

IN THE SUPREME COURT OF OHIO

Disciplinary Counsel,

Relator,

vs.

Carolyn Kaye Ranke,

Respondent.

CASE NO. 2011-0379

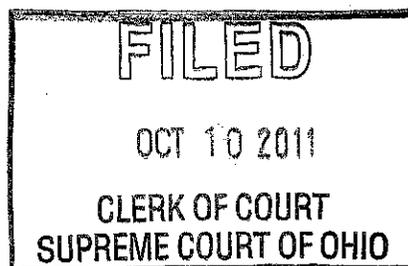
**RELATOR'S MEMORANDUM OPPOSING RESPONDENT'S MOTION FOR
RECONSIDERATION OF THE SEPTEMBER 22, 2011 ORDER**

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**RELATOR’S MEMORANDUM OPPOSING RESPONDENT’S MOTION FOR
RECONSIDERATION OF THE SEPTEMBER 22, 2011 ORDER**

I. INTRODUCTION

On September 22, 2011, this Court indefinitely suspended respondent, Carol Kaye Ranke, for violating the following Ohio Rules of Professional Conduct: Rule 1.2(a) (requiring a lawyer to abide by a client's decisions regarding the objectives of the representation), Rule 1.3 (requiring a lawyer to act with reasonable diligence and promptness in representing a client), Rule 1.4(a)(3) (requiring a lawyer to keep the client reasonably informed about the status of a legal matter), Rule 1.8(e) (prohibiting a lawyer from providing financial assistance to a client for expenses other than court or litigation costs), Rule 1.15(a)(2) (requiring a lawyer to maintain a record for each client on whose behalf funds are held), Rule 1.15(a)(5) (requiring a lawyer to perform and retain a monthly reconciliation of trust account funds), Rule 8.4(d) (prohibiting conduct that is prejudicial to the administration of justice), and Rule 8.4(h) (prohibiting conduct that adversely reflects on the lawyer's fitness to practice law). *Disciplinary Counsel v. Ranke*,

Slip Opinion No. 2011-Ohio-4730. In addition, this Court found that respondent failed to cooperate with the disciplinary investigation and proceedings in violation of Rule 8.1(b) and Ohio Sup. Ct. R. Gov't Bar V(4)(G). Id. at ¶ 15.

On September 30, 2011, respondent filed a motion for reconsideration, alleging that (1) respondent could not cooperate in the disciplinary proceeding because she is battling breast cancer, (2) respondent's conduct is not as severe as the evidence demonstrates, (3) respondent's mitigation was not considered, (4) respondent's misconduct is distinguishable from the case law cited in the Court's opinion, and (5) respondent did not respond because she was confused about the disciplinary process. (Mot. for Recons. at passim.) Now comes relator, Disciplinary Counsel, and states that for the reasons set forth below, as well as the reasons already articulated in this Court's decision, respondent's motion for reconsideration should be denied.

II. LAW AND ARGUMENT

Within ten days after this Court issues a decision on the merit of a case, a party may file a motion for reconsideration of the judgment entry or order with the Clerk. S.Ct. Prac. R. 11.2(A). However, a motion for reconsideration shall not serve as a reargument of a case. S.Ct. Prac. R. 11.2(B). Rather, "this court has invoked the reconsideration procedures set forth in S. Ct. Prac. R. XI to 'correct decisions that upon further reflection are determined to have been made in error.'" *Buckeye Community Hope Found v. Cuyahoga Falls* (1998), 82 Ohio St.3d 539, 541, 697 N.E.2d 181, 183. An examination of respondent's motion for reconsideration reveals no reason for "further reflection" by this Court, much less a determination that the Court's decision to indefinitely suspend respondent from the practice of law was erroneous. Specifically, the Court's decision is supported by clear and convincing evidence of misconduct and is in line with the Court's precedent.

A. THIS COURT'S FINDING OF MISCONDUCT IS SUPPORTED BY CLEAR AND CONVINCING EVIDENCE CONTAINED IN THE RECORD.

This matter involved three counts of misconduct. Count 1 concerns respondent's misuse of her IOLTA account. Count 2 concerns respondent's neglect of Tierra Wilson's criminal appeal. And Count 3 concerns respondent's failure to cooperate in this disciplinary proceeding.

As to Count 1 concerning her misuse of her IOLTA account, respondent neither denies the allegations stated in the disciplinary complaint nor disputes the evidence submitted during the default proceedings that established the violations. Rather, she offers as mitigation to her misconduct that no client complained about her handling of trust funds, that no client was "shorted" money, and that she never failed to provide funds or an accounting if asked. (Mot. for Recons. at 3.) Relator submits that whether the client was aware of respondent's misappropriation is irrelevant and does not refute the evidence proving that she misused IOLTA funds. In addition, respondent's presumption that no client was shorted is misplaced because the record clearly established that respondent misused IOLTA funds belonging to someone else to loan \$1,000 to her client Shanese McClain. (Mot. for Default at 6.) Therefore, others were indeed shorted, albeit secretly and temporarily, and as this Court has stated, "[m]isappropriation of a client's money cannot be tolerated, and it is immaterial whether the amount at stake is large or small, to be paid to the client, or applied to pay a client's debt." *Disciplinary Counsel v. France* (2002), 97 Ohio St.3d 240, 778 N.E.2d 573. Moreover, respondent's indication that she never failed to account for her client's funds is inaccurate because she never provided an accounting of her clients' funds to relator when requested during the disciplinary investigation. (Mot. for Default at 3-4.) Therefore, respondent fails to show that this Court erred in finding ethical violations regarding Count 1 of the complaint to warrant reconsideration.

As for Count 2 concerning her neglect of Wilson's criminal appeal, respondent again does not deny the misconduct – that she failed to file the appellate brief, thereby, prejudicing Wilson's appeal. Rather, she again offers as mitigation that some of the appellate issues were moot and that she did not charge Wilson a fee for her appeal. (Mot. for Recons. at 3.) Respondent does not offer any proof to support her assertion and requests for opportunity to submit additional evidence. Respondent's request is improper. Moreover, despite the viability of the appellate issue or the lack of a fee, respondent still had an ethical duty to act with reasonable diligence on her client's behalf to file a brief. This she failed to do and the record establishes this. (Mot. for Default at 7.) Therefore, respondent fails to show that this Court erred in finding ethical violations regarding Count 2 of the complaint to warrant reconsideration.

As to Count 3 concerning respondent's failure to cooperate in this disciplinary proceeding, respondent does not deny that she (1) did not respond to relator's inquires during the disciplinary investigation, (2) did not file an answer to the complaint, (3) did not respond to relator's motion for default judgment, or (4) did not respond to the Court's show cause order. Furthermore, respondent does not allege that she lacked notice of any of these documents or proceedings and was unaware of her obligation to respond. Instead, respondent asserts that her cancer diagnosis in July 2010 hindered her ability to defend these proceedings – a condition of which relator was aware. (Mot. for Recons. at 2 and 6-7.) However, while respondent's medical condition is serious, it did not cause her failure to cooperate with relator's disciplinary investigation since the investigation was completed before she received her cancer diagnosis. Because the misconduct in this matter predates respondent's cancer diagnosis and any subsequent surgery, respondent's medical condition cannot mitigate respondent's misconduct.

Moreover, respondent did not give any indication that she was unable to participate in

this proceeding after the filing of the disciplinary complaint. In fact, relator's counsel spoke with respondent about her ability to answer the disciplinary complaint in light of her medical condition. In response, respondent indicated that she would file her answer to the complaint by November 3, 2010. (Mot. for Default at 5.) Nonetheless, respondent never filed an answer and never contacted relator again concerning the matter. Had respondent done so or otherwise requested additional time to respond to disciplinary complaint, relator certainly would not have objected. In addition, respondent could have obtained counsel at anytime during this proceeding to advise the Board of Commissioner on Grievance and Discipline or this Court of her concerns as evidenced by her recent retention of counsel. So respondent had the ability to participate in this proceeding or at the very least advise the Court of her situation; she just chose not to do so. Therefore, respondent fails to show that this Court erred in finding ethical violations regarding Count 3 of the complaint to warrant reconsideration.

**B. RESPONDENT'S MISCONDUCT WARRANTS AN INDEFINITE
SUSPENSION BASED ON THIS COURT'S PRECEDENT.**

In her motion for reconsideration, respondent suggests that the precedent set by this Court does not support an indefinite suspension for the ethical violations she committed. (Mot. for Recons. at 5-6.) Relator submits that the case law relied upon by the Court is on point in light of respondent's violations and failure to cooperate. Moreover, the instant decision is in accord with this Court's decision in *Disciplinary Counsel v. Siehl* (2009), 123 Ohio St. 3d 480; 2009 Ohio 5936; 918 N.E.2d 143. In *Siehl*, this Court considered a two-count complaint in which the attorney was accused of failing to file an appellate brief for his client and then failing to cooperate in the resulting disciplinary investigation. *Id.* This Court, considering the matter under Gov. Bar R. V(6)(F) default judgment proceedings, found that Attorney Siehl has

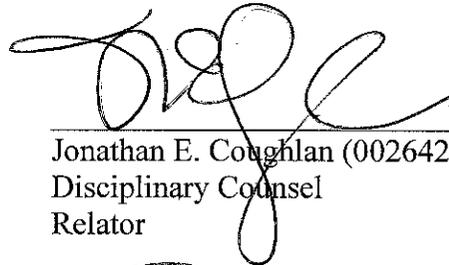
committed the above misconduct and indefinitely suspended him for the practice of law. In doing so, this Court stated that “an indefinite suspension from the practice of law ‘is especially fitting * * * where neglect of a legal matter is coupled with a failure to cooperate in the ensuing disciplinary investigation.’” Id. at ¶ 13, citing *Disciplinary Counsel v. Boylan* (1999), 85 Ohio St.3d 115, 707 N.E.2d 465, quoting *Warren Cty. Bar Assn. v. Lieger* (1997), 79 Ohio St.3d 488, 490, 683 N.E.2d 1148. The misconduct involved in *Siehl* is less severe than the misconduct in this case. Like *Siehl*, respondent failed to file an appellate brief for her client and then failed to cooperate with relator’s investigation of the matter. Unlike *Siehl*, respondent compounded her misconduct by misusing her IOLTA account. Moreover, respondent has a prior disciplinary offense. For these reasons, respondent’s conduct warrants an indefinite suspension.

Despite this, respondent asserts that the Court failed to find the following mitigating factors: lack of a dishonest motive, efforts to make restitution, character and reputation, and mental disability. (Mot. for Recons. at 4-5.) However, there is nothing in the record to establish such mitigation and respondent does not point to any. Moreover, it is unlikely that any mitigation would outweigh the aggravating factors in this matter, including respondent’s prior disciplinary offense for similar neglect. See *Siehl*, 123 Ohio St. 3d 480, ¶13.

III. CONCLUSION

For the foregoing reasons, relator respectfully requests that this Court issue an order denying respondent's motion for reconsideration.

Respectfully submitted,



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Relator



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CERTIFICATE OF SERVICE

A copy of the foregoing *Relator's Memorandum Opposing Respondent's Motion for Reconsideration of the September 22, 2011 Order* has been served upon Respondent's counsel, Martin T. Galvin, Esq. and George S. Coakley, Esq. at Reminger Company, LPA, 1400 Midland Building, 101 Prospect Avenue, West, Cleveland, OH 44115-1093, via regular U.S. mail, postage prepaid, on October 11, 2011.



Philip A. King
Counsel of Record