

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

11-0307

In Re:	:	
Complaint against	:	Case No. 10-077
Gordon Pearce Shuler	:	Findings of Fact,
Attorney Reg. No. 0019315	:	Conclusions of Law and
	:	Recommendation of the
Respondent	:	Board of Commissioners on
	:	Grievances and Discipline of
Disciplinary Counsel	:	the Supreme Court of Ohio
	:	
Relator	:	
	:	

This matter was heard on January 26, 2011, in Columbus, Ohio before panel members Judge John B. Street of Ross County, and Charles E. Coulson, Chair, of Lake County. Neither of the panel members resides in the appellate district from which the complaint originated or served on the probable cause panel that considered this matter. The third panel member, Lisa L. Fabbro, was unable to attend the hearing. Respondent and Disciplinary Counsel agreed to proceed with the two remaining panel members and authorized them to make all Findings of Fact, Conclusions of Law and the Recommendation to the Board. Representing Relator, Disciplinary Counsel, was Carol A. Costa and representing Respondent was Geoffrey Stern.

FILED
 FEB 24 2011
 CLERK OF COURT
 SUPREME COURT OF OHIO

FINDINGS OF FACT, CONCLUSIONS OF LAW

The panel finds by clear and convincing evidence the following:

BACKGROUND

Respondent, Gordon Pearce Shuler, was admitted to the practice of law in the State of Ohio on May 5, 1973. On November 15, 2010, Disciplinary Counsel filed a two-count amended complaint charging Respondent with misconduct and violations of the Rules of Professional Conduct.

Relator and Respondent filed Agreed Stipulations. A copy of the Agreed Stipulations is attached hereto and incorporated herein. The attached stipulations are very fact specific so there is no need to repeat the facts here.

Respondent stipulated to all of the relevant facts in the complaint. Respondent also stipulated to all of the rule violations of misconduct contained in the complaint with the exception that Disciplinary Counsel agreed to dismiss from both counts a violation of Gov. Bar R. V(4)(G) in light of the fact that Respondent stipulated to a violation of Prof. Cond. R. 8.1 (a lawyer shall not knowingly fail to respond in a disciplinary investigation). In addition to the stipulation of facts, the parties stipulated to all twenty-three exhibits submitted to the panel. Testifying before the panel were Respondent, three character witnesses, and Geoffrey L. Smalldon, PhD., who provided mitigation testimony.

Based upon the Agreed Stipulations, the exhibits, and the testimony of Respondent, the hearing panel found by clear and convincing evidence that Respondent's conduct violated the following Rules of Professional Conduct:

COUNT ONE:

- (i) Prof. Cond. R. 1.3 (a lawyer shall act with reasonable diligence and promptness in representing a client);
- (ii) Prof. Cond. R. 1.4(a)(2), (3) and (4) (a lawyer shall reasonably consult with a client concerning the client's objectives, shall keep the client reasonably informed about the status of the matter and shall comply as soon as practicable with reasonable requests for information from the client);
- (iii) Prof. Cond. R.1.15(d) (a lawyer shall promptly deliver property to a client);
- (iv) Prof. Cond. R. 8.1 (a lawyer shall not knowingly fail to respond in a disciplinary investigation); and
- (v) Prof. Cond. R. 8.4(h) (conduct that adversely reflects on the lawyer's fitness to practice law).

COUNT TWO:

- (I) Prof. Cond. R. 1.3 (a lawyer shall act with reasonable diligence and promptness in representing a client);
- (ii) Prof. Cond. R. 1.4(a)(2), (3) and (4) (a lawyer shall reasonably consult with a client concerning the client's objectives, shall keep the client reasonably informed about the status of the matter and shall comply as soon as practicable with reasonable requests for information from the client);
- (iii) Prof. Cond. R. 8.1 (a lawyer shall not knowingly fail to respond in a disciplinary investigation); and
- (iv) Prof. Cond. R. 8.4(h) (conduct that adversely reflects on the lawyer's fitness to

practice law).

MITIGATION

Relator and Respondent stipulated to the following mitigating factors pursuant to BCGD Proc. Reg. 10(B)(2):

- (a) absence of prior disciplinary record; and
- (b) absence of a dishonest or selfish motive.

The panel also finds, based upon the character reference letters and the testimony of the character witnesses, that Respondent is highly regarded as a talented, hard working, fair attorney, whose character and integrity are above reproach, and that the two matters which give rise to this complaint are an aberration of an otherwise spotless thirty-seven year career.

Although not found in the written stipulations, after the testimony of Geoffrey L. Smalldon, PhD, Forensic Psychologist, both Respondent and Relator stipulated that Respondent has been diagnosed by qualified health care professional to have clinically significant symptoms of depression that contributed to the misconduct alleged in the complaint, and that Respondent has a sustained period of successful treatment and that his prognosis is that he is able to engage in competent, ethical professional practice. (Tr. 158) From August 2006 to the present, Respondent has engaged in therapy with psychiatrist Douglas Beech, MD, who says Respondent's prognosis with continued treatment is good. On January 24, 2011, Respondent entered into a three-year OLAP contract to monitor continued progress of his mental health treatment.

AGGRAVATION

The parties stipulate and the panel finds that there are no aggravating factors.

RECOMMENDATION

Respondent recommends that he receive a six month suspension all of which is stayed on the condition that he maintain and successfully complete his OLAP contract. After Relator was able to hear the testimony of Dr. Smalldon, Relator also recommended that Respondent receive a six month suspension all of which is stayed on condition he successfully complete his three year OLAP contract.

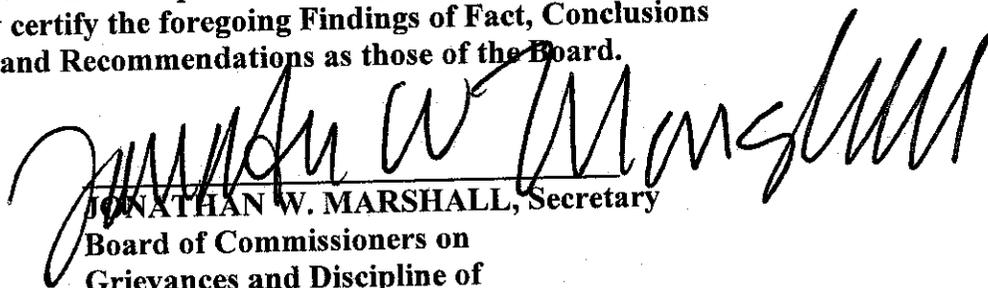
In support of Relator's recommended sanction, Relator cites *Cincinnati Bar Assn. v. Wilson* (2000), 89 Ohio St.3d 243, *Disciplinary Counsel v. Harp* (2001), 91 Ohio St.3d 385, and *Dayton Bar Assn. v. Sebree*, 96 Ohio St.3d 50, 2002-Ohio-2987. Relator cites these cases as being similar to the conduct of Respondent and where the Supreme Court imposed a six-month stayed suspension. The panel feels that the actions of Respondent are not as egregious as those in the above cited cases. However, the panel does agree with the recommended sanction and recommends that Respondent be suspended from the practice of law in the state of Ohio for six months with the entire suspension stayed on condition that Respondent successfully complete his three year OLAP contract.

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 February 11, 2011. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Panel and recommends that Respondent, Gordon Pearce Shuler, be suspended for six months with the entire six months stayed upon the conditions contained in the panel report. The Board further

recommends that the cost of these proceedings be taxed to Respondent in any disciplinary order entered, so that execution may issue.

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


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

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

In re: :

Gordon Pearce Shuler, Esq. :
3735 Carroll Southern Road :
Carroll, OH 43112-9702 :

AGREED STIPULATIONS

Attorney Reg. No. 0019315 :

FILED

Respondent, :

JAN 19 2011

**BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE**

Disciplinary Counsel :
250 Civic Center Drive, Suite 325 :
Columbus, Ohio 43215-7411 :

Case No. 10-077

Relator. :

AGREED STIPULATIONS

Now come relator, Disciplinary Counsel, and respondent, Gordon Pearce Shuler, and enter into the following stipulations:

STIPULATED FACTS

1. Respondent, Gordon Pearce Shuler, was admitted to the practice of law in the State of Ohio on May 5, 1973, and at all relevant times has been subject to the Ohio Rules of Professional Conduct, and the Supreme Court Rules for the Government of the Bar of Ohio.

COUNT ONE

Dr. Fredric Gohl

2. Dr. Fredric Gohl contacted respondent on April 25, 2008 to represent him with regard to five real estate transactions in which he believed he had been defrauded.
3. After some discussions between Gohl and respondent regarding the case over the next few months Gohl signed a contract with respondent on August 25, 2008 which stated that a \$10,000 advance payment was required, respondent's services would be billed at \$300 per hour, and that Gohl would be billed monthly.
4. Gohl wrote a check to respondent for \$10,000 and respondent deposited it into his IOLTA on August 27, 2008.
5. Initially, respondent completed some investigative work to determine whether Gohl's case was meritorious. Respondent's law clerk also expended over 75 hours on the matter reviewing numerous documents.
6. Gohl received one billing statement from respondent dated September 9, 2008 reflecting that respondent charged \$2,910 for services rendered, leaving a balance of \$7,090. (Respondent actually worked 12.7 hours, but only billed 9.7 as a courtesy).
7. Respondent withdrew \$2,910 from his IOLTA on September 9, 2008.
8. Respondent withdrew another \$3,000 from his IOLTA on November 12, 2008, although he had not sent Gohl another billing statement since September 9, 2008.
9. Respondent spoke with Gohl several times during the representation, but after a conference call between them on January 16, 2009, and a subsequent letter of February 27, 2009, respondent ceased communicating with his client.
10. Gohl sent respondent two letters in September and October, 2009 requesting a status report and/or a return of the balance of the retainer paid. Respondent did not reply.

11. After relator received a grievance from Gohl, it forwarded a letter of inquiry to respondent dated January 13, 2010.
12. Respondent received the letter of inquiry but did not reply.
13. Relator sent another letter of inquiry to respondent on April 19, 2010.
14. Respondent received the April 19, 2010 letter of inquiry but did not reply.
15. On May 18, 2010 relator's investigator went to respondent's residence address and left a subpoena with respondent's wife. The subpoena required respondent to appear for a deposition at relator's office on June 8, 2010 and to bring Gohl's complete file. Respondent did not appear pursuant to the subpoena.
16. Relator's investigator taped a notice of intent to file a disciplinary complaint on the door of respondent's residence on July 28, 2010.
17. On August 4, 2010 relator received a written response from respondent who acknowledged that he received relator's letters and the subpoena but had not opened the envelopes until that date.
18. Respondent admits that after February 2009 he "simply ignored" Gohl during the representation.
19. Respondent advised relator that he has suffered from and has been treated for clinical depression for a number of years.
20. Respondent was deposed by relator on November 22, 2010, and was accompanied by counsel.
21. After receiving relator's notice of intent, respondent provided relator with an IOLTA check for \$7,090 representing a refund of the remaining balance, which relator forwarded to Gohl.

VIOLATIONS

The parties stipulate that respondent's conduct in Count One violates the following:

22. Prof. Cond. R. 1.3 (A lawyer shall act with reasonable diligence and promptness in representing a client).
23. Prof. Cond. R. 1.4(a)(2)(3)(4) (A lawyer shall reasonably consult with a client concerning the client's objectives, shall keep the client reasonably informed about the status of the matter and shall comply as soon as practicable with reasonable requests for information from the client).
24. Prof. Cond. R. 1.15(d) (A lawyer shall promptly deliver property to a client).
25. Prof. Cond. R. 8.1 (A lawyer shall not knowingly fail to respond in a disciplinary investigation).
26. Prof. Cond. R. 8.4(h) (A lawyer shall not engage in any other conduct that adversely reflects on the lawyer's fitness to practice law).
27. The parties stipulate to a dismissal of a violation of Gov. Bar R. V(4)(G) due to the stipulation set forth in paragraph 25.

COUNT TWO

BRETT AYER

28. Respondent represented Brett Ayer beginning in April 2009 regarding a claim arising from defective materials and/or workmanship related to the painting/restoration of his classic car. No fees were agreed upon or paid.
29. After some initial communications and activity, respondent stopped communicating with Ayer.
30. On September 10, 2009 respondent sent Ayer an e-mail apologizing for neglecting the file, and asking several questions regarding the substance of the claim.

31. On or about November 17, 2009 the Columbus Bar Association forwarded a letter of inquiry to respondent regarding a grievance it received from Ayer. The letter requested a response within 10 days, but respondent did not reply.
32. On January 21, 2010 Attorney Bridgette Roman, who was assigned to investigate the grievance on behalf of the bar association, had a conversation with respondent during which she informed him why she was calling. Respondent informed Roman that he was very busy and that he had received Ayer's complaint but had not responded.
33. Respondent advised Roman he would return her call at 3:00 p.m. the same day, January 21, 2010.
34. Instead of calling at 3:00 p.m., respondent called Roman at 2:04 and left a voicemail message that he would call her later the same day. Respondent did not do so.
35. Thereafter, Roman left two additional messages for respondent at his office number but received no response.
36. On February 12, 2010 Roman mailed respondent a letter at the address to which the prior correspondence had been mailed. That letter was returned as "undeliverable."
37. When Roman had received the returned letter on March 1, 2010, she e-mailed a copy of the letter to respondent's e-mail address listed in the Columbus Bar Association's directory. The e-mail was returned as the recipient's mailbox was full.
38. On March 8, 2010 Roman faxed a letter to respondent to the fax number listed in the Columbus Bar Association's directory. The fax report showed "normal" but no response was received.
39. Roman sent the letter to respondent again by e-mail on March 9 and March 15.
40. On March 15, 2010 Roman received a call from respondent who agreed to speak with her on March 18, 2010.

41. During the call of March 18, 2010 respondent admitted to Roman that he had neglected Ayer's matter and had neglected to respond to the inquiries from the bar association. Respondent also explained that he suffers from and has been treated for clinical depression for ten years
42. Roman asked respondent a few questions which he could not answer and said that he needed to review the file and would get back to her. Respondent did not contact Roman again.

VIOLATIONS

The parties stipulate that respondent's conduct in Count Two violates the following:

43. Prof. Cond. R. 1.3 (A lawyer shall act with reasonable diligence and promptness in representing a client).
44. Prof. Cond. R. 1.4(a)(2)(3)(4) (A lawyer shall reasonably consult with the client concerning the client's objectives, shall keep the client reasonably informed about the status of the matter, and shall comply as soon as practicable with reasonable requests for information from the client).
45. Prof. Cond. R. 8.1 (A lawyer shall not knowingly fail to respond to a disciplinary investigation).
46. Prof. Cond. R. 8.4(h) (A lawyer shall not engage in any other conduct that adversely reflects on the lawyer's fitness to practice law).
47. The parties stipulate to dismissal of Gov. Bar R. V(4)(G) in light of the stipulation in paragraph 45.

MITIGATION

48. Respondent has no prior disciplinary record
49. Respondent did not have a dishonest or selfish motive

AGGRAVATION

50. The parties stipulate that there are no aggravating factors

STIPULATED EXHIBITS

1. Gohl grievance
2. Retention contract
3. September 9, 2008 statement of account
4. Front and back copies of advance payment check
5. September 3, 2009 letter to respondent with delivery confirmation
6. October 13, 2009 letter to respondent with delivery confirmation
7. January 13, 2010 letter of inquiry with certified mail return receipt
8. April 19, 2010 letter of inquiry with certified mail return receipt
9. Subpoena
10. Attempted Deposition
11. Respondent's response to Notice of Intent
12. November 17, 2009 letter of inquiry to respondent from the Columbus Bar Association with
Ayer grievance
13. Summary of Communications between Attorney Bridgette Roman and respondent
14. Character Letters
15. OLAP mental health contract
16. Letters from Dr. Beech of November 17, 2010, and December 22, 2010
17. Respondent's resume
18. Office notes of Dr. Tweel

CONCLUSION

The above are stipulated to and entered into by agreement by the undersigned parties on this

19th day of January, 2011.



Jonathan E. Coughlan (0026424)
Disciplinary Counsel



Carol A. Costa (0046556)
Assistant Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, OH 43215
(614)461-0256

Counsel for Relator.

per telephone approval 1/19/11

Geoffrey Stern, Esq. (0019315)
Kegler, Brown, Hill & Ritter
Capitol Square, Suite 1800
65 East State Street
Columbus, OH 43215
(614)461-5400

Counsel for Respondent,

per telephone approval 1/19/11

Gordon Pearce Shuler, Esq. (0019315)
3735 Carroll Southern Road
Carroll, OH 43112-9702
(614)462-5400

Respondent.