

ORIGINAL

SUPREME COURT OF OHIO

Cincinnati Bar Association,

Relator,

Case No. 2010-1894

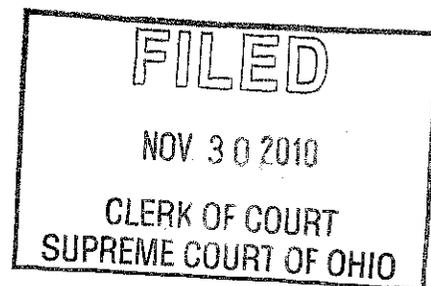
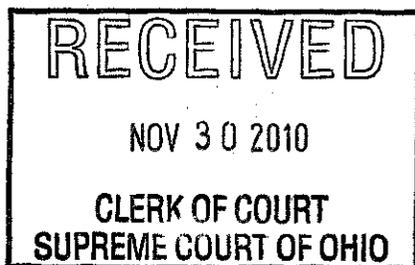
v.

Robert N. Trainor,

Respondent.

RESPONDENT'S OBJECTIONS TO FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND RECOMMENDATION OF THE BOARD WITH  
REQUEST FOR ORAL ARGUMENT

ROBERT N. TRAINOR  
618 Washington Street  
Covington, Kentucky 41011-2314  
Telephone: (859) 581-2822  
Facsimile: (859) 581-1047  
E-mail address: rntrainor@fuse.net  
*Respondent*



**SUPREME COURT OF OHIO**

**Cincinnati Bar Association,**

**Relator,**

**Case No. 2010-1894**

**v.**

**Robert N. Trainor,**

**Respondent.**

**RESPONDENT'S OBJECTIONS TO FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND RECOMMENDATION OF THE BOARD WITH  
REQUEST FOR ORAL ARGUMENT**

Comes now the respondent and does object to the Findings of Fact Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio ("Board's Findings"). Respondent does not deny the aggravating factors set forth in the Board's Findings. However, Respondent would like to more fully develop the factual considerations and direct the Court's attention to the more compelling aspects of the mitigating factors considered by the Board, as set forth in the Memorandum below.

Respectfully submitted,

  
ROBERT N. TRAINOR  
*Respondent*

## MEMORANDUM

Respondent does not deny three prior disciplinary actions against him.<sup>1</sup> Nor does Respondent deny that this matter involves multiple offenses, as there were two acts of misconduct.<sup>2</sup> However, Respondent does take some exception to the findings that he acted out of a dishonest or selfish motive<sup>3</sup> and that his conduct demonstrates a pattern of misconduct<sup>4</sup>.

As to the finding of a dishonest or selfish motive, Respondent does acknowledge that the funds belatedly returned to Childress did not belong to him<sup>5</sup>, although it has been established that those funds were returned prior to the filing of Relator's action against Respondent<sup>6</sup>. Respondent also acknowledges that it took an inordinate amount of time to return Childress' funds even after she contacted his office. However, Respondent denies any dishonest or selfish motive – during this time period Respondent was under severe stress.<sup>7</sup> And, due to that stress, Respondent was

---

<sup>1</sup> *Cincinnati Bar Assn. v. Trainor*, 99 Ohio St.3d 318, 2003-Ohio-3634 (for failing to preserve the identity of client funds and failing to maintain complete records of and appropriately account for client funds) (Board Findings, ¶23); *Cincinnati Bar Assn. v. Trainor*, 110 Ohio St.3d 141, 2006-Ohio-3825 (for failure to notify a client that he was uninsured) (Board Findings, ¶24); and *Trainor v. Kentucky Bar Assn.*, 311 S.W.3d 719 (2010) (for two instances of client neglect and failing to have malpractice insurance) (Board Findings, ¶25)

<sup>2</sup> Board Findings, ¶30

<sup>3</sup> Board Findings, ¶26

<sup>4</sup> Board Findings, ¶27

<sup>5</sup> Board Findings, ¶13

<sup>6</sup> Board Findings, ¶13 states that “After the Relator’s complaint was filed, Trainor paid \$225 to his client.” However, Relator asserts in its Complaint (¶13), and Respondent admitted (Answer, ¶14), that the \$225 in dispute was returned to Ms. Childress on July 13, 2009, seven months prior to the filing of the Complaint on approximately January 26, 2010.

<sup>7</sup> Board Findings, ¶33

not as attentive to his legal practice as he should have been. That was wrong, but there was no dishonest, selfish, or other ulterior motive to Respondent's actions or inaction. And, Respondent has addressed the stress in his life during that time period in a positive manner.<sup>8</sup>

As to the finding that the facts set forth demonstrate a pattern of misconduct due to "a history of ignoring his insurance obligations," Respondent would like to point out that all such instances occurred over the same period of time, and also during a stressful period of his life:

- The 2003 action against Respondent covered a period of time which began with Respondent's representation of a client in 1996.<sup>9</sup>
- The 2006 action against Respondent covered a period of time beginning in August of 2002.<sup>10</sup>
- The 2010 action by the Kentucky Bar Association against Respondent was for inadequate liability coverage for the period 2002 through 2005.<sup>11</sup> However, Respondent asserts that it is relevant that the actions complained of in this Kentucky action are not the same as those complained of in this action, as Kentucky does not have a disclosure requirement.

As pointed out in the 2006 case, Respondent's professional liability coverage had been cancelled in the fall of 2000.<sup>12</sup> Therefore, the omissions complained of in both prior actions (failure to

---

<sup>8</sup> Board's Findings, ¶33

<sup>9</sup> *Cincinnati Bar Assn. v. Trainor*, 99 Ohio St.3d 318, 2003-Ohio-3634 at ¶2

<sup>10</sup> *Cincinnati Bar Assn. v. Trainor*, 110 Ohio St.3d 141, 2006-Ohio-3825 at ¶3

<sup>11</sup> *Trainor v. Kentucky Bar Assn.*, 311 S.W.3d at 720

<sup>12</sup> *Cincinnati Bar Assn. v. Trainor*, 110 Ohio St.3d 141, 2006-Ohio-3825 at ¶3

secure consent to proceed without liability insurance) occurred before the 2003 or 2006 Bar complaints were filed.

It was wrong of Respondent not to secure the proper paperwork to proceed with a case, however, Respondent disagrees that such constitutes a ‘pattern of misconduct,’ rather than a failure to recognize and correct a wrong. Indeed, Respondent’s counsel during the proceedings below requested that Respondent’s sanction include training in law office management.<sup>13</sup>

In mitigation of Respondent’s wrongdoing, the Board finds that Respondent has made restitution, has cooperated fully with the tribunal below, and has undergone psychological counseling for the stress in his life, which he intends to further pursue.<sup>14</sup> Respondent would like this Court to further consider in mitigation the aforementioned lack of a dishonest, selfish, or other ulterior motive and the lack of a pattern of wrongdoing outside a specific single time period. Certainly, in light of the Board’s acknowledgment of the difficulty in procuring malpractice insurance, the sanction proposed by the Board will further make such a virtual impossibility.

Additionally, Respondent requests that this Court consider the favorable outcome in the Childress case<sup>15</sup>, as well as Childress’ acceptance of Respondent’s lack of insurance<sup>16</sup>, as a

---

<sup>13</sup> Board’s Findings, ¶22

<sup>14</sup> Board’s Findings, ¶¶31-33

<sup>15</sup> Board’s Findings, ¶10

<sup>16</sup> Board’s Findings, ¶7 (“Later in her testimony the client admitted that she probably would have hired Respondent even if he had timely informed her he was self-insured. She disclosed that she had gone to three different lawyers, all of whom declined to represent her, before hiring Respondent. Consequently, by the time she contacted Respondent she was desperate for a lawyer to accept her case.”)

mitigating factors. Indeed, not only would Childress have retained Respondent had she known before hiring him that he lack professional malpractice insurance.<sup>17</sup> The harm done to any victim of a breach in professional responsibility can be considered an aggravating factor<sup>18</sup>, and Respondent respectfully requests that this Court also consider same a mitigating factor – not a lack of wrongdoing, but simply a factor to be considered regarding sanctioning for such wrongdoing. This is particularly relevant in this matter given that not only was Ms. Childress made whole by Respondent’s representation of her, but she also testified that no other attorney she had approached would even consider taking her case, and by the time she approached Respondent, she was “desperate for a lawyer to accept her case.”<sup>19</sup>

### CONCLUSION

Respondent respectfully submits that he has been previously penalized for his failure to notify clients that he did not have liability insurance and that the sanction recommended, suspension for twenty-four months with the final eighteen months stayed, is severe considering the circumstances. Respondent therefore requests that at most, his actual suspension be for a term of no more than three months, and that he be given during that time an opportunity to seek further psychological counseling and office management assistance to better his practice and his life.

---

<sup>17</sup> Board’s Findings, ¶7

<sup>18</sup> Gov. Bar R., §10(B)(1)(h) (“vulnerability of and resulting harm to victims of the misconduct”)

<sup>19</sup> Board’s Findings, ¶7

In support of this request, Respondent refers the Court to the case of *Cuyahoga County Bar Assn. v. Drain*, 2008-Ohio-6141, 120 Ohio St.3d 288, 898 N.E.2d 580 in which the respondent was found to have failed to advise his client that he had no professional liability insurance; lost a client's malpractice claim through neglect and inadequate preparation by missing the statute of limitations; and intentionally prejudiced a client's interests by repeatedly missing established deadlines.<sup>20</sup> In that action, the respondent had no prior disciplinary actions, but never made an effort to compensate his clients, and was found to have engaged in intentional misconduct.<sup>21</sup> The *Drain* respondent was given a six-month suspension, stayed on remedial conditions<sup>22</sup>, a far less severe sanction than the one proposed by the Board in this matter.

Additionally, in the case of *Butler County Bar Assn. v. Matejkovic*, 121 Ohio St.3d 266, 2009-Ohio-776, 903 N.E.2d 633, the respondent was found to have failed to maintain unearned fees in a client trust account and to have failed to disclose his lack of professional liability insurance.<sup>23</sup> In that matter, for which there were no prior disciplinary actions, the respondent was sanctioned by public reprimand.<sup>24</sup>

In light of the foregoing, Respondent respectfully requests that the sanction against him be for no more than three months actual suspension, with conditions as this Court sees fit.

---

<sup>20</sup> *Drain* at ¶2

<sup>21</sup> *Drain, supra*

<sup>22</sup> *Id.* at ¶23

<sup>23</sup> *Matejkovic* at ¶2

<sup>24</sup> *Id.* at ¶7

Respectfully submitted,

  
ROBERT N. TRAINOR  
*Respondent*

**CERTIFICATE OF SERVICE**

I hereby certify that an original and sixteen (16) copies of the foregoing Respondent's Objections to Findings of Fact, Conclusions of Law, and Recommendation of the Board With Request for Oral Argument was this 29<sup>th</sup> day of November, 2010 mailed via USPS Express Mail to:

Clerk  
Supreme Court of Ohio  
65 South Front Street, 8th Floor  
Columbus, Ohio 43215-3431

and

Mr. Paul M. Laufman  
Laufman, Jensen & Napolitano, LLC  
30 Garfield Place, Suite 750  
Cincinnati, Ohio 45202.

  
Robert N. Trainor