

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

10-2173

In Re:

Complaint against

John Brooks Cameron
Attorney Reg. No. 0055800

Case No. 09-088

Findings of Fact,
Conclusions of Law and
Recommendation of the

Respondent

Medina County Bar Association

Relator

FILED

DEC 14 2010

CLERK OF COURT
SUPREME COURT OF OHIO

Board of Commissioners on
Grievances and Discipline of
the Supreme Court of Ohio

1. This matter was heard on June 22, 2010 in Columbus, Ohio before panel members Patrick Sink of Cleveland, Roger Gates of Hamilton, and Walter Reynolds, Chair, Dayton, Ohio. None of the panel members resides in the appellate district from which the complaint arose, or served on the probable cause panel that considered this matter. Representing Relator, the Medina County Bar Association, were William Steiger and John Porter. Respondent was represented by Cheryl Atwell and Thomas Henretta.
2. Respondent, John Brooks Cameron, was admitted to the practice of law in the State of Ohio on November 18, 1991.
3. On November 6, 2009, Relator filed a two-count complaint against Respondent. Count 1 alleged a violation of Prof. Cond. R. 4.2 which provides:

(a)(1)-A lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.

4. Count 2 alleges a violation of Prof.Cond. R. 3.3 which provides:

A lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

5. In January 2006, Respondent filed a personal injury slip-and-fall lawsuit on behalf of Pamela Garens. In late 2005, Respondent retained Michael Wright, President of Safety Through Engineering ("STE") to be an expert witness. Respondent paid STE \$2,000. This initial engagement was not memorialized in a written agreement.

6. On March 19, 2007, Respondent signed a written contract with STE for expert consulting services ("Consulting Agreement"). The written agreement acknowledged the receipt of the initial \$2,000 retainer, and the agreement required that all invoices be paid in full within 15 days of the invoice date.

7. On April 2, 2007, STE sent Respondent an invoice for \$7,008 for expert consulting services. On April 23, 2007, Respondent dismissed the Garens' lawsuit without prejudice.

8. After the April 2, 2007 invoice was sent to Respondent, Mr. Wright testified that the payment terms of the March 19, 2007 Consulting Agreement were modified to permit the invoice to be paid in monthly installments of \$500 each. Wright testified that, prior to filing suit, he never received any of the \$500 monthly installment payments and did not receive any other payments except for the initial \$2,000 retainer which was received in or about March 2005.

9. On April 15, 2008, Respondent re-filed the case for Ms. Garens.

10. On June 30, 2008, STE sued Respondent for the unpaid invoice in the sum of \$7,008 in the Medina County Court of Common Pleas. On July 2, 2008 Respondent was served with the summons and complaint by certified mail. Respondent was required to serve a response by July 30, 2008. (Resp. Ex. J and K)

11. By reason of the service of the complaint and summons, Respondent was on notice that STE was represented by attorney Adam Webber employed with the Green & Green law firm located in Dayton.

12. Having received no response to the complaint or a request for an extension of time, on August 25, 2008, counsel for STE filed a motion for default judgment.

13. On August 27, 2008, Respondent was served with notice of a non-oral default hearing set for September 5, 2008.

14. On or about September 4, 2008, Respondent contacted STE and spoke to Michael Wright. This conversation occurred 64 days after Respondent was served with the lawsuit and one day prior to the September 5, 2008 non-oral hearing on STE's motion for default. Respondent knew that STE was represented by Webber. Respondent testified that he attempted to contact Webber by telephone but was not able to get through to him so Respondent proceeded to call STE's President, Mr. Wright. (Joint Ex. 1) Respondent testified that this conversation occurred before he received notice of the default hearing set for September 5, 2008.

15. Webber testified that on September 4, 2008, his client Wright called him and reported that Respondent had telephoned him. Webber further testified that the conversation between Wright and Respondent occurred either on September 3 or 4. (Tr. 36) Wright was confused by the conversation and all parties agreed that part of the conversation related to settlement discussions regarding the pending lawsuit filed by STE.

16. Webber questioned Respondent's attempt to contact him prior to calling his client directly. Webber testified that the Green & Green law firm is a modern law firm, fully staffed during normal business hours. The firm has voicemail for after hours, and Webber's e-mail address and fax number are set forth on the complaint filed against Respondent. Webber was unable to confirm that Respondent actually attempted to contact him before calling his client directly.

17. Respondent alleged that the reason he contacted STE was to find out whether STE would continue to provide expert services in light of the pending suit. Respondent contends that STE's President, Wright, brought up the subject of the unpaid debt. Respondent contends that as a result of this conversation, he reached an agreement with STE wherein the suit would be dismissed in exchange for Respondent's agreement to pay the invoice in monthly installment payments similar to the prior \$500 per month agreement that was not adhered to by Respondent.

18. Wright contends that he insisted that the lawsuit would not be dismissed without full payment and confirmed this position with his attorney Webber on September 4, 2008. Webber confirmed STE's position with Respondent in a telephone conversation on September 4, 2008 at 4:45 p.m. (Tr. 111-112)

19. In this case, the evidence is clear and convincing that Respondent violated Prof. Cond. R. 3.3 by communicating with Wright about (1) the pending lawsuit filed by STE; (2) the terms of a settlement allegedly involving acceptance by STE of installment payments; and (3) the immediate dismissal of the lawsuit in exchange for Respondent's promise to pay the full amount in monthly installments. Even if the Panel were to accept Respondent's assertion that the purpose of his communication with Wright was to obtain assurance that Wright would continue as Respondent's expert witness, Respondent had a duty not to discuss the pending lawsuit filed

by STE against him, not to discuss settlement of the suit and not to discuss the terms of the dismissal of the suit.

20. After the September 4, 2008 conference with Wright, Respondent's attorney, Robert Tibbitts filed a motion for extension of time to file answer. This motion was filed on September 4, 2008 at 4:11 p.m. The motion stated, in part that:

“Defendant and Plaintiff have agreed upon a settlement to the above-captioned matter. As part of this settlement, the Plaintiff is supposed to dismiss the complaint prior to the default hear (sic) scheduled for September 5, 2008. If Plaintiff fails to dismiss the case as agreed, Defendant requests a brief continuance of ten (10) days in which to file a response to Plaintiff's complaint.” (Resp. Ex. L)

21. At no time prior to the filing of the September 4, 2008 motion for extension had Respondent or Tibbetts contacted STE's counsel to request an extension or to discuss settlement of the lawsuit. Moreover, Tibbetts testified during his deposition that he was not a party to the discussions between Respondent and Wright which occurred on either September 3 or 4 which allegedly was the basis for the representations made in the September 4 motion for extension of the answer date. Nevertheless, the court granted the extension.

22. On October 14, 2008, Respondent filed a response to STE's motion for reconsideration. The response was supported by Respondent's affidavit. Respondent, in his affidavit, represented to the court that he and STE came to an agreement that the case would be dismissed and that STE would accept payments in installments. (Joint Ex. 1)

23. Wright denies that he agreed to dismiss the complaint in exchange for an agreement to make installment payments.

24. Webber testified that on September 4, 2008 he was contacted by Respondent at approximately 4:45 p.m. Webber testified that in his conversation with Respondent, Respondent

stated that he wished to settle the case. (Tr. 38) Respondent did not tell Webber that Respondent had actually reached a settlement, that the case was to be dismissed prior to the September 5 default hearing and that the debt was to be paid in installments. Thus, there is conflicting testimony regarding whether a settlement was reached between Respondent and STE on or about September 4. The panel, as the trier of facts, concludes that Respondent's representations to the court that a settlement was reached are simply not credible.

25. The panel finds by clear and convincing evidence that at the time of the filing of the September 4, 2008 motion to extend the answer date, and at the time of the filing of the October 14, 2008 response to STE's motion for reconsideration with Respondent's affidavit, Respondent misrepresented to the court that he had reached a settlement with STE, that STE had agreed to dismiss the lawsuit and that STE had agreed to accept installment payments. Although the September 4, 2008 motion to extend the answer date was signed by Robert Tibbitts as counsel for Respondent, Tibbitts was employed by Respondent's law firm and Respondent was the sole source for the factual information supporting to motion. At no time did Respondent disaffirm the facts supporting the motion, and basically continued to make the same false statements in his affidavit filed with the response to STE's motion for reconsideration. Thus, the panel finds that Respondent violated Rule 4.2(a)(1) in failing to correct the false statements made in the September 4 motion for an extension of time and in making the false statements made in Respondent's affidavit filed with the October 14 response to STE's motion for reconsideration.

MITIGATION AND AGGRAVATION

26. In mitigation, Respondent does not have a prior disciplinary record. Also, evidence of Respondent's good character and professionalism was testified to in letters from several attorneys and a municipal court bailiff. Further, Medina County Common Pleas Judge

James Kimbler appeared at the hearing and testified as to Respondent's good character, courtesy and professionalism. However, Judge Kimbler admitted that he was not aware of the facts relating to the disciplinary case.

27. In aggravation, the panel finds that Respondent acted with a selfish or dishonest motive and this grievance involved multiple offenses. Respondent at the hearing, and in his post-hearing brief, refused to acknowledge that it was inappropriate for him to bypass counsel for STE and to negotiate directly with Wright regarding the pending lawsuit. The timing and circumstances surrounding the Respondent's September 4 phone conference with Wright suggest that the purpose of the call was to discuss settlement of the case and not whether Wright would continue to provide expert testimony. This call came one day prior to the non-oral hearing on STE's motion for default. Further, Respondent offered no evidence that there was activity occurring in the Garens' case which necessitated Respondent contacting Wright to assure that he would continue to act as an expert witness. Because Respondent refused to correct the false statements made in the motion for extension of the answer date and in the response to the motion for reconsideration, STE's counsel was required on October 21, 2008 to drive from Dayton to the Medina Common Pleas Court for a hearing on the motion for reconsideration. Webber testified that the only purpose for attending the hearing was to address the motion filed by STE for reconsideration of the extension of time for Respondent to file a response to the complaint. The total time expended by Webber was 7.6 hours. Webber testified that his hourly rate was \$150 per hour.

SANCTION

28. Relator requested a one-year suspension. Respondent requested that the case be dismissed with no sanctions imposed.

29. The Supreme Court has held that attorney misconduct involving dishonesty, fraud, deceit, or misrepresentation, warrants actual suspension from the practice of law because this Court “cannot permit attorneys who lie either to their clients or to the Court to continue practicing law without interruption.” *Disciplinary Counsel v. Fowerbaugh* (1995), 74 Ohio St.3d 187, 190-191, quoting *Disciplinary Counsel v. Greene* (1995), 74 Ohio St.3d 13, 16.

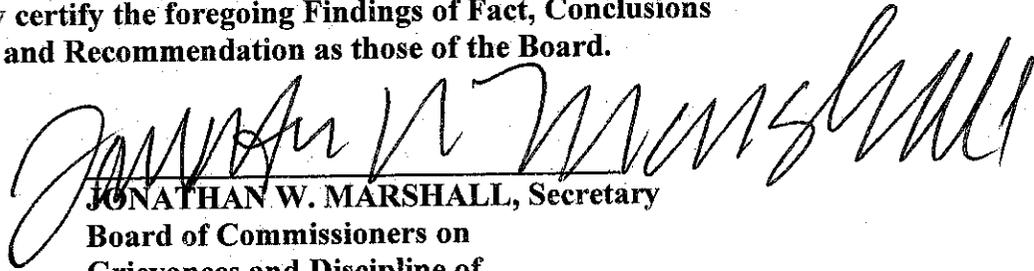
30. In reaching its decision regarding the appropriate sanction, the panel considered *Lake Cty. Bar Assn. v. Speros* (1991), 73 Ohio St.3d 101 (six-month suspension for submitting a false affidavit in support of the reinstatement of an appeal) and *Disciplinary Counsel v. Rohrer*, 124 Ohio St.3d 65, 2009-Ohio-5930 (six-month suspension for disobeying a court order and lying about it to the judge during a hearing).

31. In this case, considering the evidence presented by Respondent attesting to his good reputation and considering that this was Respondent’s first offense, the panel recommends that Respondent be suspended from the practice of law for six months, with all costs taxed to Respondent.

BOARD RECOMMENDATION

Pursuant to Gov. Bar Rule V(6)(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on December 3, 2010. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Panel and recommends that Respondent, John Brooks Cameron, be suspended for a period of six months. The Board further recommends that the cost of these proceedings be taxed to Respondent in any disciplinary order entered, so that execution may issue.

**Pursuant to the order of the Board of Commissioners on
Grievances and Discipline of the Supreme Court of Ohio,
I hereby certify the foregoing Findings of Fact, Conclusions
of Law, and Recommendation as those of the Board.**



**JONATHAN W. MARSHALL, Secretary
Board of Commissioners on
Grievances and Discipline of
the Supreme Court of Ohio**