion for default. However, Respondent then contacted the Board for leave to file an answer. The Board granted Respondent until May 24, 2010, to file his answer.

Respondent did not do so, and the matter was referred once more to Master Commissioner Judge W. Scott Gwin.

Respondent's misconduct occurred both before and after February 1, 2007, when the Supreme Court adopted the Ohio Rules of Professional Conduct. Respondent's conduct prior to February 1, 2007 was governed by the Ohio Code of Professional Responsibility.

CASE ONE- MICHAEL G. SAWYER

SAWYER FINDINGS OF FACT

Sawyer retained the firm of Elk & Elk to recover damages for injuries he sustained in a motor vehicle accident. Sawyer agreed Respondent would be jointly responsible for his representation. Sawyer sent his medical records to Respondent on or about September 1, 2006. On March 5, 2007, Respondent filed a complaint in the Court of Common Pleas for Hamilton County, Ohio, designated Case No. A0702082081, styled *Michael G. Sawyer v. Kenneth R. Brown, et al.*

Sawyer did not hear from Respondent for more than a year. In early September of 2007, Sawyer made several attempts to contact Respondent, but Respondent failed to return Sawyer's phone calls. Sawyer then sent Respondent a letter on September 14, 2007, requesting information about the matter and asking Respondent to return his phone calls. Sawyer informed Respondent that his delay in pursuing the matter was causing him problems. The letter was not returned to Sawyer.

On June 17, 2008, Sawyer and Respondent participated in a mediation and Sawyer's case was settled for \$7,170.55. Sawyer told Respondent he would like to have his share of the settlement proceeds within 30 days. On July 21, 2008, Respondent informed Sawyer he would receive a check and settlement documents in the mail shortly. The check and settlement document arrived on August 9, 2008, but were dated July 21, 2008. Sawyer endorsed the check on August 9, 2008, signed the accompanying release, and returned them to Respondent.

During the remainder of August through October, 2008, Sawyer attempted to contact Respondent by telephone, mail, and email, but could not reach him. Respondent answered one email in October. On October 25, 2008, Respondent sent Sawyer a check for the settlement funds. Sawyer alleges he was harmed financially by Respondent's failure to pursue the matter and to follow his instructions. Sawyer asserted Respondent's conduct was emotionally difficult for him.

SAWYER CONCLUSIONS OF LAW

Respondent's conduct with regard to the Sawyer matter has violated the following provisions of the Ohio Code of Professional Responsibility:

DR 6-101(A)(3) [neglecting a legal matter entrusted to him].

Respondent's conduct with regard to the Sawyer matter violated the following Rules of Professional Conduct:

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

Prof. Cond. R. 1.4(a)(3) [failing to keep the client reasonably informed about the status of the matter];

Prof. Cond. R. 1.4(a)(4) [failing to comply as soon as practicable with reasonable requests for information from the client].

CASE TWO-DEBORAH MARSHALL

MARSHALL FINDINGS OF FACT

Deborah Marshall retained the law firm of Friedman, Domiano & Smith to recover damages for injuries she sustained in a fall on May 24, 2005. On or about November 30, 2005, Respondent sent Marshall a letter advising her he would be involved in the case. Respondent filed a complaint in the Court of Common Pleas for Cuyahoga County on July 20, 2007. The case was designated Case No. CV-07-627694, styled *Deborah Marshall v. Goldberg Companies, Inc., et al.*

On or about June 6, 2008, Respondent and Marshall participated in a mediation, and the case settled for \$10,000.00 plus up to \$5,000.00 for reimbursement of medical bills. Respondent submitted \$2,961.00 of the qualifying medical bills for reimbursement, but failed to submit an additional \$1,736.15 of qualifying medical bills for reimbursement.

Marshall alleges she made at least six attempts to contact Respondent by telephone, but was unable to reach him, and he did not return her phone calls. On September 22, 2008, Marshall complained to the law firm of Friedman, Domiano & Smith that Respondent had not returned her calls for two months. On October 7, 2008, she again complained to Friedman, Domiano & Smith.

On October 14, 2008, Respondent returned her phone call and informed Marshall he was waiting for some medical bills. Marshall requested her settlement funds, but Respondent stated he did not have the funds. Marshall stated it was not a pleasant

conversation. She then complained again to Friedman, Domiano & Smith, and requested the law firm pay her and then pursue Respondent for collection. Eventually, Friedman, Domiano & Smith sent her two checks totally \$11,068.18, representing the funds due Marshall after the payment of the medical bills. In a letter to Friedman, Domiano & Smith, Respondent stated he had discussed the matter with Marshall in a pleasant conversation.

Marshall alleges she was harmed financially by the delay in pursuing the matter and by Respondent's failure to submit the additional \$1,736.15 of medical bills for reimbursement. She stated Respondent's conduct was emotionally difficult for her.

MARSHALL CONCLUSIONS OF LAW

Respondent's conduct with regard to the Marshall matter began in October, 2005, but Relator does not allege any misconduct prior to February 1, 2007, when the Ohio Rules of Professional Conduct became effective. The events of which Marshall grieved occurred in the latter half of 2008.

Respondent's conduct with regard to the Marshall matter violated the following Rules of Professional Conduct:

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

Prof. Cond. R. 1.4(a)(3) [failing to keep the client reasonably informed of the status of the matter]; and

Prof. Cond. R. 1.4(a)(4) [failing to comply as soon as practicable with reasonable requests for information from the client].

CASE THREE – VALEASIA HARRIS

HARRIS FINDINGS OF FACT

In or about February 2006, Valeasia Harris retained Respondent to recover damages resulting from injuries she sustained in a motor vehicle accident in December, 2005. In December 2007, Respondent filed a complaint in the Court of Common Pleas for Cuyahoga County, designated Case No. CV-07-644311, styled *Valeasia Harris v. Carla R. Kochalko, et al.*

Respondent did not advise Harris he had failed to obtain good service on some of the defendants in the case, and did not inform her he was going to dismiss her case before he did so. Harris alleges throughout Respondent's representation, both before and after he dismissed her case, she made several attempts to contact him by telephone, but was unable to reach him. Respondent also failed to respond to her request to promptly deliver her case file to her. Harris alleges she was harmed financially by Respondent's delay in pursuing the matter, and his conduct was emotionally difficult for her.

HARRIS CONCLUSIONS OF LAW

Respondent's conduct with regard to the Harris matter occurred both before and after February 1, 2007. Respondent's conduct prior to February 1, 2007 violated the following provision of the Code of Professional Responsibility:

DR 6-101(A)(3) [neglecting a legal matter entrusted to him].

Respondent's conduct after February 1, 2007 violated the following Rules of Professional Conduct:

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

Prof. Cond. R. 1.4(a)(1) [failing to promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required by these rules];

Prof. Cond. R. 4(a)(2) [failing to reasonable consult with a client about the means by which the client's objectives are to be accomplished];

Prof. Cond. R. 1.4(a)(3) [failing to keep the client reasonably informed about the status of the matter]; and

Prof. Cond. R. 1.4(a)(4) [failing to comply as soon as practicable with reasonable requests for information from the client].

CASE FOUR – TIMOTHY M. BRUCE

BRUCE FINDINGS OF FACT

On October 17, 2005, Timothy M. Bruce retained the Schiff Law Offices to recover damages for injuries received in a motor vehicle accident. The parties signed a contingent fee contract. Thereafter, Schiff assigned Respondent to represent Bruce. On October 15, 2007, Respondent filed a complaint in the Court of Common Pleas for Cuyahoga County, designated Case No. CV-07-638765, styled *Timothy Bruce v. Lois Schmidt, et al.* On August 27, 2008, the case was settled for \$27,500.00.

On or about September 1, 2008, Bruce signed an initial closing statement, which was also signed by Schiff and Respondent. The closing statement listed eight health-care providers whom Respondent would pay from the proceeds of the settlement. However, shortly after the settlement, several of the health care providers advised Bruce they had not been paid. On September 16, 2008, Bruce requested Respondent to pay the health-care providers, and not to "haggle" about the bills so Bruce could get his creditors "off

his back.”

As of November 24, 2009, Respondent had failed to pay any of the eight health-care providers listed on the closing statement. Two additional medical bills which should have been included in the initial closing statement were not included, and those two providers are seeking reimbursement directly from Bruce. Bruce alleges he was harmed financially by Respondent’s failure to pursue the matter and to follow his instructions, and Freeman’s conduct has been emotionally difficult for Bruce.

BRUCE CONCLUSIONS OF LAW

Respondent’s conduct with the regard to the Bruce matter began in October, 2005, but the misconduct occurred after Bruce settled his case in August 2008. Respondent’s conduct with regard to the Bruce matter violated the following Rules of Professional Conduct:

Prof. Cond. R. 1.4 (a)(2) [failing to reasonably consult with the client about the means by which the client’s objectives are to be accomplished];

Prof. Cond. R. 1.4 (a)(3) [failing to keep the client reasonably informed about the status of the matter];

Prof. Cond. R. 1.4 (a)(4) [failing to comply as soon as practicable with reasonable requests for information from the client]; and

Prof. Cond. R. 1.15(d) [failing to promptly notify and deliver to the client or a third person any funds or property that the client or third person is entitled to receive and failing to promptly render a full accounting regarding the funds or property].

Relator also alleges a violation of Prof. Cond. R. 1.4 (a)(1) [failing to promptly inform the client of any decision or circumstance with respect to which the client’s

informed consent is required by these rules] but the evidence does not support a violation.

CASE FIVE –HAROLD S. RESNICK

RESNICK FINDINGS OF FACT

In June, 2008, Harold S. Resnick retained Respondent to recover damages resulting from injuries he sustained in a motor vehicle accident. After Respondent failed to return several phone calls, Resnick retained another attorney in early 2009. Resnick made several attempts to have Respondent deliver his file to him, but Respondent failed to comply. Eventually, Respondent delivered the file to Resnick on or about March 16, 2009. Resnick alleges he was harmed by Respondent's failure to pursue the matter, failure to communicate with him, and failure to promptly deliver his file to him. He also alleges Respondent's conduct was emotionally difficult for him.

RESNICK CONCLUSIONS OF LAW

Respondent's conduct with regard to the Resnick matter began after February 1, 2007. Respondent's conduct with regard to the Resnick matter violated the following Rules of Professional Conduct:

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

Prof. Cond. R. 1.4 (a)(2) [failing to reasonably consult with the client about the means by which the client's objectives are to be accomplished];

Prof. Cond. R. 1.4 (a)(3) [failing to keep the client reasonably informed about the status of the matter];

Prof. Cond. R. 1.4(a)(4) [failing to comply as soon as practicable with reasonable requests for information from the client]; and

Prof. Cond. R. 1.15(d) [failing to promptly notify and deliver to the client or a third person any funds or property that the client or third person is entitled to receive, and failing to render a full accounting regarding such funds or other property].

Relator also alleges a violation of Prof. Cond. R. 1.4(a)(1) [failing to promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required by these rules] but the evidence does not support a violation.

CASE SIX – ALLISON MAYLE

MAYLE FINDINGS OF FACT

Allison Mayle contacted the law firm of Friedman, Domiano & Smith to recover damages for injuries she sustained in a fall on July 1, 2005. Friedman, Domiano & Smith referred her to Attorney Marvin Schiff, of the Schiff Law Offices. On January 23, 2006, Mayle retained the Schiff Law Offices and signed a contingent fee contract.

On June 1, 2007, Respondent filed a complaint in the Court of Common Pleas for Stark County, designated Case No. 2007-CV-02300, styled *Allison M. Mayle v. DOTS LLC, et al.* On or about February 25, 2008, Respondent settled her case for \$15,000.00, and notified Mayle of the settlement on or about February 29, 2008. Respondent sent her a letter confirming the settlement and enclosing a release of claims. There was also a copy of the settlement check.

Mayle asserts Respondent was obligated to pay the Ohio Department of Job and Family Services \$4,775.47 of her settlement for reimbursement of Medicaid payments made on her behalf. She was also informed that Respondent was obligated to pay Medicare an unknown amount of the settlement payments.

After settlement, Mayle attempted several times to contact Respondent by

telephone, but was often unable to reach him. Respondent did not return any of her phone calls. Mayle asserts she called Respondent about once a week for three years, and resorted to calling from different phones, sometimes successfully.

Eventually, Mayle complained to the law firm of Friedman, Domiano & Smith, asserting Respondent had not returned her calls for more than three months, and she had not received the proceeds of the settlement. Mayle asserts she was harmed by Respondent's failure to pursue her matter, failure to communicate with her, and failure to promptly deliver her funds. She alleges his conduct was emotionally difficult for her.

When discussing the matter with Relator's investigator, Respondent stated he was working with Attorney Steven Paffilas of the U.S. Department of Justice regarding the Medicare lien. When the investigator contacted Paffilas, he learned Respondent was not working with Paffilas and there was nothing in Mayle's file to indicate Respondent ever contacted the Department of Justice regarding Mayle.

MAYLE CONCLUSIONS OF LAW

Respondent's conduct with regard to the Mayle matter began in January 2006, but Relator makes no allegations of misconduct prior to February 1, 2007. Respondent's conduct with regard to the Mayle matter violated the following Rules of Professional Conduct:

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

Prof. Cond. R. 1.4 (a)(2) [failing to reasonably consult with the client about the means by which the client's objectives are to be accomplished];

Prof. Cond. R. 1.4 (a)(3) [failing to keep the client reasonably informed about the

status of the matter];

Prof. Cond. R. 1.4 (a)(4) [failing to comply as soon as practicable with reasonable requests for information from the client]; and

Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation].

Relator also alleges a violation of Prof. Cond. R. 1.4 (a)(1) [failing to promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required by these rules] but the evidence does not support a violation.

CASE SEVEN –LAURA L. MARKEY

MARKEY FINDINGS OF FACT

Laura L. Markey contacted the law firm of Elk & Elk to represent her in an action against Belmont Properties, Inc. and others for injuries she had received. Elk & Elk referred her to Attorney Marvin Schiff of the Schiff Law Offices, who in turn referred her to Respondent. On December 24, 2007, Respondent filed a complaint in the Court of Common Pleas for Cuyahoga County, Ohio, designated case no. CV07-645372, and styled *Laura L. Markey v. Belmont Properties, Inc., et al.*

On October 15, 2008, Markey received a letter on the letterhead of "The Freeman Law Office, LLC," from Lucy Higgins, who identified herself as Respondent's assistant. The letter stated Respondent had "recently" participated in a pre-trial relative to her case, during which the court had set another pretrial date of December 15, 2008. Certified copies of the appearance docket for the Cuyahoga County Court of Common Pleas show there was a case management conference on June 19, 2008, and there is no indication Respondent did not participate. A pretrial set for October 6, 2008 was cancelled and the

case was transferred to Carroll County Common Pleas Court on July 29, 2008. A certified docket sheet from Carroll County Court of Common Pleas shows Respondent did not appear for the pre-trial scheduled in Carroll County on October 15, 2008. Respondent offered no excuse and did not seek a continuance of the pretrial. Nothing on either court's docket sets any hearing for December 15, 2008.

Respondent did not respond to Belmont Properties' interrogatories and requests for production of documents. The judge assigned to the case in Carroll County was Dominick E. Olivito, Jr., who states Respondent did not appear for the pre-trial conference on October 8, 2008. On December 22, 2008, after attempting to contact Respondent, the court sustained Belmont Properties' motion to dismiss the action without prejudice. Markey alleges she was harmed by Respondent's failure to pursue the matter.

MARKEY CONCLUSIONS OF LAW

Respondent's conduct with regard to the Markey matter began in late 2007. Respondent's conduct with regard to the Markey matter violated the following Rules of Professional Conduct:

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

Prof. Cond. R. 1.4(a)(2) [failing to reasonably consult with the client about the means by which the client's objectives are to be accomplished];

Prof. Cond. R. 1.4(a)(3) [failing to keep the client reasonably informed about the status of the matter];

Prof. Cond. R. 1.4(a)(4) [failing to comply as soon as practicable with reasonable requests for information from the client];

Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation]; and

Prof. Cond. R. 8.4(d) [conduct prejudicial to the administration of justice].

Relator also alleges a violation of Prof. Cond. R. 1.4(a)(1) [failing to promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required by these rules] but the evidence does not support a violation.

CASE EIGHT – SARA NATALI TIMOCH

TIMOCH FINDINGS OF FACT

Judge Lisa L. Coates of the Stow Municipal Court, alleges she was assigned case number 2008TRC15267, in which Sara Natali Timoch was charged with operating a vehicle while under the influence, driving under suspension, and failure to control. The DUI was her third offense within six years. The offenses occurred on November 19, 2008. On December 1, 2008, at a pre-trial, Respondent, representing Timoch, advised the prosecutor and the judge he would be filing a motion to suppress before the scheduled trial date of January 7, 2009. No motion to suppress was filed. On January 7, 2009, the court granted Respondent's request for a two-week continuance, and re-scheduled the trial for January 26, 2009. On January 26, 2009, at the time scheduled for the trial, Respondent called the court stating that he had been in a car accident, and he requested another continuance of the trial date. The court granted the request and set the trial date for February 9, 2009. Judge Coates states Respondent never established he could not appear for the trial because of a car accident.

On February 9, 2009, neither Respondent nor his client appeared for trial. The court issued a bench warrant for Timoch's arrest. On February 25, 2009, Timoch turned

herself in to the court, informing the court Respondent never apprised her of the February 9th trial date. The court recalled the bench warrant and set another trial date for March 9, 2009.

On March 9, 2009, Timoch appeared for her trial, but Respondent failed to appear. Because Timoch was facing mandatory jail time, the court granted her request for a continuance so she could retain new counsel. The court then issued a show-cause order for Respondent to appear March 17, 2009.

On March 17, 2009, Respondent appeared late for the show-cause hearing, and agreed to pay the Village of Boston Heights restitution for cost of the prosecutor's time in appearing for several missed court dates, as well as for overtime for the police officers who had been called as witnesses for the prosecution. He agreed to pay within two weeks, but failed to do so. On May 14, 2009, the prosecutor filed a motion to compel Respondent to pay the court-ordered sanction. The court set a hearing date for June 1, 2009, but Respondent failed to appear for the hearing. Judge Coates asserted that Respondent's failure to appear for trial and for his own hearings was prejudicial to the administration of justice.

TIMOCH CONCLUSIONS OF LAW

Respondent's conduct with regard to the Timoch matter began in late 2008. Respondent's conduct with regard to the Timoch matter violated the following Rules of Professional Conduct:

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

Prof. Cond. R. 1.4 (a)(2) [failing to reasonably consult with the client about the

means by which the client's objectives are to be accomplished.];

Prof. Cond. R. 1.4 (a)(3) [failing to keep the client reasonably informed about the status of the matter];

Prof. Cond. R. 1.4 (a)(4) [failing to comply as soon as practicable with reasonable requests for information from the client];

Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation]; and

Prof. Cond. R. 8.4 (d) [conduct prejudicial to the administration of justice].

Relator also alleges a violation of Prof. Cond. R. 1.4 (a)(1) [failing to promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required by these rules] but the evidence does not support a violation.

Respondent's conduct in failing to cooperate with Relator in the investigation and resolution of each of these matters violated Gov. Bar R. V(4)(G) and Prof. Cond. R. 8.1.

MITIGATING FACTORS

Respondent was admitted to the practice of law in May, 1999, and has no prior disciplinary record.

AGGRAVATING FACTORS

At least seven of the nine aggravating factors set forth in BCGD Proc. Reg. 10(B)(1) are present here:

- (b) dishonest or selfish motive;
- (c) a pattern of misconduct;
- (d) multiple offenses;
- (e) lack of cooperation in the disciplinary process;

- (g) failure to acknowledge the wrongful nature of the conduct;
- (h) vulnerability of and resulting harm to victims of the misconduct; and
- (i) failure to make restitution.

RECOMMENDED SANCTION OF THE RELATOR

Relator recommends the sanction of permanent disbarment.

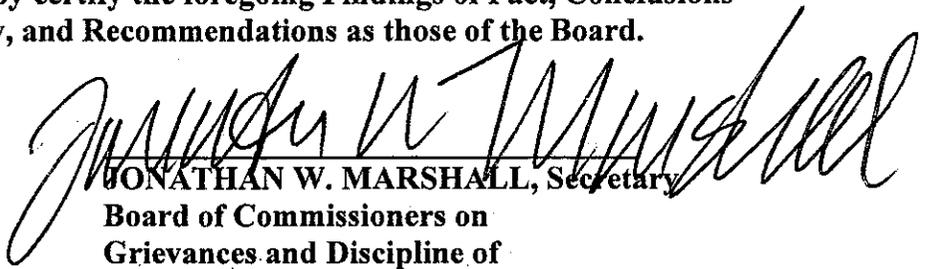
RECOMMENDATION OF MASTER COMMISSIONER

The Master Commissioner recommends indefinite suspension.

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 Master Commissioner and recommends that Respondent, Bryan S. Freeman, be indefinitely suspended 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