

ORIGINAL

No. 2010-1846

IN the SUPREME COURT of Ohio

**OBJECTIONS TO THE FINDINGS OF FACT , CONCLUSIONS
OF LAW AND RECOMMENDATION OF THE BOARD OF
COMMISSIONER ON GRIEVEANCES AND DISCIPLINE OF
THE SUPREME COURT OF OHIO
BOARD OF COMMISSIONER'S CASE NO. 09-083**

Columbus Bar Association
Relator,

v.

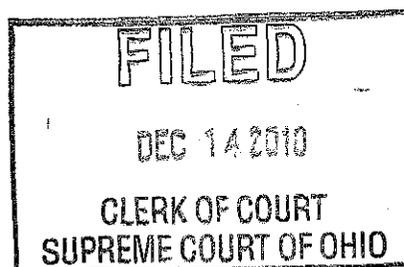
Kenneth Ray Boggs

Respondent.

RESPONDENT'S OBJECTIONS

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IN THE SUPREME COURT OF OHIO

**Columbus Bar Association,
Relator,**

Vs.

Case No. 2010-1846

**Kenneth Ray Boggs,
Respondent.**

Oral Hearing Requested

**RESPONDENT'S OBJECTIONS TO FINDINGS OF FACT, CONCLUSIONS OF
LAW , AND RECOMMENDATION OF THE BOARD OF COMMISSIONERS ON
GRIEVANCES AND DISCIPLINE OF THE SUPREME COURT OF OHIO AND
BRIEF IN SUPPORT OF OBJECTIONS**

Now comes the Respondent, Kenneth Ray Boggs, Ohio Supreme Court Attorney Registration No. 0025305, and submits for this Honorable Supreme Court of Ohio's review and consideration , the Respondent's Objections 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 and Brief in Support of Objections as written below. The following Objections and Brief In Support of Objections show cause as to why the Recommendation of the Board of Commissioners on Grievances and The Supreme Court of Ohio should not be confirmed by this Honorable Supreme Court of Ohio and why the Disciplinary Order so recommended should not be entered.

OBJECTIONS

1. The Respondent, Kenneth Ray Boggs. (hereinafter referred to as "Respondent" hereby objects to the Findings of Fact by the Panel of Hearing Officers, (hereinafter at times referred to

as "Panel"), and the Board of Commissioners on Grievance and Discipline of The Supreme Court of Ohio, (hereinafter referred to as "Board"), as related to each of the unstipulated facts and rule violations from Count Four (The Dotters Matter):

Prof. Cond. R1.1 (failing to provide competent representation):

1.3 (failing to act with diligence and promptness):

1.4(a)(3) failing to keep a client reasonably informed about the status of a matter);

1.5(a)(charging a clearly excessive fee);

8.4(h) engaging in conduct reflecting adversely on the lawyer's fitness to practice law).

Respondent objections are based on the fact they are not supported by the requisite standard of clear and convincing standard of proof and are erroneous.

2. Respondent objects to the unstipulated Findings of Fact and Rules as determined by the Panel and Board for regarding Count Five (The Peacock Matter) of which Respondent was found in violation of one or more of the following Disciplinary Rules;

Prof. Cond. R 1.1 (failing to provide competent representation);

1.3 (failing to act with diligence and promptness);

1.4(a)(3) (failing to keep a client reasonably informed about the status of a matter);

1.5(a) (charging a clearly excessive fee)' and

1.4(c) (failing to give a client notice that a lawyer does not maintain professional liability insurance) that was stipulated

1.15(15) failing to hold in trust client property, ie unearned fees)

8.4 (h) conduct reflecting adversely on the lawyers fitness to practice law

Respondent objects to the unstipulated Findings of Fact and Rules Violations as determined by the Board as the evidence is not supported by the clear and convincing requisite standard of

proof.

3. Respondent hereby further objects to the Discipline of an Indefinite Suspension that was recommended by the Board of Commissioners on Grievances and Discipline of The Supreme Court of Ohio, but not by the Panel of Hearing Officers which heard the witnesses and which examined all the evidence that was submitted.

BRIEF IN SUPPORT OF OBJECTIONS

1. Objections to Count Four (The Doters Matter)

The Panel concluded that Danielle Doters testimony was very credible . The Panel stated on page four of their findings that;

The evidence presented by Danielle Doters is that she gave Respondent \$9700 as a fee to assist her in a matter concerning an estate. The evidence was clear that there was never any explanation of how the fee money was spent, never an engagement letter, no explanation of any kind as to the hours that were used in doing this work, and no communication between Respondent and Danielle Doters about what services she got for her money she gave the Respondent.(Panels Findings Page 4)

The Panel supported the finding by referencing statements from the Panel Hearing transcript pages 218-219 and transcript pages 224-226 However, a review of the statements made at the panel Hearing by Danielle Doters does not stand scrutiny for establishing her to be very credible. First, she stated that she had reached a point after her fathers death (he passed away on November 4, 2006, tr. 173 line 23) with her own negotiations with her deceased fathers girlfriend , Vicky Sagraves that she decided to seek help from Attorney Boggs. (Panel hearing tr 161) She was concerned about the whereabouts and registration to his car (tr162line 14), an issue of a forged insurance check(tr 162, line 12) She stated she retained Mr Boggs at the first meeting at her home (tr 162 line 16-23-tp 163 line 12) She stated that she believed that was going to file an estate for her father. (tr163 line14)check a check signature and BMV for the

registration.

Mrs Dotters denied that Mr Boggs ever sent her a letter telling her what he was going to do. (tr 164 line 18-20) She stated she never received a single mailing from him.(tr 164 line 23-tr 165 line 1) She stated that she rarely talked to Attorney Boggs on the telephone. She said she would call Attorney Boggs once a week –twice a week, Danielle Dotters when asked how often Attorney Boggs returned her telephone calls she responded once a month(tr 166 line 10-12) She also admitted that Attorney Boggs was at her home in person to pick up more documents(tr 167 line 3-7) Upon cross examination , Danielle Dotters admitted she wrote the check to Attorney Boggs the second Not the first time he was at her home but the second time he was at her home and her husband was involved and her husband left it up to her to decide to hire Attorney Boggs .(tr 169 line 13-23) (tr 171 line 10-17) , (tr 188 line 19-22)She testified that Attorney Boggs quoted her a flat fee of \$10,000 and there would court fees as well.(tr 214 line 15-21-, tr215 line 13, (tr 218 line 14 (a flat fee was discussed) She wrote the check for \$9700.(tr 170 line 7-18). She remembered on cross examination that I returned a couple days after the first meeting and obtained a check. (tr 170 line 22) At the first meeting she stated she and Attorney Boggs discussed that her dads girlfriend lived on Eureka Avenue(tr 171) Ms Sagraves is a pill head and Danielle Dotters stated she told me nasty things about her and she was at her wits end with her. (tr. 174 line) Ms Dotters admitted she knew her father had very little, if any , of an estate.(tr. 174 line 15-19, Danielle Dotters did not get along with Vicky Sagraves and that day she hired Attorney Boggs was the last day she had spoken to her. Mrs Dotters wanted to pursue any and all legal actions against Vicky Sagraves. (tr 177 line 8-tr 177 line 18) Danielle Dotters admitted that during the time Attorney was working for her she and Attorney Boggs had a conversation concerning Mr Boggs receiving a telephone call from Danielle Dotters brother. (tr 179 line 3-17)

(tr 193 line 4) Ms Dotters stated her brother has a drug problem and he was calling her to obtain me money but she said she had given me her money (tr 193 line 13) Danielle Dotters

Respondent had stated he had mailed several letters to Vicky Sgrave (Respondents exhibits K) Respondent also had mailed a letter on January 26, 2007 outlining their discussions leading p to Attorney Boggs being hired by Danielle Dotters. (Respondents Ex L) Danielle Dotters admitted the contents of the letter was accurate as to the first two meetings at her home . tr 188, line 10-14)(tr 191 line 6-17) . It is clear that the initial story concerning Daniell Dotters knowledge as to what Attorney Boggs was planning on doing with her money she had paid him and him staying in contact with her at least on a monthly basis via telephone from January 26, 2007 up to August 1, 2008 when she filed her complaint and her entire story does not stand scrutiny after she was on direct examination by the Relators counsel and her story changed upon cross examination by Respondent. Relator admitted that they had no evidence that Respondent did not mail to Danielle Dotters Respondent Exhibit L. as Respondent testified to (tr. 337 (tr 369line 8-14) The law presumes a letter is received and delivered once there is evidence it was mailed. Respondent stated he mailed the Respondent Exhibit L and it was not returned to him, **Griffin v General Acci. Fire & Life Assur. Co.** 91953) 94 Ohio App. 403, 52 Ohio Ops. 123 If Danielle Dotters was really not reasonably informed and unhappy with her attorney representations to what was going on with her matters by Respondent she would have and should have scheduled an office appointment with Respondent rather than wait for eighteen months to file a complaint . She was speaking with him by own testimony every month during that time according to her own testimony, Danielle Dotters and the stipulations in the case by the parties herein clearly reflect that the client was kept reasonably informed as to what Respondent was hired to do, was in fact trying to do, and the difficulty that was encountered by the ex girl

friend being a pill head. Hence, the findings that were made by the Panel and adopted by the Board are not sufficient to establish by clear and convincing evidence any violations that were not stipulated and are erroneous as a matter of law.

2. Count Five (The Peacock Matter)

Mr Peacock stated that he met with the Respondent twice before Respondent agreed to represent him. (tr 229 line 2-4) Mr Peacock stated that he was told the legal fees would be \$4000 and he replied he could not pay Respondent for 90 days. (tr tr 229 line 6) Mr Peacock stated he left documentation as to his recent case and a previous case. He was in Respondents office on November 27, 2007 and he paid Respondent on January 24, 2008. Respondent informed Mr Peacock he could not try his case unless Ohio Department of Youth Serices waived their right as well as the union. (tr245-246) He admitted he knew the union and state would not waive the union right to provide his counsel for his arbitration hearing. He stated even though Respondent was not paid on November 2007 he left his pretty thick files with Respondent. (tr 260 line 24-tr 261 line 21) Mr Peacock filed his Complaint against Respondent in March 2009. (tr 262 line17-21) Mr Peacock stated he personally discussed his case with Respondent no more than four times. (tr 263) Mr Peacock admitted he never requested an itemized bill from Respondent. (tr 287 line 18) Mr Peacock knew from his discussions with Respondent that Respondents hourly rate is \$250 . (tr 287 line 21) Mr Peacock stated that he discussed the arbitration ruling "maybe once or twice"; (tr 235) The Panel had a difficult time understanding what Mr Peacock had hired . Respondent to assist in getting his employment back with the state and all pay and benefits. The arbitration decision on his October 2007 discharge just awarded him his job back and no back pay or benefits like they did in the 2001 case. he did not trust the union attorneys. Respondent contacted the union attorneys and offered his assistance (tr 351-352

after he read his disciplinary packet(tr 347) and before they had the arbitration hearing.(Respondents Exhibits I and R were provided to Respondent by Mr Peacock in the office on December 17, 2007. Respondent reviewed the case law and the arbitrators award and advised him that was all that could be done regarding the arbitration ruling .(Stipulations32-34). Additionally , per Stipulations 31-33, Mr Peacock wanted Respondent to help him pursue a complaint with the Ohio Civil Rights Commission and Respondent refused as he explained and as the parties stipulated Respondent informed him he had no case with the Ohio Rights Commission. Mr Peacock stated he did in fact lose the Ohio Civil Rights case .

Hence, there was insufficient evidence to support the additional Prof. Conduct Rule violations found by the Panel and adopted by the Board herein. The evidence did not rise to the level of clear and convincing as to; Prof Cond R 1. 4(a)(3) not keeping he client reasonably informed ; Rule 1.1 he was provided competent representation . There was nothing in the record that justified the violation determination of Prof Cond Rule 8.4(h) conduct reflecting adversely on the lawyers fitness to practice law, or Rule 1. 3 not acting diligently and promptness. Respondent testified that all that could be done for Mr Peacock was in fact done.

3. Respondent hereby further objects to the discipline of Indefinite Suspension that was recommended by the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio , but Respondent does not object to the recommended sanction by the Panel of hearing officers which heard the witnesses , examined the evidence and weighed all evidence that was submitted.

The Panel that heard the testimony and reviewed the evidence in this case has the greater advantage of all concerned in weighing the credibility and demeanor of the witnesses for all parties. The Panel also was able to determine the candor and sincerity of the Respondent in the proceedings. This Court is not bound by the conclusion of either the panel or board in determining the propriety of an attorney's conduct or the appropriate sanction. **Disciplinary**

Counsel v Furth, (2001) 93 Ohio St 3d 173, 754 N.E.2d 219. The disciplinary process exists “not to punish the offender but to protect the public from lawyers who are unworthy of the trust and confidence essential to the attorney-client relationship and to allow us to ascertain the lawyer’s fitness to practice law. **Akron Bar Assn v Catanzarite** , 118 Ohio St 3d 313, 2008 – Ohio- 4063. There are no two cases alike so it is important to craft the sanction that is appropriate to the facts and the law. In the case at bar the fact that there are multiple violations in and of themselves does not justify a license suspension. **Disciplinary Counsel v Taylor**, 130 Ohio St . 3d 366, In the case at bar the Respondent did not have a selfish or dishonest motive. Attorney Dale Musilli testified he has known Respondent over 40 years and he knows that as to the character and reputation of Respondent it is as being honest and dedicated to his clients. (tr 303-306) He would be shocked to hear someone state Respondent lied to them . Attorney Musilli also stated that Respondent is straightforward and candid with his clients and is a competent lawyer. Attorney Dale Musilli has referred cases to Respondent and has worked on cases with Respondent. This Court when imposing sanctions for attorney misconduct has considered all relevant factors, including the duties violated, the lawyer’s mental state, and sanctions in similar cases. Attorney Dale Musilli testified that he would be shocked to hear that Respondent had lied to a client and has never known him to lie to anyone. (tr 306 line 4-14)

Respondent hereby strongly moves this Court to disregard the sanction recommended by the Board for an indefinite suspension and for this Court to issue an order that the Respondent is to be sanctioned per the Panel’s recommendation that the :

Respondent be suspended from the practice of law for two years, with one year of that suspension stayed, and in the second year that Respondent is to be monitored by someone who is an expert , or by someone who is knowledgeable, in the area of law office management and maintaining an IOLTA trust account. If Respondent violates any of the provisions of the monitor’s oversight during the second year he shall be immediately

suspended for the second year. Respondent must make restitution to Danielle Dotters and Marcus Peacock and pay the costs of these proceedings.
(Panels and Boards Recommendation pg 14)

Such a sanction meets the standards announced by this Court in previous cases where Sanction was a two year license suspension and a stay of one year with conditions where the Respondent Vogtsberger, unlike here with Attorney Boggs, had been uncooperative with the disciplinary process and had multiple violations . **Disciplinary v. Vogtsberger** , 119 Ohio St. 3d 458, 2008-Ohio -4571, 895 N.E. 158 , **Cuyahoga County Bar Assn v Cook** , 121 Ohio St 3d 2009. In the case of **Disciplinary Counsel v McShane** , (2009) 121 Ohio St. 3d 169, 902 N.E. 2d 980 the respondent had a legal career of over 35 years and was found to have committed multiple violations of misconduct; failed to promptly repay unearned fees and failed to cooperate with the disciplinary process; had a good reputation of professional competence. In **McShane** this Court ordered as a sanction a two year license suspension. See also **Lake County Bar Assn v Ryan**, 109 Ohio St. 3d 301, 2006-Ohio -2422-practicing lawyer for 27 years committed multiple violations including a pattern of misconduct of neglect of client matters ;causing harm to three clients; and failed to promptly return fees. The Panel referred to their evaluation of the applicable caselaw of **Disciplinary Counsel v Wise** 2006 –Ohio-1194, 108 Ohio St 3d 381 and **Cleveland Metro Bar Assn. v Kaplan** , 124 Ohio st 3d 278, 2010-Ohio -167 , and **Columbus Bar Assn. Thomas**, 124 Ohio St3d 498, 2010-Ohio-604 in their analysis of case law for an appropriate sanction Yet, unlike the Board , the Panel did not recommend an indefinite suspension of Respondent’s license to practice law due to the distinguishing factors mentioned in the Findings of Fact , Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio , page 13-14. In **Wise**, the Respondent , already serving a license suspension also failed to cooperate in the disciplinary

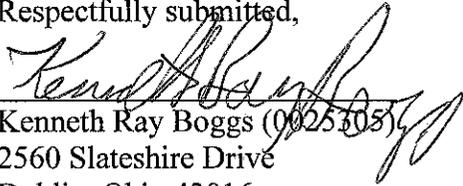
process, provided evasive testimony, and lacked a sense of responsibility and remorse for his misconduct according to the Panel who saw Respondent Wise testify. Respondent herein has great remorse and sense of responsibility to the practice of law and the representation of his clients.

In the final analysis , the appropriate sanction in this case is two year suspension with a one year stay with the aforementioned conditions by the Panel.

PRAYER FOR RELIEF

Wherefore, for the foregoing reasons, the Respondent , Kenneth Ray Boggs , respectfully prays that this Honorable Supreme Court of Ohio not confirm , not enter, and overrule the Findings of Fact , Conclusions of Law and Recommendations in the Report of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio against Respondent and limit the sanction against the Respondent herein to the sanction of a two year license suspension with the second year stayed upon conditions as was the Recommendation of the Panel that heard the evidence and observe the demeanor of the Respondent .

Respectfully submitted,


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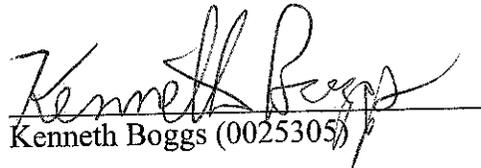
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CERTIFICATE OF SERVICE

A copy of the foregoing Respondent's Objections to Findings of Fact, Conclusions of Law, and Recommendation of the Board of Grievances on Discipline to the Supreme Court of Ohio was served upon Jonathan W. Marshall, Secretary for the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, and Bruce Campbell, Alysha Clous , and Michael Close of the Columbus Bar Association by regular US. Mail this 14th day of December , 2010.


Kenneth Boggs (0025305)