

ORIGINAL

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

In Re: : 11-2043

Complaint against : Case No. 10-048

Curtis D. Britt : Findings of Fact,
Attorney Reg. No. 0070966 : Conclusions of Law and
Respondent : Recommendation of the
Cincinnati Bar Association : Board of Commissioners on
Relator : Grievances and Discipline of
: the Supreme Court of Ohio
:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶1} This matter was considered by a panel consisting of Patrick Sink, David Tschantz and Walter Reynolds, chair. None of the panel members is from the appellate district where the complaint originated or served on the probable cause panel that certified this matter to the Board.

{¶2} On September 14, 2011, a formal hearing was held in this matter. Relator was represented by Robert J. Gehring and Phillip J. Smith. Respondent was represented by George D. Jonson.

{¶3} On August 29, 2011, the parties filed an agreed stipulation of facts and violations. At the hearing the agreed stipulations were duly identified and admitted into evidence as Joint Exhibit 1. Based on the agreed stipulations and testimony, the facts and violations are not in dispute.

{¶4} Respondent was admitted to the practice of law in Ohio in November 1990.

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{¶5} In March 2007, Respondent was also admitted in Kentucky. His Kentucky license was suspended from December 2008 to November 2009 for non-payment of bar dues, but he is now in good standing in Kentucky.

{¶6} At the time Relator filed its initial complaint in this matter in June 2010, Respondent maintained his sole office in Florence, Kentucky. He had previously maintained three additional offices: in the Cincinnati suburb of Blue Ash from July 2008 through July 2009; in the Cincinnati suburb of Kenwood from October 2008 to November 2009; and in Cincinnati from February 2009 through January 2010. The Florence, Kentucky office was open from October 2008 through September 2010. Respondent has now closed all of his offices.

{¶7} From the time Respondent opened his own law office on or about July 2008, on Reed Hartman Highway in Blue Ash, ninety-five percent of his practice related to Ohio bankruptcy matters.

COUNT ONE - SONYA WEAVER

{¶8} Respondent had an agreement with "Total Bankruptcy," a website that provides a referral platform for bankruptcy attorneys, whereby he paid Total Bankruptcy \$65 per client referral.

{¶9} Client leads from Total Bankruptcy made up approximately ninety percent of Respondent's client referral base.

{¶10} The Total Bankruptcy website stated that clients would receive a free evaluation by the local bankruptcy lawyer they were referred to.

{¶11} Sonya Weaver was referred to Respondent after completing an application on the Total Bankruptcy website. She sought legal counsel regarding the feasibility of filing Chapter 7 bankruptcy.

{¶12} At her first appointment, at Respondent's office on February 6, 2009, Weaver met with Kenneth Cooper, a nonlawyer employed by Respondent.

{¶13} At this meeting, Cooper advised Weaver that she would qualify for Chapter 7 despite her interest in three time-share properties. Cooper also advised Weaver to discontinue payment of her credit card bills, to quit her part-time job, and to convert a CD to an IRA.

{¶14} Weaver relied on Cooper's advice, discontinuing payment of her credit card bills and quitting her part-time job.

{¶15} That day, Cooper completed an intake form noting Weaver's interest in the three time shares. (Joint Ex. 1, Ex. A)

{¶16} Weaver signed an agreement calling for payment of a flat fee of \$1,000 to Respondent for handling of the Chapter 7 bankruptcy. The agreement also called for the payment of miscellaneous filing fees. (Joint Ex. 1, Ex. B) Respondent did not review or sign the agreement until sometime in early March 2009.

{¶17} In payment of these fees, Weaver wrote Respondent two checks totaling \$1,424 - a check for \$100 on February 26, 2009 and a check for \$1,324 on February 27, 2009 - both of which she dropped off at Respondent's office.

{¶18} Respondent did not meet with Weaver on either occasion when she dropped off the checks. His office assistant merely provided her with paperwork to complete to further the filing of her bankruptcy.

{¶19} In early March 2009, Weaver returned the completed paperwork, as well as bank records that Cooper had requested, to Respondent's office.

{¶20} Thereafter, at the direction of Respondent's office assistant, Weaver completed an online credit counseling course to satisfy a court mandate for bankruptcy petitioners.

{¶21} In April 2009, Respondent met with Weaver for the first time. At this brief meeting, he informed her that a Chapter 7 bankruptcy might not be a viable option given her ownership interest in the property, including the time-shares. Respondent requested additional information from Weaver so that he could make a final determination.

{¶22} Several days later, Respondent and Weaver met again and she provided him with the documentation he had requested. At this brief meeting, Respondent confirmed that Chapter 7 was not a viable option for her given her interest in property.

{¶23} Weaver expressed dissatisfaction that, due to her reliance on Cooper's flawed advice, she was now two months behind on her credit card payments. Respondent suggested that she contact her creditors to set up payment plans.

{¶24} On April 30, 2009, Weaver sent Respondent a certified letter dismissing him from the case, and requesting return of her file, an itemized statement of the legal services rendered, and the return of any unearned fees. (Joint Ex. 1, Ex. C)

{¶25} In late May 2009, Respondent sent Weaver a check for \$499, which represented \$299 for the filing fee and \$200 in unused legal fees. He failed to include an itemization of the legal services rendered and failed to return her file.

{¶26} Respondent kept no contemporaneous time records in Weaver's case. In responding to inquiries from Relator, Respondent maintained that he was due the \$925 that he retained based on the following: two hours of direct consultation with Weaver (billed at \$225 per hour); one hour of file review and research (billed at \$225 per hour); administrative work performed by his office assistant (billed at a total of \$150); and reimbursement for the \$50 fee for the credit counseling course.

{¶27} Weaver disputes that Respondent spent two hours with her.

{¶28} Weaver has since retained another attorney to assist her in filing bankruptcy.

COUNT TWO - CRAIG SMITH

{¶29} In May 2010, Respondent undertook representation of Craig Smith in a Chapter 7 bankruptcy matter, receiving a \$299 filing fee and \$800 retainer from Smith.

{¶30} Respondent deposited the retainer and filing fees from Smith directed into his office operating account.

{¶31} Thereafter, Respondent failed to communicate with Smith, failed to respond to his inquiries, and failed to file his petition.

{¶32} Respondent's delay in filing the petition was due in part to the fact that he had already spent Smith's filing fee on other matters not related to Smith's case and no longer had sufficient funds to file the petition.

{¶33} Respondent was only able to file Smith's petition when he eventually received a retainer and/or filing fee from a different matter and misapplied those monies to pay Smith's filing fee.

COUNT THREE - NEIL FRAZIER

{¶34} In October 2009, Neil Frazier retained Respondent to represent him in dissolution, paying him an \$800 retainer.

{¶35} Frazier later paid Respondent a \$250 filing fee.

{¶36} Respondent deposited Frazier's retainer and filing fee directly into his operating account.

{¶37} In October 2010, after Respondent's repeated failure to communicate with him and his failure to file the dissolution, Frazier dismissed Respondent.

{¶38} Respondent failed to refund Frazier's retainer or filing fee, as he had expended the funds on other matters.

**COUNT FOUR - RECEIPT AND EXPENDITURE OF CLIENT FEES
AND FAILURE TO MAINTAIN A TRUST ACCOUNT**

{¶39} During Relator's investigation of the Smith grievance, Respondent admitted that, while he had a trust account, he did not use it. Rather, it was his regular practice to deposit all client monies, whether earned or unearned, into his office operating account.

{¶40} At the time of Relator's second deposition of Respondent on September 28, 2010, Respondent also admitted that he had accepted employment from between 24 and 30 additional bankruptcy clients, taking retainers and filing fees from them, but that he had failed to file their petitions and had spent the clients' fees on matters other than their cases.

{¶41} On September 30, 2010, after Respondent's deposition in this matter, Relator requested that he provide names and contact information of the additional clients he identified by October 8, 2010. Respondent did not respond until after he retained counsel and on or about November 4, 2010.

{¶42} After Respondent provided the documents to his counsel and thereby to Relator, Relator learned that Respondent actually accepted over \$40,000 in retainers and filing fees from 42 clients. Those retainers and filing fees were deposited in Respondent's operating account. None of the funds were deposited in a trust account. The spreadsheet attached as Exhibit D to the agreed stipulations summarizes the information from Respondent's client files concerning the clients from whom Respondent received fees that he deposited into his operating account without filing any action on their behalf. The data contained in the columns of the spreadsheet assign an identifying number to the client and accurately summarizes from left to right: (1) the names of the clients; (2) the dates on which each client made payments to Respondent that were deposited

into Respondent's operating account; (3) the amount of such payments; (4) whether Respondent's client file contained written evidence of a fee agreement with the client and, if so, the date of the agreement; and the amount agreed under the fee agreement.

{¶43} Respondent used funds deposited into his operating account from the clients identified on Exhibit D, in part, for his own purposes without regard to whether any such funds had been earned.

{¶44} It was not until after Relator initiated the instant matter that Respondent took steps to alert the clients identified in Exhibit D that he had not filed their petitions because of his conversion of their fees.

{¶45} Although Respondent has made no direct restitution to any of the clients identified in Exhibit D, he has paid \$1,000 per month (\$9,350 as of the September 14, 2011 hearing) to local bankruptcy attorney Nick Zingarelli as part of an arrangement to have Zingarelli complete the work for which some of the clients paid Respondent.

COUNT FOUR - IRS ISSUES

{¶46} Two Internal Revenue Service levies were filed against Respondent in the Bankruptcy Court (Joint Ex. 1, Exhibits E and F) as he had failed to withhold federal taxes or pay unemployment taxes. The levies totaled \$16,672.92. Thus, fees earned by Respondent that were to be paid by the Bankruptcy Trustee were paid to the IRS.

HARM TO CLIENTS

{¶47} Because they were seeking assistance with bankruptcy issues, Respondent's clients had limited resources. By making payments to Respondent that he spent, those funds were not available to make payments to alternative counsel. Because their bankruptcies were not

filed, their effort to seek relief from their indebtedness and creditors was delayed, in some cases indefinitely.

**RESPONDENT'S EFFORTS TO ASSIST CLIENTS
TO FIND OTHER COUNSEL**

{¶48} On December 14, 2010, Respondent and bankruptcy attorney Nick Zingarelli executed a contract in order to assist those clients who had paid Respondent for work that was not completed. For those who wanted to have Zingarelli take over representation, Zingarelli agreed to complete the work for the amount agreed upon between the client and Respondent. Respondent agreed to pay Zingarelli \$1,000 per month for completing the work, and he instructed his bank to deposit the \$1,000 into Zingarelli's account on the first of each month. (Joint Ex. 1, Ex. G). As of September 14, 2011, Respondent had paid Zingarelli \$9,350.

{¶49} After executing the contract with Zingarelli, Respondent sent each of the clients identified in ¶39 of the agreed stipulations a letter. For the Chapter 7 clients, Respondent explained that he had spent the money they paid him before it was earned, and outlined the arrangement with Zingarelli. An example of this letter as appears in Joint Ex. 1, Exhibit I.

{¶50} For the Chapter 13 clients, Respondent explained he was closing his practice and that Zingarelli was willing to substitute as counsel. An example of this letter appears in Joint Ex. 1, Ex. J.

RECENT CLIENT COMPLAINTS TO RELATOR

{¶51} Since the second amended complaint was filed in this matter, Relator has received additional complaints from three of Respondent's clients (Philip Jones, Linda Powell, and Richard Scott Brandenburg) that are consistent with the facts and pattern of conduct to which the parties have stipulated above. (Joint Ex. 1, Ex. K -M)

{¶52} Respondent admits that the facts set forth in Joint Ex. 1, Exhibits K-M are true.

{¶53} Based upon the agreed stipulations and the evidence at the hearing, the panel finds by clear and convincing evidence that Respondent violated the following Rules of Professional Conduct:

- Prof. Cond. R. 1.1, by failing to provide Ms. Weaver with competent representation as a result of his flawed office intake and review process;
- Prof. Cond. R. 1.1, 1.3, and 1.4, by failing to provide diligent, prompt and competent representation to his clients;
- Prof. Cond. R. 1.4, by failing to inform his clients of the status of their cases;
- Prof. Cond. R. 1.5, in that he charged Ms. Weaver an excessive fee;
- Prof. Cond. R. 1.15(a) and (c), through his failure to properly segregate client funds from his own funds in a trust account;
- Prof. Cond. R. 5.3(b) and 5.5(a), by aiding in the unauthorized practice of law through his failure to properly supervise Mr. Cooper;
- Prof. Cond. R. 7.1, by failing to provide Ms. Weaver with the free initial consultation that the Total Bankruptcy website had promised.
- Prof. Cond. R. 8.4(c) and (d), through his conversion of client funds;
- Prof. Cond. R. 8.4(h), by engaging in conduct that adversely reflects on his fitness to practice law.

AGGRAVATION AND MITIGATION

{¶54} In aggravation, the panel finds that the evidence in this case shows a pattern of misconduct, multiple offenses, and harm to vulnerable clients. Respondent took more than \$40,000 from 42 clients and did little or no work for many of these clients who came to Respondent for bankruptcy assistance

{¶55} There is evidence that once Relator commenced its investigation, Respondent did not avail himself of the opportunity to disclose other wrongdoings. Further, although Respondent has retained Zingarelli to take over the representation of some former clients, there

are other clients harmed by Respondent's misconduct to whom Respondent has made no direct restitution. Rather, Respondent has directed payments to his parents in order to repay approximately \$116,000 he borrowed to help keep his office operating.

{¶56} In mitigation, the parties entered into an agreement for Respondent to be evaluated by Dr. Douglas Mossman, M.D. Mr. Mossman concluded that although Respondent suffers from depression, such was not the cause of his misconduct. Moreover, Dr. Mossman opined that Respondent's depression "was not severe enough to substantially impair his ability to practice law." (Respondent's Ex. 2) Thus, the panel will not consider Dr. Mossman's evaluation as evidence of mitigation.

{¶57} Although Relator contends that Respondent showed a lack of remorse from his actions, the panel finds the evidence is otherwise. Respondent testified that he has been employed at Wright Patterson Air Force Base for approximately three months. His net compensation is approximately \$4,000 per month. He testified that he intends to make restitution by paying \$1,000 each month into an account so that payments can be made to the approximately 30 clients who are not represented by Zingarelli. Further, as part of Respondent's engagement of Jonson to represent him in this matter, an agreement was reached that Jonson's fee would not be paid until restitution has been made to all clients.

{¶58} Although Respondent denies that there was a selfish or dishonest motive for his wrongful acts, he did acknowledge that his acts were wrongful.

{¶59} Relator is requesting that Respondent be disbarred. Relator cites *Cincinnati Bar Assn. v. Weaver*, 102 Ohio St.3d 264, 2004-Ohio-2683 for the proposition that the presumptive discipline for the wrongful taking of clients' money without performing work is disbarment.

Relator also directs the panel's attention to *Butler Cty. Bar Assn. v. Cornett*, 109 Ohio St.3d 347, 2006-Ohio-2575 and *Warren Cty. Bar Assn. v. Marshall*, 121 Ohio St.3d 197, 2009-Ohio-501.

{¶60} Respondent is requesting a two-year suspension, with reinstatement conditioned on total restitution. Respondent cited several cases supporting his request for a sanction of a two-year suspension. However, the panel concludes that those cases are not controlling considering the extent and nature of Respondent's misconduct. The panel instead recommends Respondent be suspended indefinitely from the practice of law in Ohio.

{¶61} In recommending that Respondent be indefinitely suspended, we note that the Supreme Court has stated on numerous occasions that "[t]he primary purpose of disciplinary sanctions is not to punish the offender, but to protect the public." *Disciplinary Counsel v. O'Neill*, 103 Ohio St.3d 204, 2004-Ohio-4704. Thus, even in cases of egregious misconduct and illegal drug use, the Court has decided against permanent disbarment based on the lawyer's probable recovery from the drug addiction that caused the ethical breaches. See, e.g., *Disciplinary Counsel v. Garrity*, 98 Ohio St.3d 317, 2003-Ohio-740.

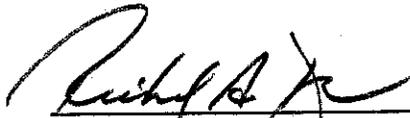
{¶62} In support of the recommendation, the panel considered *Cleveland Metro. Bar Assn. v. Brown*, 130 Ohio St.3d 147, 2011-Ohio-5198 (attorney neglected a client's matter, failed to communicate or respond to clients' requests, failed to properly maintain and deliver client's funds, failed to provide competent representation, and engaged in conduct involving dishonesty, fraud, deceit and misrepresentation). In *Brown*, Relator recommended permanent disbarment. The master commissioner also recommended disbarment. However, the Board disagreed and recommended an indefinite suspension based on the entire record, including the fact that Brown had been in the practice of law for only a few years. The Board further recommended that Brown be required to pay full restitution. The Supreme Court agreed.

{¶63} Accordingly, the panel recommends that Respondent be indefinitely suspended for the practice of law and that he be ordered to pay full restitution to all clients harmed by his misconduct as evidenced by Joint Ex. 1, Ex. D and K-M.

BOARD 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 December 2, 2011. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the panel and recommends that Respondent, Curtis D. Britt, be suspended indefinitely from the practice of law in Ohio and ordered to pay full restitution to his former clients as set forth in ¶63 of this 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 Recommendation as those of the Board.



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