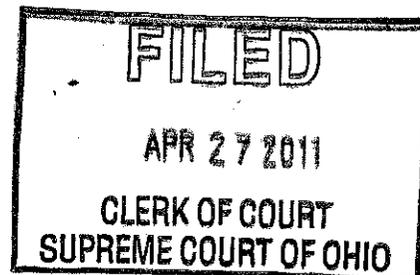


BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO

11-0697



In Re:	:	
Complaint against	:	Case No. 10-018
Bartley J. Troy	:	Findings of Fact,
Attorney Reg. No. 0031600	:	Conclusions of Law and
	:	Recommendation of the
Respondent	:	Board of Commissioners on
	:	Grievances and Discipline of
Lake County Bar Association	:	the Supreme Court of Ohio
	:	
Relator	:	
	:	

This motion for default was referred to Master Commissioner Harry White by the Board Secretary pursuant to Gov. Bar R. V(6)(F)(2) on July 9, 2010. Master Commissioner White then proceeded to prepare a report pursuant to Gov. Bar R. V(6)(J).

PROCEDURAL HISTORY

Prior to the filing of the Complaint, Relator forwarded letters to Respondent on April 13, April 17, June 22, July 22, August 18 and December 4, 2009, regarding the various complaints which make up the separate counts herein.

Thereafter, on December 21, 2009, Relator sent a letter to Respondent, including a copy of the proposed Complaint. On January 13, 2010, Relator sent its formal Complaint and certificate to this Board with a copy sent to Respondent.

On February 8, 2010, a Board probable cause panel found probable cause and certified the Complaint which was then filed February 11, 2010. Service by certified

mail upon Respondent at his employment address and residential address were unsuccessful. Service was therefore perfected pursuant to Gov. Bar R.V(11)(B) through the Clerk of the Supreme Court of Ohio.

Relator's motion for default was filed July 6, 2010, with attempted regular mail service upon Respondent at his last registration address listed with the Supreme Court of Ohio.

FINDINGS OF FACT

Count I – Adrienne Merrill Grievance

In March of 2006, Adrienne Merrill engaged Respondent to secure a civil protection order and a divorce for Merrill paying Respondent \$600.00 as a retainer. The civil protection order was obtained. In April of 2006, Respondent advised Merrill that he had filed her divorce action and was awaiting a court date.

The divorce proceedings transformed into a dissolution of marriage and the necessary documents were prepared by Respondent and signed by the parties. Respondent was also to file certain documents to establish paternity of a minor child of the parties to be other than Merrill's husband.

In April 2008, Respondent requested an additional \$650.00 in order to finalize the proceedings which was paid in June 2008. Approximately four months later and after unsuccessful attempts to contact Respondent, Merrill learned that no legal proceedings had been filed to terminate her marriage.

Upon locating Respondent, who was then residing at his father's home, she was advised by Respondent that her case had been referred to another attorney. Upon contacting this attorney, she was advised that no such arrangement had been made.

Count II – Kathryn Smith Grievance

In February, 2007, Kathryn Smith retained Respondent to represent her in divorce proceedings and paid Respondent \$1,100 as a retainer and filing fee. Thereafter, Respondent requested from Smith an additional \$870 for a retainer on court costs to address the issue of paternity and changing the birth certificate concerning a child that had been born out of wedlock. In August 2008, Ms. Smith sent Respondent a \$300 check which Respondent represented was necessary to secure a paternity test.

Subsequent to this final payment in August of 2008, Smith's attempts to contact Respondent were unsuccessful and she subsequently learned that no filings on her behalf had been made either in the divorce or in the paternity action. Although Respondent did obtain the results of the paternity test, he has not delivered the same to Smith despite her numerous requests.

Count III – Lacraica Barritt Grievance

During the pendency of Relator's investigation of the foregoing grievances, Lacraica Barritt filed a legal malpractice action against Respondent in the Court of Common Pleas of Geauga County alleging, *inter alia*, that, in 2006, after receiving a retainer of \$500, Respondent failed to file an answer or otherwise respond on her behalf to an action pending against her in the Chardon Municipal Court for a money judgment. As a result, a default judgment was entered in the amount of \$9,948.25 against Barritt and her bank account was subsequently garnished to satisfy the judgment. During the pendency of these proceedings, Barritt was advised by Respondent that he "had to obtain a court date" or "he had to file a response to the papers."

As a result in 2009, the Geauga County Common Pleas Court entered a judgment in favor of Barritt against Respondent in the amount of \$44,700, interest and costs. The Ohio Bar Liability Insurance Company (OBLIC) advised Barritt's counsel that although Respondent was insured by it for the period March 2007 through March 2008, no claim or potential claim was reported to OBLIC during the claims made policy effective dates. Therefore, the insurance policy would not apply to any act or omission of Respondent occurring in 2006 through 2008. Respondent never informed Barritt that he did not have professional liability insurance at the time he was retained and during the course of the subject proceedings.

Failure to Cooperate in the Disciplinary Investigation

The exhibits attached to Relator's Motion for Default reflect numerous efforts on behalf of Relator's counsel and investigator to contact Respondent to address the foregoing grievances. These attempts were not met with any response by Respondent.

SUPPORT OF FACTUAL ALLEGATIONS

The foregoing facts are supported by the affidavits of the individual grievants and Relator's investigator.

CONCLUSIONS OF LAW

With respect to the substantive grievances in Counts I, II and III, the Master Commissioner finds Respondent's conduct violated the Rules of Professional Conduct in each count as follows:

- | | |
|--------------------|---|
| Prof. Cond. R. 1.1 | <u>Competence</u> , requiring a lawyer to provide competent representation; |
| Prof. Cond. R. 1.3 | <u>Diligence</u> , requiring a lawyer to act with a reasonable diligence and promptness in representing a client; |

Prof. Cond. R. 1.4 Communication, requiring a lawyer to keep a client informed about the status of matters for which he or she was engaged; and

Prof. Cond. R. 8.4(c) Misconduct, engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

Respondent also violated Gov. Bar R.V(4)(G), by neglecting or refusing to assist or testify in a disciplinary investigation.

AGGRAVATING FACTORS

Respondent's actions demonstrate a pattern of misconduct involving multiple offenses resulting in harm to victims who were otherwise vulnerable and for which Respondent has failed to make any restitution. Respondent has also failed to cooperate in the investigation in these matters indicating a lack of acceptance of responsibility or remorse for his misconduct.

MITIGATING FACTORS

Relator was admitted to practice in Ohio on November 6, 1981, and other than a suspension of approximately nine months for failing to register with the Clerk of the Supreme Court of Ohio, has no prior disciplinary record.

RECOMMENDATION OF SANCTION BY RELATOR

Relator recommends that Respondent be indefinitely suspended from the practice of law and ordered to pay restitution to Adrienne Merrill in the amount of \$2,000, Kathryn Smith in the amount of \$2,270, and Lacraica Barritt in the amount of \$44,700.

MASTER COMMISSIONER'S RECOMMENDATION

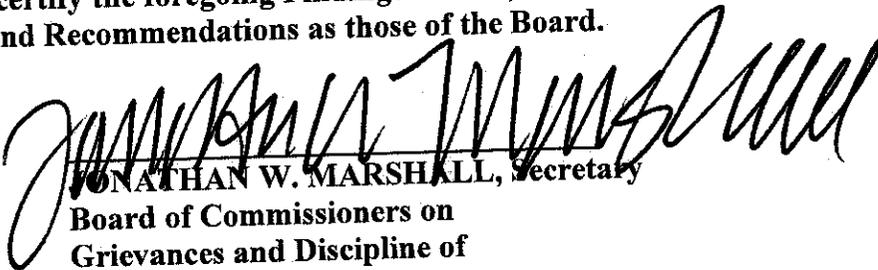
The Master Commissioner concurs with the recommendation of Relator that Respondent be indefinitely suspended from the practice of law and ordered to pay

restitution to Adrienne Merrill and Kathryn Smith in the amount of their respective payments of retainers to Respondent and to Lacroica Barritt in the amount of \$44,700.00, which represents the amount of judgment she obtained against Respondent in her legal malpractice claim, with such full restitution serving as a prior condition of any future reinstatement.

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 April 8, 2011. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Master Commissioner and recommends that Respondent, Bartley J. Troy, be suspended from the practice of law in the State of Ohio indefinitely and that he pay restitution to his clients as set forth in the Master Commissioner's 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