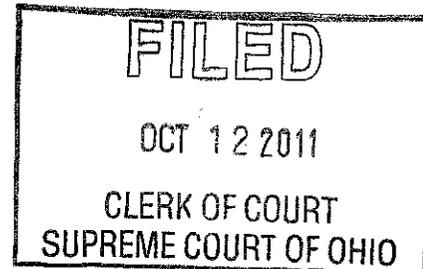


BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO

11-1735



In Re:	:	
Complaint against	:	Case No. 11-017
Frank Rozanc	:	Findings of Fact,
Attorney Reg. No. 0047173	:	Conclusions of Law and
	:	Recommendation of the
<u>Respondent,</u>	:	Board of Commissioners on
	:	Grievances and Discipline of
Lake County Bar Association	:	the Supreme Court of Ohio
	:	
<u>Relator.</u>	:	
	:	

MOTION FOR DEFAULT JUDGMENT

This matter was referred by the secretary of the Board to Master Commissioner, Judge W. Scott Gwin, on August 5, 2011, pursuant to Gov. Bar R, V, Section 6(F)(2) for ruling on the Relator's motion for default judgment. Master Commissioner Gwin prepared this report pursuant to Gov. Bar R. V, Section 6(J).

PROCEDURAL HISTORY

{¶1} On or about September 14, 2010, Kathryn T. Joseph, as Guardian of the Estate of Barbara Williams, filed a grievance against Respondent. Relator appointed attorney Gary D. Zeid to investigate the grievance. Zeid contacted Respondent by letter and by phone to discuss the matter with Respondent on December 13, 2010. Subsequently Zeid filed a report with Relator. Relator's certified grievance committee voted to prosecute Respondent for violations of the Ohio Rules of Professional Conduct and notified Respondent by letter on December 27, 2010.

{¶2} On January 3, 2011, Relator sent Respondent a notice of intent to file a complaint with a copy of the proposed complaint. (Relator's Amended Motion for Default Judgment, Ex. Z.) On January 27, 2011, Relator filed its formal complaint with the Board of Commissioners on Grievance and Discipline with a copy sent to Respondent. On February 14, 2011, a probable cause panel certified the complaint to the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio. On February 14, 2011, the secretary of Board of Commissioners on Grievances and Discipline sent Respondent a notice of filing the complaint and a copy of the complaint by certified mail. The return card indicates the certified mail was accepted on February 16, 2011. To date, Respondent has not filed an answer or any other pleading.

FINDINGS OF FACT

{¶3} On December 6, 2010, Magistrate Lora Lynne Stalnaker filed a decision regarding a motion to reopen the estate and file exceptions to the final account in the case of *The Estate of Richard L. Kariher*, Lake Common Pleas Court, Probate Division, No. 05 ES 0140. The magistrate found out that Respondent received notice of the hearing, held November 18, 2010, but did not attend. The magistrate found Respondent was licensed to practice law when he was appointed executor of the estate, but after the estate was closed, the Supreme Court of Ohio suspended his license for failure to register. As of the hearing, the court had not reinstated Respondent's license. (Relator's Amended Motion for Default Judgment, Ex. L.)

{¶4} The magistrate found attorney Kathryn T. Joseph is the Guardian of the Estate of Barbara Williams, the sole beneficiary of the Kariher estate. The court found the voucher Respondent attached to the final account, purportedly signed by Melanie Root, Guardian of the Person of Barbara Williams, indicating Williams received \$19,228.28 from the estate, did not in fact bear Root's signature. The magistrate found by clear and convincing evidence that

Respondent had perpetrated a fraud on the court by providing the receipt. (*Id.*)

{¶5} The magistrate found Respondent failed to attend two meetings at which he was to distribute the estate proceeds to Root. He did not return at least five phone calls, but finally on May 19, 2010, he dropped the distribution check off at Root's office, along with a copy of the final account and a receipt for Root to sign. Root did not sign the receipt for the check, which was dated March 19, 2010, some three months earlier. (*Id.*)

{¶6} Root's office forwarded the check to Attorney Joseph, who attempted to deposit it. Key Bank returned the unpaid check with a notation it was unable to locate the account on which it was drawn.

{¶7} The magistrate found Attorney Joseph filed a complaint for concealment of assets and a disciplinary complaint against Respondent. She recommended the court reopen the estate and find the exceptions to be well taken. (*Id.*) The court adopted the magistrate's decision on December 21, 2010. (Relator's Amended Motion for Default Judgment, Ex. T.)

{¶8} On February 17, 2011, Magistrate Charles T. Brown filed a decision in the case of *Joseph, Guardian of the Estate of Barbara Williams v. Rozanc*, Cuyahoga Common Pleas Court, Probate Division, No. 2010 ADV 0161724, which was the concealment of assets case. The magistrate recommended the court find Respondent guilty of concealment of assets and be ordered to pay Williams the bequest of \$19,228.28, plus a ten percent penalty and costs of \$2,137.75, minus a payment of \$5,000 for a total of \$18,288.86. (Relator's Amended Motion for Default Judgment, Ex. R.)

{¶9} The court adopted the magistrate's decision on March 7, 2011. (Relator's Amended Motion for Default Judgment, Ex. Q.) Subsequently, Attorney Joseph filed a notice to the court that Respondent had paid the amount in full. (Relator's Amended Motion for Default

Judgment, Ex. V.)

CONCLUSIONS OF LAW

{¶10} The Supreme Court of Ohio adopted the Ohio Rules of Professional Conduct, effective February 1, 2007, to supersede and replace the Ohio Code of Professional Responsibility. Although Respondent was appointed executor in 2005, the record does not affirmatively show Respondent's misconduct occurred before February 1, 2007, and the Ohio Rules apply.

{¶11} Relator alleges Respondent's actions violate the following Rules of Professional Conduct: Prof. Cond. R.8.4 (a) [violating or attempting to violate the Ohio Rule of Professional Conduct, knowingly assist another to do so, or do so through the acts of another]; Prof. Cond. R. 8.4 (b) [committing an illegal act that reflects adversely on the lawyer's honesty or trustworthiness]; Prof. Cond. R. 8.4(c) [engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation]; and Prof. Cond. R. 8.4 (d) [engaging in conduct that is prejudicial to the administration of justice].

{¶12} Based on the evidence presented in Relator's amended motion for default judgment, the Master Commissioner finds by clear and convincing evidence that Respondent has violated Prof. Cond. R. 8.4(a), 8.4(b), 8.4(c), and 8.4(d).

MITIGATING FACTOR

{¶13} Respondent has repaid Williams in full as ordered by the probate court.

AGGRAVATING FACTORS

{¶14} Relator alleges Respondent's actions evidence of dishonest and selfish motives, a pattern of misconduct, a failure to acknowledge the wrongful nature of his conduct, and that the victim of the misconduct was vulnerable and harmed by the misconduct.

RECOMMENDED SANCTION OF RELATOR

{¶15} Relator recommends the sanction of indefinite suspension.

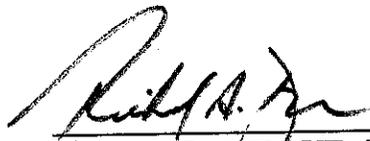
RECOMMENDATION OF MASTER COMMISSIONER

{¶16} I concur in the recommendation of the Relator and recommend the sanction of indefinite suspension.

RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 6(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on October 7, 2011. The Board adopted the Findings of Fact, Conclusions of Law, and Recommendation of the Master Commissioner and recommends that the Respondent, Frank Rozanc, be indefinitely suspended from the practice of law in the State of Ohio. The Board further recommends that the costs 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.



**RICHARD A. DOVE, Secretary
Board of Commissioners on
Grievances and Discipline of
the Supreme Court of Ohio**