ORIGINAL

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

11-0866

In Re:	:	
Complaint against	:	**Case No. 10-041**
Betty Groner **Attorney Reg. No. 0030130**	:	**Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio**
Respondent	:	
Akron Bar Association	:	
Relator	:	

Relator and Respondent filed an agreement for consent to discipline that called for a public reprimand in this matter on October 13, 2010. The panel rejected the agreement on October 18, 2010 and set a hearing for February 8, 2011, before a panel consisting of Judge Thomas F. Bryant, Judge John B. Street, and Lynn B. Jacobs, Chair. None of the panel members is from the appellate district from which the complaint arose or served on the probable cause panel in this matter. Relator was represented by Alfred E. Schrader and Donald J. Malarcik, Jr. Respondent was represented by Rasheeda Z. Khan.

OVERVIEW

In July 2009, Zachary Hopson, (hereafter "Hopson") a Texas resident, hired Respondent to contest his sister's, Brenda Fowler (hereafter "Fowler"), application to the Probate Court of Summit County, Ohio, to be appointed fiduciary of the estate of their deceased Mother, Lee-Anner Hopson.

FILED
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CLERK OF COURT
SUPREME COURT OF OHIO

During the course of her representation of Hopson, Respondent received notice of a September 8, 2009 hearing in probate court. Respondent arrived with her witness on the morning of September 8 for the oral hearing she anticipated. Respondent was informed that the hearing would not be oral, but rather, she was expected to submit written objections to the appointment of Fowler as Administratrix by September 8, 2009.

This case arises from a grievance filed by Fowler stating that Respondent filed objections based on untrue and damaging statements about Fowler alleging that she had a significant criminal record, including convictions of charges involving theft and drug and alcohol abuse, and that she had filed personal bankruptcy. Respondent obtained this misinformation from Internet research, which she testified to having read too hastily and used in the document filed in court on September 8, 2009 on her client's behalf.

Furthermore, Respondent's Brief in support of objections referred to a document that appeared to be a fiduciary's bond application denying Fowler a fiduciary bond based on her criminal convictions and bankruptcy. Ten days later, Respondent filed a motion for mediation, which was granted. On November 18, 2009, the dispute over the appointment of a fiduciary was successfully completed through mediation. The offending accusations remain in the probate court record.

Relator alleges the following violations of the rules:

Prof. Cond. R. 3.1 (a lawyer shall not assert an issue unless there is a basis . . . for doing so that is not frivolous); Prof. Cond. R. 3.3(a)(1) (a lawyer shall not knowingly make a false statement of fact or law to a tribunal) and (a)(3) (a lawyer shall not knowingly offer evidence that the lawyer knows to be false); Prof. Cond. R. 4.1(a) (a lawyer shall not knowingly make a false statement of material fact or law to a third

person); Prof. Cond. R. 8.4(c) (conduct that involves dishonesty, fraud, deceit or misrepresentation); 8.4(d) (conduct prejudicial to the administration of justice); and 8.4(h) (conduct that adversely reflects on the lawyer's fitness to practice law).

The parties submitted written stipulations of fact, factors in mitigation, and agreed to the authenticity and admissibility of fifteen documents. The parties did not stipulate to any rule violations, nor did they propose a recommended sanction. The panel has made additional findings drawn from the testimony of Respondent and the other witnesses who testified at the hearing.

FINDINGS OF FACT

1. Respondent, Ohio Registration No. 0030130, was admitted to the practice of law in Ohio in 1985.

2. Her law practice includes 18 years of representing clients in probate matters. Currently, most of her practice centers on elder clients, tax matters, foreclosures (pro bono), and veterans' work.

3. Lee-Anner Hopson died leaving three daughters, Brenda Fowler, Audrey Hopson-Lawton, and Linda Hopson, and one son, Zachary Hopson. Her will named Hopson, then residing in Texas, as her Executor.

4. Fowler filed an Application on her behalf to be appointed administrator of her mother's estate. The original will had been lost.

5. A hearing on the application for Admission to Probate of a Spoliated or Lost Will was set for July 15, 2009. A notification letter to Fowler's siblings requested them to hire legal counsel if they intended to oppose the appointment of Fowler as Administratrix.

6. In July 2009, Respondent was hired by Hopson to contest this application. Respondent knew that the Summit County Probate Court would not permit Hopson to serve alone as executor since he resided in Texas. She decided to file a Motion to Allow Executor in which she requested that a close family friend who resided in Summit County, David Pierce, be appointed as co-fiduciary with Hopson.

7. Hopson's two sisters, Linda Hopson and Audrey Hopson-Lawton, also opposed Fowler's application and supported Hopson's position, but took no legal action of their own.

8. On August 17, 2009, the court issued a notice of hearing to take place on September 8, 2009, at 9:00 am and did not specify what type of hearing. (Joint Ex. 1)

9. At the appointed day and time, Respondent appeared in court for the hearing, bringing David Pierce as the potential co-applicant to serve as fiduciary with Hopson. Fowler also appeared in court without her attorney.

10. At the disciplinary hearing, Respondent testified that only upon her appearance at probate court on September 8, 2009, did she learn from the chief clerk that the magistrate was not present and that there would be no oral hearing. Instead, it was a "counter hearing," meaning that September 8 would serve as a deadline to submit written objections to the Court. (Tr. 30-31)

11. Respondent testified that she was completely unprepared to submit written objections and that she had come to court with Pierce to orally advocate for his appointment as co-fiduciary either with Hopson---or, if that was not allowed, then as Fowler's co-fiduciary.

12. Respondent testified she had never heard of a counter hearing. (Tr. 31) When the clerk informed her that it meant that this date was the deadline for submission of written objections, she panicked. The clerk told her that another attorney had tried to circumvent a deadline before this judge and insinuated that it was frowned upon. (Tr. 31) Thus, Respondent took the deadline "very seriously." She immediately returned to her office, where she set in motion several actions which gave rise to Fowler's grievance. Respondent directed her secretary to search the Internet for any criminal background on Fowler, while Respondent accessed PACER.

13. The background search on Intelius, a fee-based online service providing background checks, revealed that a Brenda Joyce Fowler, residing in New Philadelphia, Ohio, had filed for bankruptcy in 2008. (Joint Ex. 9)

14. Respondent also reviewed printouts of an Intelius search that 'confirmed" that a Brenda Fowler in New Philadelphia, Ohio had filed personal bankruptcy.

15. The printout also revealed to Respondent that a Brenda Joyce Fowler had also been convicted of several misdemeanors, felonies and DUI offenses. (Joint Ex. 8, p. 10-14)

16. Armed with this information, Respondent telephoned Frank Duffy of CBS Agency, Inc., a bonding subsidiary of the Columbus Bar Association, with whom she had had previous contact.

17. She asked him whether a bond could be obtained for a fiduciary who had filed for bankruptcy and who had committed felonies. He informed her that such an applicant would be declined a bond.

18. Duffy testified that it was highly unusual to receive such a request for this information from an attorney calling on behalf of a non-client. (Tr. 99)

19. When Respondent then asked him to confirm his opinion in writing, Duffy stated that no such document existed. After she persistently pressed him further, Duffy completed a form adding in his handwriting the conditions for rejection that he had orally stated. He testified the form he used was a "pre-application" form approved by the Franklin County Probate Court to meet its particular requirements and not used by other courts. Duffy testified further that he had filled out the form and initialed it "FD" to satisfy Respondent's request.

20. Duffy testified that he would not have filled out the form denying the bond for Fowler had he known that Respondent did not represent Fowler. (Tr. 102)

21. Respondent filed her written objections attaching this document as "Exhibit A," by the deadline. The essence of her written objections was that Fowler should be denied appointment as the fiduciary of Lee-Anner Hopson's estate because of Fowler's supposed criminal record and bankruptcy filing.

22. After filing the objections in Probate Court on September 8, 2009, Respondent called Fowler's attorney to notify him and sent him a copy of the pleading. He subsequently notified his client and sent her a copy of the document.

23. Fowler was incensed upon reading the document because she had never filed personal bankruptcy and had no criminal record.

24. The information from PACER and Intelius used by Respondent in the pleading referred to persons named Brenda Joyce Fowler who were not the Brenda Joyce Fowler,

Hopson's sister, who had made application to become fiduciary of the estate of Lee-Anner Hopson.

25. Respondent testified that she was very upset to discover that her hasty research which was the essence of her pleading filed in the probate court was incorrect.

26. Respondent testified that she could have and should have based her written objections solely on the fact that her client (as well as his sisters with whom she had also had email correspondence) opposed the appointment of Fowler as fiduciary on grounds that they believed she had taken possessions, including jewelry and cash from their mother's house, after Lee-Anner Hopson's death and prior to the funeral, without permission of her siblings. (Tr. 125-127)

27. Ten days after filing her written objections, Respondent filed a motion for mediation of this matter.

28. A mediation hearing was held and the parties successfully resolved their dispute through mediation in November 2009.

29. On September 25, 2009, Fowler filed a grievance against Respondent with the Akron Bar Association, on the grounds of the false accusations made against her.

30. Before she found it necessary to file an objection to the appointment of Fowler as Administratrix of Lee-Anner Hopson's estate, Respondent had learned identifying information about Fowler from Hopson, her client, from the documents filed by Fowler's lawyer, and from her own observation of Fowler at probate court the morning before the objections were prepared and filed.

31. Respondent, in an attempt to gain information on Fowler for the purpose of contesting her appointment as administratrix, used an online reporting system called

"Intelius." By entering in what limited information Respondent knew about Fowler into the Intelius website (her name, Brenda J. Fowler; her date of birth, September 28, 1957; her age, 51; and her address, 212 Rosemarie Dr., Lebanon, OH 45036), Intelius would return information about the search subject on a multitude of contents, including: address history, criminal and civil records, marriage and divorce records, property history summary, and several others. The report was presented to the panel as Joint Exhibit 8.

32. Respondent, in her haste to file her objections with the probate court, failed to carefully read the report, which led to her assuming that the entire 16-page document was about the Brenda Fowler at issue in the case. In fact, the report provides information on every "Brenda J. Fowler" that Intelius could find in the United States, some 19 separate individuals in Ohio alone. (See Ex. 8, p. 5-7) It pulled civil records that showed bankruptcy proceedings, an eviction, and state liens, all in various cities across Ohio. (See Ex. 8, p. 3-4) The report further pulled criminal records from across the United States, including felony offenses in Florida, misdemeanors in Texas, the minor offense of failing to obey a stop sign in Alaska, among others (See Ex. 8, p. 10-14) These "Brenda J. Fowler" results provided people who ranged in age, physical description, geographic location, and even sex. [1]

33. The Intelius report contained several disclaimers about its accuracy, noting that positive or false matches in criminal searches may not provide confirmation of an individual's criminal or civil judgment background. The report also, at times, provided superfluous information because none could be found using the search terms given. Under the "Single State Criminal Check" section, the report states that "We have

[1] The criminal records results returned entries for a Brendan John Fowler, illustrating the inaccuracy of the service used by Respondent and Respondent's lack of due diligence in vetting the results before submitting them to the probate court.

searched the following for Brenda J. Fowler in OH state matched to the date of birth Sep 28, 1957; [records listed]. No records were found." (See Ex. 8, p. 3)

34. Respondent made no attempt to verify that the New Philadelphia address and the Social Security information given in the PACER report she found were truly those of her client's sister. In fact, they were not.

35. Exhibits 8 and 9 clearly and unmistakably do not pertain to the person named Brenda Fowler about whom Respondent was seeking discrediting information.

36. When asked at the panel hearing how she determined the information about Brenda Johnston Fowler, a white female residing in Texas and weighing 240 lbs with green eyes who had been convicted of a theft offense in 2006, related to Brenda J. Fowler, a black 51-year old female who lives in Lebanon, Ohio about whom information was sought, Respondent acknowledged that this was a "mistake" on her part. (Tr. 156)

37. Specifically, Respondent testified that she was especially poor at predicting "measurements" and "weights" and that she had not noticed the eye color. (Tr. 41) She further diminished her credibility by stating that black persons have many different colored eyes. Asked if she knew whether Fowler lived in New Philadelphia or not, she answered: "I was fuzzy on geography." (Tr. 166)

38. Respondent admitted that her "analysis" of the Intelius background report consisted of reading only the "right column" of each page and that she ignored the "left column" which gave not only the name, but also other verifiable facts about the person named. In response to one question at the panel hearing regarding the various Brenda Fowlers, Respondent suggested that she thought they were all the same person and she moved around a lot. (Tr. 125)

CONCLUSIONS OF LAW

After reviewing the record and hearing testimony in this matter, and upon the findings of fact set forth above, the panel finds, by clear and convincing evidence that Respondent violated all of the Rules of Professional Conduct charged, including Prof. Cond. R. 3.1 forbidding a lawyer from asserting an issue unless there is a basis to do so.

The panel concludes that there was no basis in fact or law for Respondent to present false assertions of facts and specious and misleading arguments in a pleading in the probate court regarding the application of Brenda J. Fowler for appointment as administratrix of her mother's estate, and that by doing so, Respondent violated Prof. Cond. Rule 3.1.

The panel concludes that Respondent knowingly made false statements of fact in a pleading based in part upon an attached document knowing that it was not what the document was represented to be and that the information stated did not support the inferences the court was urged to draw from it. The false statements and the false impressions made by Respondent to the court have never been corrected. The panel thus concludes that Respondent, by these actions and omissions, violated Prof. Cond. R. 3.3(a)(1) and (3) requiring candor toward a tribunal.

By filing a pleading containing false statements of material fact in the probate court, and thus in the public record for information and use by the magistrate and judge of the court, and available to any member of the public as well as other parties, counsel, and members of the public interested in the proceedings, Respondent violated Prof. Cond. R. 4.1.

The panel concludes that Respondent, by her knowing misrepresentations of fact, by her disregard for the truth of matter presented to a court intended to influence the court's decision on a pending matter, and by her procurement and use of misleading evidence in a legal proceeding has engaged in fundamental dishonesty and misrepresentation in violation of Prof. Cond. R. 8.4(c), (d), and (h).

AGGRAVATION AND MITIGATION

The panel considered the aggravating and mitigating factors pursuant to the requirements of BCGD Proc. Reg. 10(B)(1) and (2) with regard to this case.

The parties have submitted stipulations of mitigation, but not of aggravation, as follows:

Respondent has no prior disciplinary record; Respondent has made full and free disclosure to Relator and the Board, and has demonstrated a cooperative attitude toward these proceeding; and Respondent has good character and reputation.

The panel accepts these three mitigating factors, noting the submission of eleven character letters from Respondent's colleagues, clients, rabbi, and a fellow congregant Ph.D. psychologist.

There are, however, several aggravating factors under BCGD Proc. Reg. 10(B)(1) to be considered, including:

(b) Selfish motive: Respondent seemed more concerned with meeting a court deadline to preserve her own professional reputation than with making sure that the incriminating statements against the grievant were true.

(d) Multiple offenses: Respondent submitted false and damaging information to the court in her written objections. She also filed a paper that was not what it purported

or offered to be and it was marked Exhibit A and appended to the objections that created the false impression to the court that Brenda Fowler could not legally serve as administratrix of her mother's estate because she had been declined bond. The two actions constitute multiple offenses.

(h) Resulting harm to the victim: The panel accepted Fowler's testimony that she was personally humiliated by the false accusations asserted and filed in court by Respondent. The panel, however, does not credit her testimony that her siblings have severed their relationship with her solely because of a continuing belief in those accusations.

The record shows that several emails traveled back and forth between the siblings and Respondent prior to the September 8, 2009 hearing. The essence of these emails was distrust of Fowler for altogether different reasons. The siblings believed Fowler and her husband had removed personal property from their mother's home prior to the memorial service without their permission. (Joint Ex. 4)

The panel therefore concludes that, although personal harm to the victim did result, Respondent's false accusations per se were not the cause of an irretrievable break in family relationships.

(g) Refusal to acknowledge wrongful nature of conduct: Throughout her testimony, both on direct and cross-examination, Respondent insisted that she was sorry for her actions. However, the panel has difficulty accepting this as true remorse. The panel finds these statements to be mostly self-serving. Fowler testified (and the record shows) that Respondent never apologized for her egregious accusations.

Respondent's repeatedly expressed apologies to the panel and stated wish to now apologize to the grievant revealed a lawyer who was thoroughly embarrassed by both the quality of her work and the notoriety of this case.

The panel has trouble accepting Respondent's explanation that she was motivated only by a desire to do the best job possible for her client. The results speak for themselves.

RECOMMENDED SANCTION

The parties have not stipulated any recommended sanction. At the hearing, Respondent asked for dismissal of all charges or, in the alternative, a public reprimand. Relator recommended a six month suspension, all stayed, based on the belief that despite violations of all of the rules alleged, they did not rise to the level of two recent disciplinary cases involving the same rule violations.

In *Disciplinary Counsel v. Rohrer,* 124 Ohio St.3d 65, 2004-Ohio-5930, the respondent was given a six-month suspension. He had directed a staff member to deliver a copy of a motion to a local newspaper in violation of the trial court's verbal order prohibiting counsel from discussing the case with the media. He denied to the court that he had done so and fired his assistant for allegedly breaching confidentiality. The Court found violations of Prof. Cond. R. 3.3(a)(1), 3.4(c), 8.4(c), (d), and (h)- close to the violations in the present case. The same mitigating and aggravating factors accepted by the Court in *Rohrer* are also present here.

In *Disciplinary Counsel v. Robinson,* 126 Ohio St.3d 371, 2010-Ohio-3829, the respondent, a former partner of a Columbus law firm, lied in a deposition about removing confidential firm documents from the firm, providing them to competitor firms with

whom he was seeking employment, and then destroying some of them. At the hearing, Robinson attempted to mitigate his failure to precisely answer questions regarding past behavior giving rise to the grievance, allegedly due to great personal stress and lack of litigation experience. Finding violations of Prof. Cond. R. 3.4(a) and 8.4(c), (d), and (h), the Court suspended him for 12 months.

Similar mitigation testimony to Robinson's has been offered by Respondent in explanation of her rule violations. She claimed that the extreme stress of meeting a deadline caused her to panic and submit false documentation. She also claimed that her inability to correctly recall the sequence of events on September 8, 2009 was also due to stress, as well as her distaste for litigation, which she repeatedly stated was counterbalanced by her strength at negotiating and resolving disputes before ever they ever got that far.

In *Robinson*, the Court found a lack of remorse in the respondent's testimony, labeling them more accurately "excuses." Likewise, the panel heard lengthy explanations for Respondent Groner's errors. Her apologies were also profuse, but centered more on why her mistakes arose from having to meet a deadline she did not know existed, rather than true remorse for violating the fundamental ethical code for attorneys. The panel is mystified why Respondent could be acutely aware of her obligations as to "form," yet totally oblivious to a concern for "substance" in her quest to "get it right."

Her testimony that, "Lord, there would be so many things I would do differently…I would never [sic] gone in any kind of detail that would ever hurt anyone. I did and I'm sorry. I can't tell you how sorry I am," (Tr. 126) may truly be sincere when made. Unfortunately, it does not erase the harm done to the victim, to the reputation of

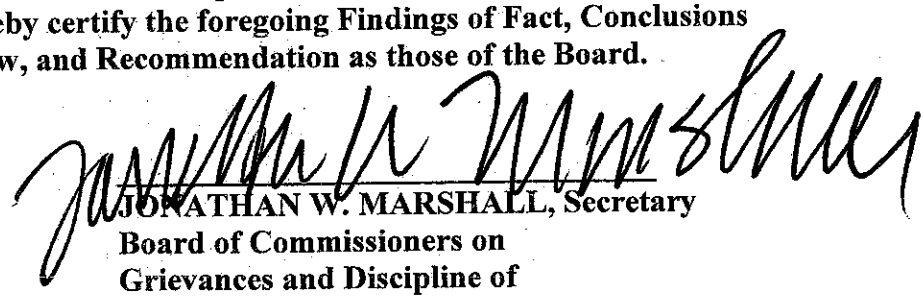
the legal profession and to the integrity of the court proceedings. Just as in *Robinson*, this Respondent has not harmed her own clients. Nevertheless, she has impugned the personal reputation of an innocent person and took no action to correct her errors. Such behavior is unacceptable for a 25-year lawyer whose personal actions themselves created the cause for this grievance.

Based on clear and convincing evidence derived from case law, written records, and testimony at the hearing, the panel recommends that Respondent be suspended from the practice of law in Ohio for twelve months, with six months stayed on condition that she commit no further violations of the Rules of Professional Conduct.

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 Panel and recommends that Respondent, Betty Groner, be suspended from the practice of law for a period of twelve months with six months stayed. 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

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

In Re: Complaint Against Betty Groner	:	**AGREED STIPULATIONS** Case No. 10-041
Respondent	:	FILED
Akron Bar Association	:	DEC 08 2010
Relator	:	BOARD OF COMMISSIONERS ON GRIEVANCES & DISCIPLINE

AGREED STIPULATIONS

INTRODUCTION

Relator Akron Bar Association and Respondent Betty Groner, do hereby stipulate to the admission of the following facts, mitigation, and the authenticity and admissibility of the following exhibits:

STIPULATED FACTS

1. Respondent, Betty Groner, Ohio Registration No. 0030130, was admitted to the practice of law in Ohio on November 4, 1985. Respondent is subject to the Ohio Rules of Professional Conduct, the Ohio Code of Professional Responsibility, and the Rules for the Government of the Bar of Ohio.
2. Respondent is a sole practitioner with her business address registered with the Supreme Court of Ohio as 3584 Ridgewood Road, Akron, Ohio 44333.
3. On or about May 29, 2009, Brenda Joyce Fowler filed an Application for Admission to Probate of Spoliated or Lost Will ("Application") with the Probate

Court of Summit County, Ohio, Case Number 2009 ES 00557. The Application pertained to the Estate of LeeAnner Hopson, Fowler's deceased mother, and included a copy of LeeAnner Hopson's will.

4. Brenda Joyce Fowler ("Applicant/Grievant Fowler") is the daughter of LeeAnner Hopson and is the Grievant herein.

5. A copy of the electronic docket for Probate Court of Summit County, Ohio, Case Number 2009 ES 00557 is included as Joint Exhibit 1. The Application is included as Joint Exhibit 2.

6. The Application included the following list of LeeAnner Hopson's known surviving children:

   - Linda Marie Hopson, daughter
     1250 American Pacific Dr. No. 2823, Henderson, NV 89074

   - Brenda Joyce Fowler, daughter
     212 Rosemarie Drive, Lebanon, OH 45036

   - Audrey Hopson-Lawton, daughter
     1130 Longmont Drive, San Antonio, TX 78425

   - Zachary Hopson, son
     P.O. Box 168353, Irving, TX 75016

7. Pursuant to page 5 of her Last Will and Testament, LeeAnner Hopson appointed her son, Zachary Hopson, to act as Executor of her estate. However, at the time of LeeAnner Hopson's death, Zachary Hopson was residing in Texas.

8. At all relevant times, Applicant/Grievant Fowler was represented by Attorney James E. Brown, One Cascade Plaza, Suite 2210, Akron, Ohio.

9. On or about June 11, 2009, Attorney Brown notified the surviving children referenced in paragraph 6 above that Applicant/Grievant Fowler was seeking to

be appointed to administer the estate of LeeAnner Hopson and that a hearing on the Application for Admission to Probate of a Spoliated or Lost Will would take place on July 15, 2009. A copy of the June 11, 2009 notification letter, which was submitted to the Court is included as Joint Exhibit 3.

10. The June 11, 2009 notification letter stated in relevant part:

> If you have any concerns about the right of Brenda Fowler to proceed with her application to administer the estate or of your own rights in regard to the Estate of LeeAnner Hopson then you should consult with your own legal counsel.

11. On or around July 2009, Zachary Hopson retained Respondent to assist him in objecting to Fowler's application to serve as fiduciary of the estate. Zachary Hopson's sisters also opposed Fowler's application.

12. On or about July 11, 2009, Respondent entered a Notice of Appearance on behalf of Zachary Hopson, the named fiduciary on the will. The Notice of Appearance is included as Joint Exhibit 6.

13. On the same date, Respondent filed a Motion to Allow Executor, moving the Court to recognize Zachary Hopson as the named Executor on the will and, due to the requirement that the Probate Court requires fiduciaries to also be residents of Ohio, to allow David Pierce, a trusted family friend and resident of Summit County, Ohio to serve as co-fiduciary with Zachary Hopson. The motion is included as Joint Exhibit 7.

14. On or about August 17, 2009, the Court issued a Notice of Hearing to take place on September 8, 2009 at 9:00 a.m.

15. On the morning of September 8, 2009, Respondent appeared at Court for the hearing along with family friend David Pierce as the potential co-applicant to

serve as fiduciary with Zachary Hopson. Grievant/Applicant Fowler also appeared.

16. While at Court, Respondent learned that there would be no actual hearing. Rather, the September 8, 2009 date was to serve as a deadline to submit written objections to the Court. Respondent had only prepared for an oral hearing. She had not prepared any written objections.

17. Respondent went back to her office and began to prepare written objections. She had less than a half day to prepare written objections and personally file them with the Court on that same day. Respondent's office is located approximately one-half hour from the Court.

18. All of the events described in paragraphs 20 through 29 below, took place on September 8, 2009.

19. While preparing the written objections, Respondent requested a Background Check Report from Intelius, an online service that provides background reports for a fee. A copy of the Background Check Report from Intelius is included as Joint Exhibit 8.

20. Respondent also performed her own search for background information on PACER (Public Access to Court Electronic Records), an official United States government website that allows users to obtain case and docket information from US Appellate, District, and Bankruptcy courts for a fee.

21. The Background Check Report from Intelius revealed that an individual named Brenda Joyce Fowler, residing in New Philadelphia, Ohio, had filed for bankruptcy. Respondent confirmed this information by using PACER.

22. The PACER search revealed that an individual named Brenda Joyce Fowler, residing in New Philadelphia, Ohio filed for bankruptcy in the United States Bankruptcy Court for the Northern District of Ohio. A certified copy of the docket is included as Joint Exhibit 9.

23. The Background Check Report from Intelius also revealed that Brenda Joyce Fowler had a criminal record that included felony convictions.

24. Respondent contacted Frank Duffy of CBS Agency, Inc., a bonding subsidiary of the Columbus Bar Association to inquire whether an individual who was a convicted felon and had previously filed for bankruptcy would be eligible for a probate bond. Mr. Duffy informed Respondent that a bond applicant with such a background would be declined.

25. Respondent asked Mr. Duffy to confirm the information he shared with her in writing. Mr. Duffy then took the information that Respondent provided to him over the phone, completed a bond application form and faxed it to Respondent. A copy of the bond application form which was completed by Frank Duffy and faxed to Respondent is included on page 6 of Joint Exhibit 10.

26. The form from CBS Agency, Inc., was not completed by Respondent, but rather by Mr. Duffy of CBS Agency, Inc., and was, as detailed above, based upon the information furnished by Respondent to Mr. Duffy.

27. Respondent's filed her client's Objections to Appointment of Brenda Fowler as Administratrix at approximately 3:40 p.m. on September 8, 2009. A copy of the Objections is included as Joint Exhibit 10. The objections were based upon the following factors:

a. Because of her criminal record and bankruptcy filing, Brenda Joyce Fowler would be unable to obtain bond. A copy of the Bond application form completed by Frank Duffy was attached as Exhibit A to the written objections;

b. Brenda Fowler was never listed on the will as Executrix;

c. Every other heir of LeeAnner Hopson was opposed to the appointment of Brenda Fowler as Administratrix, or fiduciary in any capacity.

d. Every other heir was prepared to litigate to oppose the appointment of Applicant/Grievant Fowler as fiduciary in any capacity in the Estate of LeeAnner Hopson (*See* Joint Exhibit 5).

e. Zachary Hopson and Linda Hopson asserted that Applicant/Grievant Fowler had taken property from the house of the decedent almost immediately following the death of LeeAnner Hopson. (*See* Joint Exhibit 4).

f. Ohio case law authority confirming that courts have disqualified applicants on the basis of, among other things, distrust from other family members and anticipated challenges from every other heir in the estate. Copies of these cases are attached as Joint Exhibits 11 and 12 respectively.

28. After filing the Objections to Appointment of Brenda Fowler as Administratrix, Respondent phoned Attorney James E. Brown, attorney for Grievant/Applicant Fowler and sent him a copy of the pleading.

29. The Background Report from Intelius and the PACER information referencing the bankruptcy filing and criminal convictions pertained to a Brenda Joyce Fowler that is different from the Applicant/Grievant Brenda Joyce Fowler.

30. On September 18, 2009, ten (10) days after filing the Objections, Respondent field a Motion for Mediation. A copy of the Motion for Mediation is included as Joint Exhibit 13.

31. On or about September 22, 2009, the Court granted the Motion for Mediation. A copy of the order is included as Joint Exhibit 14.

32. On or about September 25, 2009, Applicant/Grievant Fowler completed and filed a grievance against Respondent with the Akron Bar Association. A copy of the grievance is included as Joint Exhibit 15.

33. On November 18, 2009, the parties successfully mediated the case and the matter was settled shortly thereafter.

STIPULATED MITIGATION

1. Respondent has no prior disciplinary record.
2. Respondent has made full and free disclosure to the Relator and the Board and has demonstrated a cooperative attitude towards these proceedings.
3. Respondent has good character and reputation.

STIPULATED EXHIBITS

1. Electronic docket for Probate Court of Summit County, Ohio Case Number 2009 ES 00557.

2. May 29, 2009 Application for Admission to Probate of Spoliated or Lost Will

3. June 11, 2009 Notification Letter.

4. September 7, 2009 and September 1, 2010 correspondence from Linda Hopson

5. September 7, 2009 correspondence from Zachary Hopson

6. July 11, 2009 Notice of Appearance

7. July 11, 2009 Motion to Allow Executor

8. Information from Intelius

9. Docket for Bankruptcy Petition #08-60403 in the United States Bankruptcy Court for the Northern District of Ohio

10. September 8, 2009 Objections to Appointment of Brenda Fowler

11. *In re Estate of Dalton* (1995), 647 N.E.2d 581, 68 Ohio Misc.2d 78

12. *In re Estate of Henne* (1981), 421 N.E.2d 506, 421 N.E.2d 506

13. September 18, 2009 Motion for Mediation

14. September 22, 2009 Order to Mediate

15. September 25, 2009 Grievance

CONCLUSION

The above are stipulated and entered into by agreement by the undersigned parties on this 8th day of December, 2010.

Alfred E. Schrader by RZK per telephone authority 12-8-10

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