ORIGINAL

IN

THE SUPREME COURT OF OHIO

Dea Lynn Character, Respondent	:	CASE NO. 2010-1693
Disciplinary Counsel, Relator	:	RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS TO THE BOARD OF COMMISSIONERS' REPORT AND RECOMMENDATIONS

RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS TO THE BOARD OF COMMISSIONERS' REPORT AND RECOMMENDATIONS

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RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS TO THE BOARD OF COMMISSIONERS' REPORT AND RECOMMENDATIONS

Now comes relator, disciplinary Counsel, and hereby submits this answer to respondent's objections to the Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline ("Board").

Based upon clear and convincing evidence, the Board found violations in 10 separate counts including one violation of DR 1-102(A)(3), three violations of DR 1-102(A)(4), two violations of DR 1-102(A)(5), six violations of DR 1-102(A)(6), two violations of DR 1-104(A-C), two violations of DR 2-102(B), two violations of DR 2-102(C), two violations of DR 2-106(A) & (B), one violation of DR 2-107(A), two violations of DR 5-104(A), one violation of DR 5-105, two violations of DR 6-101(A)(2), two violations of DR 6-101(A)(3), two violations

of DR 7-101(A)(1), two violations of DR 7-101(A)(2), four violations of DR 7-101(A)(3), two violations of DR 9-102(A), one violations of DR 9-102(A)(2), one violation of DR 9-102(E), one violation of Prof. Cond. R. 1.3, two violations of Prof. Cond. R. 1.4(c), one violation of Prof. Cond. R. 1.5(a), one violation of Prof. Cond. R. 7.5(a), one violation of Prof. Cond. R. 7.5(d), one violation of Prof. Cond. R. 8.4(b), three violations of Prof. Cond. R. 8.4(c), and three violations of Prof. Cond. R. 8.4(h). The board also found two violations of Gov. Bar R.V (4) (c).

The board recommended that based on the "astonishing record of misconduct" respondent be permanently disbarred. (Report at 43).

The board did not find any mitigating factors but found the following aggravating factors: prior disciplinary offenses, a pattern of misconduct, refusal to acknowledge the wrongful nature of the conduct, vulnerability of victims and resulting harm to victims, multiple offenses, and failure to make restitution. BCGD Proc. R. 10(B) (1). (Report at 42).

The board's report was certified to this court on September 28, 2010. The court issued a Show Cause Order on October 6, 2010. Respondent's objections were filed on November 9, 2010. It is to those objections that relator now responds.

STATEMENT OF FACTS

COUNT ONE

Respondent agreed to represent Barbara Williams in a wrongful-termination case against her former employer, University Hospitals, and matters involving the Bureau of Unemployment Compensation. (9/18 Tr. 8: Stip. 2; Jt. Ex. 1). Williams had been terminated for filling out a patient's vital statistics on the patient chart prior to seeing the patient. (9/28 Tr. 174).

Respondent entered into a written agreement with Williams on April 28, 2004 and accepted $750 as a retainer on April 14, 2004. (Stip. 3; Jt. Ex. 1, 2). The fee was not deposited

into a trust account. (Stip. 3). Respondent later testified that it was a flat fee and not a retainer. (9/28 Tr. 183). Respondent has not refunded any money to Williams.

The written agreement specifically states that respondent would investigate the wrongful termination and pursue settlement. (9/18 Tr. 8; Jt. Ex. 1). Respondent was to take on the wrongful-termination case but not pursue an actual lawsuit without a subsequent fee agreement.

Respondent testified that she explained to Williams that respondent's father used to serve on the University Hospital board and that she personally knew the president of the board. Respondent told Williams that she would contact the president of the board and see if she could get Williams another job at the hospital. Respondent also told Williams that she knew Dr. Edgar Jackson, respondent's father's doctor, who was also on the board and that she would contact him also. (9/28 Tr. 177-178).

Respondent twice attempted to call Dr. Jackson, who did not speak with her. Respondent wrote to someone in the office of the president of the hospital board to see if Williams could get another job. Respondent also talked to her friend who worked at University Hospital who told respondent of a new clinic position opening, but Williams was not qualified for the job. (9/28 Tr. 179).

Respondent contacted University Hospital to obtain Williams' personnel file, which she never received. (9/28 Tr. 180). Respondent also requested a copy of the employee handbook, which she ended up obtaining from "another contact." (9/28 Tr. 181).

Williams had applied to the Ohio Bureau of Employment Services (OBES) for unemployment benefits related to her termination. (9/18 Tr. 10). University Hospitals appealed Williams' benefits on the grounds that her termination was for cause.

Respondent agrees that in July 2004 she met with Williams and helped her complete forms from OBES. At the meeting, respondent told Williams that she would request Williams' employment records. (Stip. 6). However, respondent testified that all of the necessary information was in the OBES packet and had been supplied by University Hospital. (9/28 Tr. 182).

Respondent was practicing law under the name "Character, Character & Associates" a name she still uses. (9/18 Tr. 5) Respondent states that the other "Character" is her sister, Darlene, who lives in Columbus, Ohio. Respondent does not know when her sister last represented a client and does not know anything about her sister's practice. (9/18 Tr. 7).

Respondent testified that she is not the only attorney in the firm because, in addition to her sister, there are "a couple people that are considered my associates." (9/28 Tr. 187). Respondent does not have any attorney associates practicing in the law firm. Instead, respondent refers to attorneys with whom she frequently co-counsels as her "associates." (9/28 Tr. 187).

Respondent claims that she was told once by James Flaherty, a professor at Cleveland Marshall School of Law that she could use the firm name of "Character, Character & Associates" when she had no associates and referred only to co-counsel. (9/28 Tr. 188).

COUNT FOUR

Respondent filed a bankruptcy petition on behalf of a debtor named David Rowe in United States Bankruptcy Court, Northern District of Ohio, in 2005. Respondent actually filed three separate bankruptcy petitions on behalf of Rowe in quick succession. (Stip. 9; Jt. Ex. 5). Respondent believes that the triplicate filing was caused by a computer malfunction. (9/18 Tr. 14).

Two of Rowe's bankruptcy cases were assigned to Judge Arthur Harris and one was assigned to Judge Patricia Morgenstern-Clarren. (9/18 Tr. 14).

On April 6, 2005, Judge Morgenstern-Clarren issued an Order for Respondent to Appear and Show Cause on April 26, 2005 as to why she had not paid filing fees in ten bankruptcy cases, including the one filed for Rowe. (Jt. Ex. 8).

On April 19, 2005, respondent filed a motion to dismiss Rowe's bankruptcy that was filed with Judge Morgenstern-Clarren but the case was not dismissed. (Jt. Ex. 9). Respondent later testified that she spoke with Theresa Underwood in the clerk's office and that Underwood told respondent that Rowe's duplicate bankruptcy would be dismissed. (9/28 Tr. 190). On May 9, 2005 respondent paid filing fees in all three of Rowe's bankruptcies. (Jt. Ex. 12).

Because respondent did not file the appropriate schedules for Rowe's bankruptcy, Judge Morgenstern-Clarren issued an order for respondent to appear in her courtroom. The hearing was scheduled for July 26, 2005. (9/18 Tr. 20, Jt. Ex. 14).

Respondent states that she was not aware of the hearing until after her paralegal, Leroy Armstrong, saw respondent's name the hearing docket. Armstrong told respondent that she needed to appear. (9/18 Tr. 21, 9/28 Tr. 195). Respondent later testified that Armstrong told her of another hearing, not the hearing on Rowe, and that she did not know about the Rowe hearing until she talked to the bailiff after the hearing. (9/28 Tr. 202).

Respondent attended court with Judge Morgenstern-Clarren on July 26, 2005. Respondent apparently did not check in with a bailiff or otherwise make her presence known. Instead, respondent asserts she saw an individual that she knew and claims she went into the hall to speak with that person. (9/18 Tr. 21-22). While in the hall, Judge Morgenstern-Clarren called respondent's case.

Respondent did not re-enter the courtroom until after the Rowe matter had been disposed of by Judge Morgenstern-Clarren. Respondent made her presence known to the bailiff, who told respondent to contact the Court and explain the situation. (9/18 Tr. 22). Respondent states that she wrote a letter to the Court explaining that the Rowe case had been dismissed. (9/18 Tr. 23). However, there was no dismissal entry. (9/18 Tr. 23). Later, respondent states that she talked to the bailiff and left a detailed message a second time. However, respondent never actually talked to Judge Morgenstern-Clarren or filed any formal motions after July 26, 2005. (9/18 Tr. 23-24).

Judge Morgenstern-Clarren dismissed Rowe's pending bankruptcy and found that respondent engaged in a pattern of neglect. (Jt. Ex. 15). Judge Morgenstern-Clarren also barred respondent from filing any additional bankruptcy claims. (Jt. Ex. 11).

COUNT TEN

In 2002, Jewell Jackson hired respondent to represent her in an eviction and post-decree matters related to Jackson's divorce. The eviction and post-decree cases were related. (Stip. 15).

Jackson is on social security disability income (SSDI) due to a mental health related illness. Jackson has been diagnosed with post-traumatic stress disorder and suffers from panic attacks which result in hyperventilation. Jackson testified that she attended special education classes in high school, that she is easily confused and has trouble understanding concepts. (11/12 Tr. 415-417).

At the time she was hired, respondent told Jackson that she would bring in another attorney, Cynthia Smith, as lead counsel, which she did. (Stip. 19). Respondent did not provide Jackson anything in writing regarding the duties of each attorney or how each would be paid.

Jackson testified that respondent did not say how much respondent would charge, whether charges would be hourly or a flat rate or how Jackson would be expected to pay. There

was no written fee agreement. (9/18 Tr. 39; 11/12 Tr. 419; Stip. 16). Respondent testified that that they would "just try to work something out." (9/28 Tr. 211).

At the time respondent did not carry professional liability insurance and did not tell Jackson.

The post-decree matter concerned Jackson's ex-husband's pension and 401K accounts as well as two Cleveland properties one on Darley Rd. and one on Hyde Park, both sold by Jackson's ex-husband. Pursuant to the divorce decree, Jackson was to have received one-half of the proceeds of the marital property and one-third of the various pensions and 401K account. (11/12 Tr. 420-421).

After hiring respondent, Jackson received nothing on the Darley Rd. house and $35,000 from the sale of the Hyde Park house. From this amount, Jackson gave respondent and Smith $15,000 in attorney fees. (9/28 Tr. 217; Stip. 20). She also used $5,000 to pay back rent to Reginald Adams. Jackson also gave respondent $4,800 to invest in Skywater- a division of Time Reveals LLC in which respondent serves as Vice President of Business and Legal Affairs. (9/18 Tr. 84; 9/28 Tr. 225). Jackson kept the remaining $10,200. (11/12 Tr. 502-503).

Although she was being represented by respondent and Smith, Jackson prepared and filed the motion to obtain the Hartford 401K without the assistance of either attorney. (11/12 Tr. 482, 513, 514, 516; Resp. Ex. 2). Respondent testified that Armstrong assisted Jackson with the motion without respondent's assistance. (11/13 Tr. 72).

Despite not preparing the motion, respondent and Smith appeared in Cuyahoga County Domestic Relations Court on Jackson's behalf. Jackson testified that this is because the court made respondent represent her. (11/12 Tr. 515).

Jackson was awarded $20,000 from the Hartford 401K. Jackson paid respondent and Smith an additional $3,000 in fees. (11/12 Tr. 518; Jt. Ex. 29). Jackson used the remaining money to pay bills. (11/12 Tr. 518).

In addition to the $18,000 from the two settlements, Jackson paid respondent an additional $3,750 in legal fees related to the eviction and post-decree matters when Jackson closed on the purchase of a house in December 2003. (11/12 Tr. 453; Stip. 27; Jt. Ex. 40).

Respondent claims that she kept detailed time records of the time the she spent on Jackson's case. (9/28 Tr. 219). To date, respondent has not produced her time records. Respondent admits that Jackson was very concerned about fees because of how much she had been charged by her divorce attorney. (9/28 Tr. 220).

On October 17, 2003, Jackson invested $4,800 in Skywater, a company in which respondent had been an officer since 1997 and which was run by respondent's boyfriend. (Stip. 23). Respondent accompanied Jackson to the bank to collect the money. (11/12 Tr. 529). Respondent collected the money because she was the "person in charge of money for investments" for Skywater. (9/28 Tr. at 221).

Jackson invested in Skywater at respondent's urging. Respondent did not provide Jackson any information about Skywater, what type of investment it is or whether or not there was any risk involved. Respondent told Jackson that if she invested, her money would grow. Jackson's only proof of her investment is a handwritten receipt prepared and signed by respondent. (9/18 Tr. 85; 11/12 Tr. 462, 528; Jt. Ex. 35). According to the receipt, Jackson would receive a 15-25% return on her investment within 90 days. (9/18 Tr. 85; Jt. Ex. 35).

Rather than return the principal and interest to Jackson, respondent testified that Jackson ordered her to pay Jackson's bills out of the principal of the Skywater investment in the amount

of $3,000 for back rent to both Reginald Adams and respondent's mother. Respondent and Smith took the remaining $2,000 for additional legal fees. Respondent also testified that Jackson was paid interest monthly for 6 months. (9/18 Tr. 86-88).

Jackson testified that she was to get her entire investment back plus interest. Jackson testified she did not tell respondent to pay any rent out of the investment because Jackson had already paid $5,000 to Adams. Jackson did not have any of her principal returned and did not receive any interest payments from respondent. (11/12 Tr. 463, 450).

Respondent and Smith continued to represent Jackson until the spring of 2004 when Smith decided she didn't want to continue. Respondent withdrew as well. (11/12 Tr. 526).

Mary Ann Rini, investigator for the Cuyahoga Bar Association, testified that respondent appeared for one deposition and brought with her an unorganized box of documents related to Jackson's and other cases. Rini had made numerous attempts to get documents from and meet with respondent. An attempt was made to depose respondent but, due to the poor state of the documents, the deposition was terminated. (11/12 Tr. 359).

COUNT TWELVE

Vashon Williams hired respondent in December 2004 to represent him in both an administrative action with Miami University and a criminal case. (Stip. 23). Williams was involved in a stabbing incident with Miami University football players. (Stip. 30). He was charged with 2 counts of felonious assault and was facing suspension from Miami University. (9/18 Tr. 98; 9/28 Tr. 250).

The suspension process at Miami University consists of two hearings. The first is a "1219" hearing where a student can be represented by an attorney. The second, a judicial affairs hearing, is student conducted but an attorney may be present to assist. (Stip. 31, 32).

Williams was 9 credit hours short of graduating and being able to finish his degree was of the utmost concern.

Williams contacted respondent through his ex-girlfriend who is a relative of respondent. (10/8 Tr. 163). On or about December 17, 2004, Respondent met with Williams, his father and mother at William's mother's house. Respondent told Williams and his family how her father, a respected attorney, looked over her shoulder and assisted her. Respondent also told Williams and his family how she had gotten many clients charged with criminal acts "off" and she didn't see why his case should be any different. (10/8 Tr. 286-287).

Respondent charged a flat fee of $23,000 to represent Williams in both the criminal case and the hearings at Miami University. (10/8 Tr. 287). Respondent was to represent Williams in both the "1219" hearing and the judicial affairs hearing at Miami University. There was no written fee agreement. (10/8 Tr. 163, 296).

William's father, James, obtained a home loan to pay respondent's fees of $23,000. Before the home loan was approved, James was borrowing money to pay respondent. At the time, respondent was in constant contact with James; however, after he paid her the last, and largest, fee payment of $15,000 she became elusive. (10/8 Tr. 292, 296).

Of the fee paid, $5,000 was to be paid to an investigator. (10/8 Tr. 289). Respondent told James that the investigator fee was so high because many of the witnesses were college students home on break the investigator would need to travel to conduct interviews. (10/8 Tr. 290). Respondent was also to hire a reconstruction expert to reconstruct the scene. (10/8 Tr. 289, 290).

Neither Williams nor his father, James, believe that an investigator was hired. (10/8 Tr. 173, 174, 290). Neither was told of the identity of an investigator and many of the witnesses

whose names Williams provided were never contacted. (10/8 Tr. 174, 291). Williams was not told that an expert was retained even though he followed up on it. (10/8 Tr. 174, 175).

Respondent states that an investigator, Ben Lamir, was hired but does not know when. The investigator was hired by Marcus Poole, respondent's co-counsel. Respondent states that Lamir was paid $1,000 because that was the only money set aside, although she's not sure because Poole made the payments. (9/28 Tr. 272). Lamir did not make a report or perform any work. Because Williams pled guilty to 2 misdemeanor assault charges, it was determined that an investigator was not needed. (9/18 Tr. 95). However, Williams didn't plead until September 6, 2005, a few days before his trial was to have started. It is evident that the investigator did not perform any work in support of either the criminal case or the administrative hearing at Miami University as that hearing occurred in January 2005.

Respondent states that an expert was contacted through TASA but she does not recall a name and states that the expert was "paid something up front," but does not know how much. The expert witness was not needed due to Williams' plea. (9/18 Tr. 96). It appears that no effort was made to timely find and utilize the promised experts for whom James paid respondent.

At the time respondent states that she "may" have had professional liability insurance. When asked if she had a copy of the policy, respondent answered that she "May or may not. I don't know. I'm not sure." (9/18 Tr. 97).

At the time respondent was hired, she made no mention that she would engage co-counsel. (10/8 Tr. 163) Williams was under the impression that he hired respondent to be his attorney and she would be taking care of the matter. James agrees the understanding was respondent would be the sole attorney. (10/8 Tr. 297). In fact, Williams and James first found out that Poole would be working on the case was when he was in the car on their way to Miami

University for the "1219" hearing on January 4, 2005. (10/8 Tr. 212, 297). Respondent agrees that Williams met Poole after Williams' arraignment, although she states the meeting occurred in an office. (9/28 Tr. 259). Williams was not informed in advance nor provided any information about how Poole would be paid or what his duties would be. (10/8 Tr. 163). In her testimony, respondent refers to Poole as "the lead trial counsel". (9/18 Tr. 95).

In addition to hiring Poole to work on Williams' case, respondent hired attorneys Cynthia Smith and Reginald Maxton. Smith was paid $500 to "strategize" for the criminal matter and Maxton was paid $1,000 to drive Williams to Butler County on the criminal matter. (10/8 Tr. 169). Neither Williams nor James were informed ahead of time that either of these attorneys would be hired. (10/8 Tr. 166, 169, 170; 10/8 Tr. 297). Respondent states that Williams was told what each attorney would be paid. (9/28 Tr. 263). Respondent states that all attorneys were paid out of the $23,000, adding that Williams knew what Maxton was paid. (9/18 Tr. 98). Williams and James both testified that even now they do not know what any of the attorneys connected to this case were paid. (10/8 Tr. 169, 171, 299, 300).

It was not Williams' intention that another attorney would handle his matter. Williams hired respondent and expected that she would be the lead attorney, attending hearings and handling matters. (10/8 Tr. 214, 264). Williams testified that he objected to Poole's involvement and told respondent she needed to take the case as lead counsel and be present at hearings. (10/8 Tr. 264, 265).

Williams requested that respondent provide both accountings of how the fee was spent and statements of each attorney's responsibilities. (10/8 Tr. 253, 254). Williams even wrote respondent two letters requesting this information and it was never provided. (10/8 Tr. 171, 173,

185; Jt. Ex. 59, 60). Williams testified that even to date he doesn't know what each attorney was supposed to do or how they were paid. (10/8 Tr. 169, 171).

Miami University Hearings

Respondent was to represent Williams in the two hearings at Miami University- a "1219" hearing and a judicial affairs hearing. The only way that a judicial affairs hearing would be unnecessary is if Williams won the "1219" hearing. The "1219" hearing is a threshold hearing to determine if Williams violated school policy, in essence, if there was evidence that he committed felonious assault.

Respondent testified that she interviewed 4 witnesses and prepped them for the hearing. Respondent falsely claims that five witnesses, including Williams, testified on his behalf at the "1219" hearing. (9/28 Tr. 269). Williams gave respondent a list with 5-10 witnesses. Williams realized that respondent only spoke to 2 witnesses when he followed up with them regarding the upcoming hearing. (10/8 Tr. 178, 179). Williams testified that there was only one witness, besides himself, at the "1219" hearing. (10/8 Tr. 180). The report from the hearing states that Williams only had 2 witnesses and the university presented 3 witnesses. (Jt. Ex. 75).

After the "1219" hearing, Williams was suspended from the university. (Jt. Ex. 75). He could have been reinstated following a judicial affairs hearing or by being acquitted of the criminal charges.

Respondent filed an appeal of the suspension with the Butler County Court of Common Pleas. (Jt. Ex. 75). Respondent dismissed this appeal the day after Williams' sentencing hearing on the 2 misdemeanor offenses. (9/18 Tr. 103; 10/8 Tr. 243; Jt. Ex. 76).

Respondent told Williams and his father that Williams would get to go back to Miami University if he pled to the misdemeanor. Both Williams and his father testified that respondent's assurances influenced the decision to accept a plea. (10/8 Tr. 175, 243, 304, 339).

Despite respondent's assurances that Williams would be reinstated if he pled guilty to the misdemeanor offenses, he was ineligible for reinstatement because he pled guilty to state charges. Ohio Revised Code 3345.23(A) prohibits reinstatement if the misdemeanors classified as crimes of violence. The state statute violations for assault are defined as crimes of violence; however, city violations are not. R.C. 2903.13. (Jt. Ex. 78). Respondent relied on what she was told by someone at the university in advising Williams to plead. (9/18 Tr. 102). Respondent admits that she found out only after she notified Miami University of William's plea that he could not be readmitted. (9/18 Tr. 103, Jt. Ex. 78).

Williams testified that he found out he was ineligible for reinstatement when he called Miami University to register for classes a week or so after his plea. (10/8 Tr. 181, 182) He did not find out from respondent.

Rather than make an attempt to withdraw William's plea, respondent filed an appeal of the conviction in the same court and with the same judge. The appeal was not filed with the appropriate Court of Appeals and was dismissed. (Jt. Ex. 73). Respondent filed a Motion for Reconsideration of Conviction of the State Statute of Assault and Sentence. (Jt. Ex. 74).

The judicial affairs hearing was scheduled for August 16, 2006. Williams had not heard from respondent and found her increasingly difficult to contact after he was released from jail in January 2006. (10/8 Tr. 184). Prior to his release, Williams and respondent had talked about the judicial affairs hearing many times so she knew his expectations. (10/8 Tr. 183). Respondent did not contact or arrange witnesses for Williams or provide him copies of necessary documents.

The only thing that Williams received from respondent was a transcript that was missing pages and completely unusable. (10/8 Tr. 183, 184).

Because she failed to contact him and help him prepare for the judicial affairs hearing, Williams sent respondent a letter on August 14, 2006 terminating her representation (Stip. 33; Jt. Ex. 60). Ultimately, Williams was not readmitted to Miami University and completed his undergraduate degree at Cleveland State University.

Criminal Case

Williams expected respondent to be the primary attorney in his criminal matter. Respondent abdicated this role to Poole without advising or consulting with Williams.

Poole attended respondent's criminal hearings, and all pleadings were filed in Poole's name- even when prepared by respondent. (10/8 Tr. 164, Jt. Ex. 73). Respondent attended the arraignment at the beginning but did not attend any other criminal hearings. (10/8 Tr. 165, 166). Respondent did not attend Williams' plea or sentencing hearing. Poole was difficult to contact and Williams only saw Poole once outside of court. (10/8 Tr. 262, 263).

On July 26, 2005, Williams' bond was forfeited because he missed a hearing. (Jt. Ex. 68). Williams had been calling respondent and Poole about the hearing but did not hear back from either. The hearing was to be on a motion to suppress statements that had been filed by Poole. (Jt. Ex. 66). Respondent believed that the motion had been withdrawn, negating the hearing. (9/18 Tr. 99). However, the motion wasn't withdrawn until August 4, 2005. (Jt. Ex. 69). As a result, Williams had to return to Butler County to be re-bonded.

At all times, respondent represented herself as an attorney with "Character, Character & Associates". (Stip. 29).

COUNT THIRTEEN

Mary Ann Rini, investigator for the Cuyahoga County Bar Association, testified that respondent was not cooperative. Respondent did not respond to letters or requests for documents in a timely manner. Respondent did not appear for scheduled meetings or depositions. Rini testified that respondent was very, very hard to reach, that she called respondent repeatedly and sent letters – all with no response. (11/12 Tr. 357). There were multiple attempted depositions and meetings. (11/12 Tr. 358; Jt. Ex. 123, 124).

Respondent appeared for one deposition and brought with her an unorganized box of documents. An attempt was made to depose respondent but, due to the state of the documents, the deposition was terminated. (11/12 Tr. 359).

Rini testified that most of her recommendations to proceed to a complaint on the various charges were related to respondent's failure to cooperate. (11/12 Tr. 381).

Respondent states that she was unable to produce records due to circumstances of varying plausibility. First, her office at the Agora building was burglarized and then expanded into by a neighboring tenant, causing the landlord to box up her office and store it- since 2006. (9/18 Tr. 93, 94). Then, a rental car driven by respondent broke down and was towed to a repair shop. Respondent had several files in the car which she didn't remove before leaving it. The repair shop was ordered closed for environmental violations and the car was sent to impound. Apparently the rental company never retrieved their car. Lastly, respondent kept files in a house on Onaway Dr. in Shaker Heights. This house was owned by Tyrone Cody, respondent's boyfriend, and condemned by the City of Shaker Heights. Respondent states she accidentally discovered that the house was being demolished because she drove past it on the way to her

grandson's school. She was given 2 hours to retrieve property and left behind her legal files, which were in the house when it was demolished that same day. (6/28 Tr. 281-285).

COUNT FIFTEEN

Respondent was given money by Rhonda Freeman as an investment in SIGN Joint Ventures, a division of Time Reveals. (9/18 Tr. 117; 6/28 Tr. 310). Respondent was to negotiate and pay off a judgment against Freeman by National City Bank. (11/12 Tr. 566; Stip. 37). Freeman instructed respondent to use money that she was paid by Freeman as an investment in SIGN Joint Ventures.

Respondent should have had Freeman's money, as Freeman invested $60,000 in cash between March and April 2006. (Jt. Ex. 89, 90). However, the check to pay the judgment, written from Time Reveals' bank account bounced. (9/18 Tr. 118; 6/28 Tr. 310). Freeman paid the debt, a little more than $2,000, and then attempted to get the money back from Time Reveals. (11/2 Tr. 566; Stip. 38).

Respondent, through Time Reveals, attempted to reimburse Freeman for the amount of the judgment. The check respondent gave to Freeman also bounced and was not made good. (11/12 Tr. 568).

The check respondent gave to Freeman is from Time Reveals and shows that "Tyrone Cody" signed the check. (11/12 Tr. 586, 589). Freeman testified that she watched respondent sign Cody's name to the check. Respondent testified that she had authority to sign Cody's name on behalf of Time Reveals. (11/13 Tr. 49).

COUNT SIXTEEN

In her role as Vice President of Business and Legal Affairs of Time Reveals, respondent also found investors for rehabilitation projects. Freeman was one such investor. After Freeman

sold her home on Daleford Rd., respondent asked Freeman to invest in SIGN Joint Ventures, a division of Time Reveals. (11/12 Tr. 570). Freeman invested because she knew and trusted respondent. (11/12 Tr. 578). Respondent testified that she didn't solicit Freeman to invest, that Freeman asked her about it. (6/28 Tr. 312). This is completely inconsistent with Freeman and Jackson's testimony concerning how they came to invest money with respondent.

Freeman invested in SIGN Joint Ventures on two occasions one month apart. The money came from the sale of the home on Daleford Road. (9/18 Tr. 120; Stip. 39). On both occasions, respondent gave Freeman a written investment agreement outlining the terms of the investment. Both Freeman and respondent signed the agreements. (Jt. Ex. 88, 89).

Freeman's first investment in March 3, 2006 was for $35,000. (Stip. 40; Jt. Ex. 88). Freeman was to receive her principal and the specified interest of $12,000 within 7 days of the initial investment. (Stip. 41). Although respondent states that it took longer to get Freeman her money, Freeman testified that she received both principal and interest by the time that she invested a second time. (11/12 Tr. 573). Freeman invested a second time in April 7, 2006. (Stip. 42; Jt. Ex. 89).

The second time, Freeman invested $25,000 because respondent "begged her." (11/12 Tr. 581, 592). Respondent went to the bank with Freeman to wire the $25,000 directly into Time Reveals' account. (Stip. 43).

For the second investment, Freeman was to receive principal and interest of $8,000 within 10 days. Freeman did not receive back her principal or any interest. Freeman made many phone calls to respondent and respondent repeatedly promised to give Freeman her money. To date, Freeman has received approximately $6,000-8,000 back. (Stip. 44). Freeman testified that respondent stated SIGN Joint Ventures was her company. (11/12 Tr. 591). Respondent admits

that Freeman is owed approximately $19,000 but claims that she has no responsibility to pay Freeman. (9/18 Tr. 122).

Each of the investment agreements list houses that are rehabilitation projects for SIGN Joint Ventures. Each home needs rehabilitation work before it can be sold. (Jt. Ex. 88, 89). Neither Time Reveals, nor any of its divisions, ever owns the properties but simply coordinates the rehabilitation work. The homes are in development for the buyer, who is an assignee/credit investor of Time Reveals or its divisions. The assignee/credit investor gets a mortgage and then enters into a land contract to give half of the mortgage to Time Reveals or its divisions. (11/13 Tr. 134, 136).

Respondent claims that the market changed so drastically within two weeks that she couldn't get Freeman her money. (11/13 Tr. 31-33). In reality, the risky sub-prime loan market that respondent was involved in dried up.

The investment agreements themselves do not explain that there is any risk to the investor, Freeman or others. The agreements state that the investor "shall" receive both principal and interest within the specified time frame. (Jt. Ex. 89, 90; 11/12 Tr. 581).

Respondent did not provide Freeman with a prospectus, property appraisals or other information on the houses listed in the agreements. (11/12 Tr. 571, 572). Freeman invested based on respondent's assertions and representations. Freeman testified that the company didn't mean anything without respondent. (11/12 Tr. 583).

COUNT SEVENTEEN

In January 2007, Katherine Greig hired respondent to represent her son, William Ellis, in an appeal of his criminal conviction for gross sexual imposition and kidnapping. (9/18 Tr. 132). Greig found respondent through James Page, respondent's legal assistant. (9/18 Tr. 132). When

they met, respondent inquired about other pending cases against Ellis. (Stip. 47). Respondent agreed to represent Ellis in 2 other pending criminal cases- one for felonious assault and one for receiving stolen property. The felonious assault case was scheduled for trial in February 2008. (10/7 Tr. 84).

Respondent represented herself as an attorney with the firm of "Character & Character" even though she was a sole practitioner. (Stip. 46).

Greig decided to hire respondent after she agreed to handle all three cases for $7,500. To Greig, this sounded like a good deal. (10/7 Tr. 110). Greig paid a total of $5,850 to respondent between December, 2007 and March 17, 2008. (Stip. 48; Jt. Ex. 98). Greig did not have a written fee agreement with respondent, even though respondent said she would draft one. (10/7 Tr. 111).

Respondent testified that she was never hired to represent Ellis in his pending cases and only agreed to do the appeal. At the same time respondent states she was going to "look into it, and go to the pretrials, and meet with Mr. Butler and see what I could do". (9/28 Tr. 133).

Respondent stated that she normally charges more than $7,500 for an appeal but gave Greig a discount because Ellis wanted to hire her so badly. (9/28 Tr. 320, 321). Greig disputes that Ellis wanted to hire respondent and, in fact, states that Ellis did not want respondent to represent him at all. (10/7 Tr. 83).

In actuality, respondent did not represent Ellis in any capacity on any case. Respondent did not file an appeal on Ellis behalf or represent him in either of the pending criminal cases.

Respondent stipulated she never filed an appeal on behalf of Ellis and that Bridget Barthol, a court appointed attorney, represented Ellis in the appeal. (9/18 Tr. 136; Stip. 50; Jt.

Ex.101). Respondent testified that she thought about filing a notice of appeal but noticed that Barthol already had. Respondent did not talk to Barthol about the appeal. (9/28 Tr. 328).

Greig testified that respondent told her on multiple occasions that the appeal didn't have to be filed right away. (10/7 Tr. 87, 88). However, respondent also acknowledged that Barthol filed the notice of appeal "on time."

Respondent told Greig that she would need to hire an investigator for the pending criminal charges. (Stip. 49) Greig paid an additional $600 for the investigator, Mark Angelotta. (9/28 Tr. 323; Stip. 49). He performed work on the pending case involving the felonious assault and kidnapping. (9/18 Tr. 138; 10/7 Tr. 91). Respondent states that Angelotta even went to the trial but it was continued. (9/28 Tr. 333). Butler admits that the trial was continued twice in February 2008, but denies that he ever saw Angelotta at court. Butler knows Angelotta and would recognize him. (11/12 Tr. 551).

Greig was consistent in her testimony; respondent continually represented that she would handle all 3 matters. (10/7 Tr. 84, 89, 109, 113, 132, 135). In fact, Greig believed that respondent would handle Ellis' criminal trial on the felonious assault and kidnapping charges in February 2008. (10/7 Tr. 114, 115, 116). Within weeks of the start of the trial, Greig found out that respondent would be in Florida the week of the trial. (10/7 Tr. 90, 116; Stip. 51). Butler represented Ellis at trial.

Respondent testified that she was assisting Butler with case strategy and planning, which Butler contradicts. (9/28 Tr. 324; 11/12 Tr. 548). In fact, respondent testified that she was in contact with Butler and attended the pretrials on the criminal cases. (9/28 tr. 326). From the context of respondent's testimony it is clear that she claimed that she was there to help with the criminal matter. Respondent states that she was trying to "work with Don [Butler] and support

him in the case, you know, before we just pull him out." (9/28 Tr. 325). Butler denies that she helped in any manner with the criminal case and, in fact, states he never discussed particulars of the case with respondent. (11/12 Tr. 549).

In March, 2008, respondent asked Greig for another $500 for the criminal matter but the trial was over and Ellis was convicted. (Stip. 52). Respondent wanted the next fee payment from Greig who demanded respondent prove she had done something for Ellis before making another payment. (10/7 Tr. 94).

In response, respondent prepared 4 separate post-conviction motions that she presented to Greig, who then made another fee payment of $500. (Stip. 53, 54). The motions have the following captions: Defendant's Motion for New Trial; Motion for Judgment of Acquittal Not Withstanding the Jury Verdict of Guilty Pursuant to Criminal Rule 29(C); Defendant's Motion for Reconsideration and/or Modification of Sentence and a Notice of Limited Appearance. (Stip. 55, 57; Jt. Ex. 102, 103, 104,105).

Of the motions, only the Motion for Limited Appearance contains the signature of respondent. (Stip. 57; Jt. Ex. 102) The remaining motions were signed "William Ellis, pro se." (Stip. 56: Jt. Ex. 103, 104, 105). Respondent signed Ellis name to the motions without his authority or designation. None of the motions are date stamped as filed. Grieg did not know that the motions would be filed "pro se." (10/7 Tr. 92). Greig believed that respondent would be representing her son. (10/7 Tr. 93, 94).

When she was giving Greig the motions, respondent led Greig to believe that respondent would be representing Ellis on the motions. Greig believes that this is why she was given the Motion for Limited Appearance. (10/7 Tr. 123).

Respondent states she only prepared the motions at the request of Ellis, saying "William [Ellis] was calling the shots. William was telling me exactly what he wanted me to do". (9/18 Tr. 137).

Respondent testified that she faxed the motions to her law clerk who was to file them, after first signing respondent's name. The law clerk took the motions to the courthouse unsigned and intended to sign them in front of someone in the clerk's office. Because the clerk's office could not verify that the law clerk had authority to sign respondent's name, they would not let the law clerk file them. Respondent instead re-faxed motions to the clerk with Ellis' name, pro se. Respondent testified that her law clerk signed Ellis' name to the motions and filed them. (9/18 Tr. 143-144; 9/28 Tr. 330-331). The docket reflects that only one motion was filed.

The signatures on all four of the motions, including the Motion for Limited Appearance, are the same. (Jt. Ex. 102, 103,104,105). Respondent explains this by stating that the copies that she gave to Greig are duplicates and that the law clerk signed the copies. (9/18 Tr. 145).

Respondent testified that the clerk of court's office lost 3 of the motions and docketed only the Motion for Judgment of Acquittal Not Withstanding the Jury Verdict of Guilty Pursuant to Criminal Rule 29(C). Respondent states that she got the clerk of court's office to fix this and that the motions appear on a later docket. (9/18 Tr. 147). This statement is incorrect. Although there are subsequent motions docketed, each is filed by "William Ellis, pro se" followed by his inmate number and either "Cuyahoga County Jail" or "Madison Correctional Institute" and the address. According to the docket, Ellis began filing motions on June 9, 2008. (Resp. Ex. 1). If these were the motions allegedly filed by respondent, they would not reflect Ellis inmate number and prison address because that information is not on the motions presented to Grieg. (Jt. Ex.

103, 104, 105). Additionally, if they were the motions allegedly filed by respondent, the Motion for Limited Appearance would be docketed but it is not.

Greig testified that she called the clerk's office and found out that the motions had not been filed. (10/7 Tr. 132).

To date, respondent has not returned any fees to Greig. (10/7 Tr. 95).

At the time of the representation, respondent did not have professional liability insurance, nor did she inform Greig of this fact. (9/18 Tr. 148; Stip. 59).

COUNT EIGHTEEN

Shirley Ellington hired respondent in January 2008 to represent her son, James, and his girlfriend, Evangeline Ford, in two separate house foreclosures- one in Georgia and one in Cleveland. (Stip. 60). Respondent charged $200 for the Cleveland property and $500 for the Georgia property. (Stip. 61; Jt. Ex. 91, 92, 93). Both Ellington and respondent agree that more was to be paid later. (9/18 Tr. 130; 6/28 Tr. 335; 10/7 Tr. 46). Respondent was to complete short sales on both properties. (10/7 Tr. 46, 49, 75). Ellington had buyers for both properties (10/7 Tr. 75, 78).

On January 8, 2008, respondent filed an answer to the foreclosure on the Cleveland property. (6/28 Tr. 335; Stip. 62) Respondent testified that she was orally given 30 days by the court to complete a short sale on the property. (9/18 Tr. 124; Stip. 63).

On January 29, 2008, the plaintiff's filed a Motion for Summary Judgment and respondent did not respond. Respondent testified she did not file a response to the motion because she was working on the short sale and that if the short sale was successful, the court could "vacate it or whatever". (9/18 Tr. 126). Ellington testified that respondent "just dropped it" and took no further action on a short sale for the Cleveland property. (10/7 Tr. 57).

Respondent did not complete the sale and did not take any further action on behalf of Ford. (Stip. 64). The Motion for Summary Judgment was granted on April 17, 2008. (Jt. Ex. 96). On May 5, 2008, Ford, pro se, filed a Motion to Reconsider alleging that she was unaware that the house was foreclosed upon and that her attorney had "disappeared". (Jt. Ex. 97).

Respondent stopped communicating with Ellington, Ford or Jesse Ellington in or about February 2008- one month after being hired.

Through their own efforts, Ellington and Ford have been able to save the Cleveland home from foreclosure by negotiating with the bank. Ford was able to pay off the negotiated amount. (10/7 Tr. 52, 80).

Respondent was supposed to conduct a short sale on the Georgia property. Ellington testified that there was already a buyer for this property. (10/7 Tr. 75). In an attempt to save the home from foreclosure, respondent had her paralegal, Armstrong, file a Chapter 13 bankruptcy petition on behalf of Ellington. (10/7 Tr. 49). At the time, respondent continued to be barred from filing bankruptcy cases.

Respondent took no action to save the Georgia property and admits to only starting the paperwork for a short sale. (9/18 Tr. 129). The Georgia home was lost to foreclosure. (10/7 Tr. 49, 51).

At the time, respondent did not carry professional liability insurance and did not inform Ellington. (Stip. 65).

COUNT NINETEEN

In 2008, respondent met Phu Van Nguyen of San Jose, California, at a "personal banking boot camp" held in Cleveland. (9/18 Tr. 148; Stip. 67). Nguyen was interested in real estate

investing to make extra money. (Stip. 66). Respondent attended on behalf of Time Reveals and went to the seminar with Amir Sharif of Power One Financial, Atlanta, Georgia. (9/18 Tr. 148).

Respondent entered into the real estate development deals with Nguyen and Sharif and began exchanging e-mail communication with them. (Stip. 68; Jt. Ex. 109, 110). Specifically, Sharif was going to pick up the assignment on some properties and find buyers for them. (9/18 Tr. 149).

Nguyen became the assignee buyer of three properties. Two of the properties were Sharif's and were in Georgia. One property was a Skywater Investment property and was located in Gates Mills, Ohio. Respondent provided the information on the Gates Mills property. (Stip. 69).

As agreed, Nguyen would purchase the Gates Mills property, rehabilitate it and sell it. Nguyen would be contractually obligated on both the purchase agreement and the mortgage. The home was a single-family property and Nguyen was to obtain a $3.5 million mortgage. (9/18 Tr. 153; Stip. 70, 71; Jt. Ex. 115).

According to the purchase contract, both Power One and Skywater were to receive money at the closing on the property. Skywater was to receive between $125,000 and $200,000 as a credit from the buyer to the seller. This amount would have to come directly from the mortgage obtained by Nguyen, which would be the only cash at close. Nguyen was listed on the contract as "Nominee for Skywater Investment Group & Network". (9/18 Tr. 152; Jt. Ex. 115).

In addition to the amount Skywater would receive from the mortgage, Nguyen paid $40,000 up front. Respondent states that this was what Skywater charged Nguyen to be the assignee. (9/18 Tr. 156).

On August 28, 2008, respondent sent Nguyen an e-mail with wiring instructions for the $40,000. Respondent specified a bank account number at Key National Bank. (9/18 Tr. 156; Stip. 72; Jt. Ex. 112). The bank account belongs to respondent's mother and father. (9/18 Tr. 156; Jt. Ex. 114).

Nguyen actually wired $50,000 into the account in two payments- one of $10,000 and one of $40,000. The $10,000 payment was immediately wired out to Amir Sharif. The remaining $40,000 stayed in respondent's parent's account. (9/18 Tr. 157-158; Jt. Ex. 114).

In an attempt to justify her actions, respondent claims that the money went to her parent's account because Time Reveals bank, Parkview Federal Savings, would not accept a late wire transfer. (9/18 Tr. 160). Respondent testified also that Time Reveals owed her mother money, but not $40,000. (6/28 Tr. 358). However, based on the bank records and respondent's testimony, the amount was never transferred to Time Reveals. (Jt. Ex. 114). Respondent states that she instructed her mother to spend the money for Time Reveals. (9/18 Tr. 159; 6/28 Tr. 329). A review of the checks from respondent's parent's account demonstrates that the money was not spent for Time Reveals. In fact, there are multiple ATM withdrawals and checks written to respondent's mother, "Dee Ann Character," for cash. There are checks for bills, groceries, payments to doctors, and other everyday expenses. (Jt. Ex. 114).

Nguyen was unable to obtain a mortgage for the Gates Mills property and it was never purchased. (9/18 Tr. 154; Jt. Ex. 117; Stip. 74). Respondent did not refund Nguyen's $40,000.

RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS

I. Respondent was properly afforded due process.

Respondent claims that the disciplinary procedure and hearing process was flawed in numerous ways that resulted in a denial of due process. Respondent's allegations include the alleged unconstitutional nature of the disciplinary process, the lack of a third board member, and prejudice allegedly caused because the respondent was video deposed in the Ohio Reformatory for Women.

The constitutionality of the attorney disciplinary process has long been established. The Ohio Constitution affords this Court the authority to provide a procedure, by rule, with reference to disciplining attorneys. Const. art. 4, §1. This Court has stated that both admission to the practice and disciplining of those admitted to practice are "matters which come within the inherent powers of the judicial branch of government." *Cleveland Bar Assn. v. Pleasant*, 167 Ohio St. 325 at 334, 148 N.E. 493 at 498. In the *Pleasant* case, this Court reviewed the constitutionality of the newly enacted Rule XXVII, now Gov. Bar R. V, establishing the board of commissioners on grievances and discipline and the disciplinary process. The Court found the disciplinary process constitutional, citing specifically that the Court itself makes all decisions as to discipline and only accepts recommendations from the board. *Id.* at 335.

Further this Court has found that due process is met in a disciplinary proceeding when the respondent was given a hearing, the right to issue subpoenas and depose witnesses, and an opportunity to explain the circumstances surrounding the disciplinary allegations. *Cleveland Bar Assn. v. Acker*, 29 Ohio St.2d 18, 278 N.E.2d 32. Respondent in this matter was afforded the same rights under both Gov. Bar R. V and the Ohio Rules of Civil Procedure. Respondent did not present any witnesses to testify on her behalf and presented only one exhibit (Resp. Ex. 1).

Respondent's failure to exercise the rights available to her does not mean that she was not afforded due process.

Respondent alleges that she was denied due process because only two hearing panel members heard the case rather than the three required by the rule. Gov. Bar. R. V(6)(D)(1). Both relator and respondent were informed on the first day of the hearing that one of the panel members was unable to attend. Relator and respondent both consented to allowing the hearing to proceed with only two panel members. (10/7 Tr. at 6). This Court found that where an attorney fails to show bias or prejudice he or she cannot claim that there was a failure to comply with bar rules. *Disicplinary Counsel v. Baumgartner*, 100 Ohio St.3d 41, 796 N.E.2d 495. In *Baumgartner*, the panel chair revealed a potential conflict of interest. Baumgartner, through counsel, consented to the panel chair continuing on the panel. The Court found that there was no evidence of bias or prejudice. In this instance, respondent's brief does not even allege any bias or prejudice as a result of only having a two-member panel.

Respondent claims that she was prejudiced by the fact that she could not attend the hearing and was deposed at the Ohio Reformatory for Women (ORW) in Marysville, Ohio, in her prison uniform. Because respondent was incarcerated at the time, this was the only way that respondent could participate in the proceedings. Relator and respondent's counsel spent two days at ORW obtaining the respondent's testimony. Despite respondent's contentions that she was prejudiced by time constraints imposed by the prison, relator and respondent were permitted to stay past closing on one day and were allowed to stay beyond the predetermined cut-off time on the second day. Further, after the witness testimony was heard, the panel members, respondent's counsel and relator spent a day at ORW taking additional testimony from respondent.

Respondent alleges that she was prejudiced because her criminal conduct was not truly bifurcated from the disciplinary proceedings. Count Twenty of the Sixth Amended Complaint filed July 29, 2009 concerned certain criminal convictions of respondent. At the outset of the hearing in October 2009, the panel bifurcated that particular count from the proceedings pursuant to Gov. Bar R. V(5)(C), as respondent's conviction had been appealed. Respondent claims that she was prejudiced because certain of the violations contained the same parties and instances as the conduct in respondent's criminal conviction. Although it is true that two of the witnesses who testified at the hearing were also victims in the criminal case, the alleged misconduct did not pertain to respondent's criminal case.

Respondent also claims that laches applies but does not state how or to what specific aspects. Laches is "an omission to assert a right for an unreasonable and unexplained length of time, under circumstances prejudicial to the adverse party." *State ex rel Eaton Corporation v. Industrial Comm.*, 80 Ohio St.3d 352, 356, 686 N.E.2d 507, 511, quoting *Connin v. Bailiey*, 15 Ohio St.3d35,35, 472 N.E.2d 328, 329. Further the prejudice must be material. *Id.* at 356, 686 N.E.2d at 511. A review of the record of this matter will reveal that at no time was respondent prejudiced by an unreasonable delay. Respondent cannot claim that she was prejudiced when she was timely notified of the allegations against her and given the opportunity to file an answer. Respondent failed to raise any affirmative defenses, including laches. At the hearing in this matter, respondent, through counsel, did not raise the defense of laches, or claim any unreasonable or unexplained delay. Further, any delay in the hearing of this matter was caused by respondent's failure to cooperate, her requests for continuances and her failure to cooperate in discovery.

II. Relator is not required to provide affidavits of grievances in a disciplinary hearing.

Respondent claims that relator did not prove the misconduct by clear and convincing evidence because affidavits from each grievant were not submitted as evidence. Respondent claims that the matter must be remanded to the board for further proceedings due to this lack of evidence.

Respondent primarily relies on the case of *Dayton Bar Assn. v. Wilson*, 127 Ohio St.3d 10, N. E. 2d, for the principal that grievant affidavits are required. That case pertains to the required proof for a motion for default filed pursuant to Gov. Bar R. V(6)(F). The Court found one count of alleged misconduct to be unsupported by direct evidence. The Court found that a sworn affidavit or certified evidence was needed to support an allegation that Wilson failed to act with reasonable diligence in representing specific clients.

Respondent's reliance on this case is misplaced. The matter before the Court does not involve a motion for default. A hearing pursuant to Gov. Bar R. V(6)(G) was properly held. The testimony came from witnesses properly sworn and appearing before the board. Respondent was given the opportunity to cross-examine each witness. Respondent stipulated to all of relator's exhibits at the start of the hearing. (10/7 Tr. at 15). Additionally, respondent provided two days of sworn testimony on both direct and cross-examination and a third day wherein she was examined by the panel members. Relator does not have to provide affidavits from grievants on each allegation, particularly when there is sworn testimony in support of the misconduct by the respondent. *Cleveland Bar Assn. v. Acker*, supra.

Respondent also cites *Dayton Bar Assn. v. Sebree*, 104 Ohio St.3d 448, 820 N.E.2d 318, to claim that the investigator provided hearsay testimony regarding the previous investigator's

written findings or testimony. Relator believes that respondent is referring to Mary Ann Rini, the investigator from the Cuyahoga County Bar Association who testified at the hearing. A review of the transcript does not show that respondent objected to any hearsay in Ms. Rini's testimony, neither does respondent's brief point to any specific testimony in question. Respondent stipulated to the use of the investigator's reports and did not object to them at the time of their use. Any objection to the nature of the testimony or reports should have been made at the hearing and are waived.

Respondent's request that the matter be remanded is misplaced. Respondent does not claim any permissible reason for the matter to be remanded to the board and relies on cases that pertain to motions for default.

III. The board properly recommended that respondent be permanently disbarred from the practice of law.

Respondent requests that the Court dismiss the entire matter due to the lack of affidavits and due process violations.[1] Dismissal of this matter is not appropriate based on the severity of the misconduct and the number of violations.

Respondent's conduct includes misconduct related to her direct representation of clients in legal matters, but also includes her actions as Vice President of Business and Legal Affairs for Time Reveals and its subsidiaries. The misconduct spans five years.

This Court has determined that a wide range of misconduct, both related to the practice of law and private action, can result in permanent disbarment. This Court has also stated that a "license to practice law is a privilege to which there are attendant rights and duties." *In re: Judicial Campaign Complaint Against Carr*, 76 Ohio St.3d 320, 667 N.E.2d 956.

[1] At the hearing, respondent recommended an indefinite suspension.

The Court permanently disbarred an attorney for filing a deficient bankruptcy petition resulting in dismissal of the petition, failure to notify the clients, and failing to return the unearned fees. The attorney neglected other client matters and failed to settle a case as directed by his client. In addition, the attorney failed to cooperate with the investigation, including failure to appear at the hearing. *Warren Co. Bar Assn. v. Marshall*, 121 Ohio St.3d 197, 903 N.E.2d 280.

Attorney Christopher Gueli was permanently disbarred for neglecting multiple client matters, mishandling an estate and a medical malpractice matter, conflicts of interest, failure to return unearned fees, and failure to cooperate with the investigation by not supplying requested documents. In determining sanction the Court stated the "repeated conduct of this magnitude and variety demands only one result." *Columbus Bar Assn. v. Gueli*, 119 Ohio St.3d 434, 442, 894 N.E.2d 1231, 1239.

This Court permanently disbarred Attorney Belock for misappropriating funds from four clients. *Cleveland Bar Assn. v. Belock*, 82 Ohio St.3d 98, 694 N.E.2d 897. The Court found that Belock violated multiple provisions of the Ohio Rules of Professional Conduct in misappropriating funds from clients to use while he was in hiding as a result of having his life threatened. The Court found that respondent had several mitigating factors in his favor including no other discipline and good character. However, due to the severity of his actions, Belock was permanently disbarred. Respondent herein did not present, nor did the board find, any mitigation on her behalf. The board did find several aggravating factors including prior disciplinary offenses, a pattern of misconduct, refusal to acknowledge the wrongful nature of the conduct, vulnerability of victims and resulting harm to victims, multiple offenses, and failure to make restitution. BCGD Proc. R. 10(B) (1). (Report at 42).

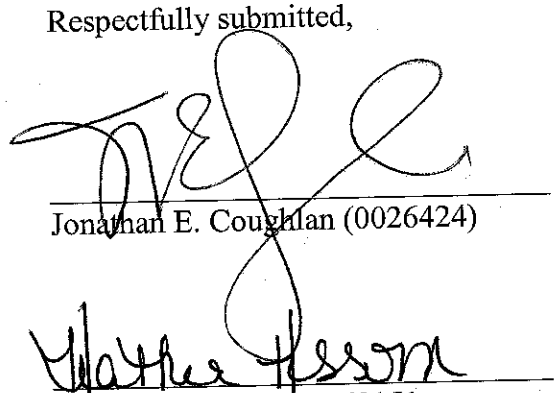
Lastly, the Court permanently disbarred Attorney Baumgartner for ethical misconduct that included making unfounded accusations of both criminal and unethical conduct against both private individuals and public officials. *Disciplinary Counsel v. Baumgartner*, 100 Ohio St.3d 41, 796 N.E.2d 495. Attorney Baumgartner sent harassing e-mails to school officials and her daughter's track coach. She filed numerous citizen's complaints against a county commissioner, the county prosecutor and others, in addition to other misconduct. The Court found no mitigation and several aggravating factors, including a dishonest or selfish motive, a pattern of misconduct, multiple offenses, and a failure to cooperate.

The board in this matter recommended permanent disbarment based on the "astonishing record of misconduct". (Report at 43). The board found that respondent violated 53 provisions of both the Ohio Rules of Professional Conduct and the Ohio Code of Professional Responsibility for her misconduct that spanned 4 years and involved seven different grievants. The board did not find any mitigating factors but found the following aggravating factors: prior disciplinary offenses, a pattern of misconduct, refusal to acknowledge the wrongful nature of the conduct, vulnerability of victims and resulting harm to victims, multiple offenses, and failure to make restitution. BCGD Proc. R. 10(B) (1). (Report at 42).

CONCLUSION

The Court should adopt the recommended sanction of the board in this matter. Based on the record in this matter, it is wholly appropriate that respondent be permanently disbarred from the practice of law.

Respectfully submitted,



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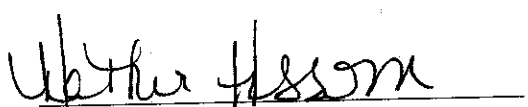
CERTIFICATE OF SERVICE

I hereby certify that the foregoing answer brief was served via U.S. Mail, postage prepaid, upon respondent's counsel, Gerald R. Walton, Esq., Suite 320, The 2800 Euclid Avenue Building Cleveland, OH 44115, and upon Jonathan W. Marshall, Secretary, Board of Commissioners on Grievances and Discipline, 41 S. High Street, Suite 2320, Columbus, Ohio 43215 this 23rd day of November, 2010.



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