

ORIGINAL

IN THE SUPREME COURT OF OHIO

Toledo Bar Association, :
Relator, :
v. : No. 11-1760
Beauregard Maximillion Harvey, :
Respondent. :

RELATOR'S ANSWER BRIEF

**TO RESPONDENT'S OBJECTIONS TO THE BOARD OF COMMISSIONERS
FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS,
AND RESPONSE TO SHOW CAUSE ORDER**

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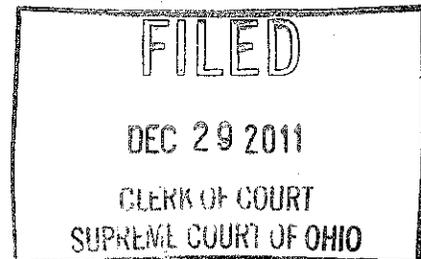
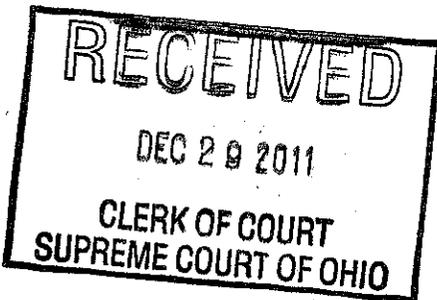


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STATEMENT OF FACTS

Respondent, Beauregard Maximillion Harvey, during the years 2008, 2009 and approximately the first half of 2010, represented fourteen (14) bankruptcy clients in their petitions filed in the Northern District of Ohio, Western Division. The Board of Commissioners found either by stipulation or by clear and convincing evidence that Respondent failed to properly represent his bankruptcy clients in that each of their bankruptcy cases were dismissed without Discharge because of Respondent's failure to timely file a Certificate indicating this his bankruptcy clients had timely completed an educational class in financial management, which is required by Title 11 of the U.S.C. (the Bankruptcy Code).

Additionally, the Board of Commissioners found that Respondent stipulated that he mishandled representing a couple in a Municipal Court case by failing on at least two (2) occasions to respond to Motion for Default Judgments, and thereby his clients suffered a default judgment against them. Moreover, despite the finding that the Respondent voluntarily paid the cost for refileing the bankruptcy cases that had been dismissed without discharge due to his failure to file the proper documents, and charging no extra fee for reopening the cases, no remediation efforts have been undertaken in the matter of the Complaint In Re Richardson, set forth in Relator's Amended Complaint under Exhibit C.

The case remains closed without a Discharge.

ARGUMENT

I. THE BOARD OF COMMISSIONERS CONSIDERED THE MITIGATING CIRCUMSTANCE SET FORTH BY RESPONDENT AND PROPERLY REJECTED THEM

Respondent complains in his Objections to Findings of Fact, conclusions of Law and

Recommendations that he is limiting the scope of his objections to the Aggravating and Mitigating Factors and Recommended Sanction by the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, and Relator will limit the response to these two objections.

Respondent objects to the Board not considering two monumental life events as mitigating factors. He testified that he was in the process of a divorce and that his mother had died. There was no testimony that these life events had any proximate relationship to the violations of the Ohio Rules of Professional Conduct found to be committed by Respondent.

In *Disciplinary Counsel v. Bowman*, 110 Ohio St. 3d 480 (2006), this Court set forth a four prong test that must be satisfied for a mental condition to have significant mitigating effect: (1) A diagnosis of a mental disability by a qualified health care professional, (2) A determination that the mental disability contributed to the misconduct, (3) A sustained period of successful treatment, and (4) A prognosis from a qualified health care professional that the attorney will be able to return, under specified conditions if necessary, to the competent, ethical, and professional practice of law.

Respondent has offered no evidence to support any of these four prongs. Accordingly, the Board of Commissioners properly found that the stress factors in Respondent's personal life were insufficient to be considered in mitigation.

II. THE SANCTION RECOMMENDED BY THE BOARD OF COMMISSIONERS WAS JUSTIFIED BY THE FACTS AND EXISTING LAW

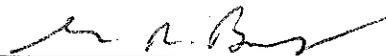
Respondent has admitted to eight (8) violations of the Ohio Rules of Professional Conduct, and the Board found him to be in violation of three (3) additional violations (to which Respondent does not object). The Respondent has stipulated, and the Board found that Respondent's misconduct constituted a pattern and practice of violating the Rules of Professional Conduct. In Cleveland

Metropolitan Bar Association v. Nance, 124 Ohio St. 3d 57 (2009), this Court ordered a one year suspension with six (6) months stayed for multiple neglect violations. In that case, Nance had committed three (3) violations similar in nature to the violations found in the instant case. In this Disciplinary Action, Respondent has committed eleven (11) violations over a period that extended over two years.

CONCLUSION

Respondent has committed violations of the Ohio Rules of Professional Conduct in eleven (11) matters, entrusted to him over a period greater than two years. He has engaged in a pattern and practice of violating Professional Conduct Rules 1.3, 1.4(a)(3) and 8.4(d). Respondent has not cited any cases to support his position that a less severe punishment is warranted than that recommended by the Board of Commissioners.

Relator believes the Board's Findings of Fact and Conclusions of Law are correct, and defers to the Board's authority for its Recommended Sanctions of a one year suspension, with six (6) months stayed, upon conditions.



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CERTIFICATION

This is to certify that a copy of the foregoing was served upon Respondent, Beauregard Maximillion Harvey, Pro Se Counsel, 425 Jefferson Avenue, Suite 910, Toledo, Ohio 43604 by ordinary U.S. Mail this 28th day of December, 2011.



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