ORIGINAL

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

12-0315

In Re:	:	
Complaint against	:	**Case No. 11-080**
Leonette F. Cicirella **Attorney Reg. No. 0042219**	:	**Findings of Fact, Conclusions of Law, and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio**
Respondent	:	
Cleveland Metropolitan Bar Association	:	
Relator	:	

FILED
FEB 22 2012
CLERK OF COURT
SUPREME COURT OF OHIO

MOTION FOR DEFAULT JUDGMENT

{¶1} This matter was referred to Master Commissioner, Judge W. Scott Gwin, on January 23, 2012, by the secretary of the Board pursuant to Gov. Bar R. V, Section 6(F)(2) for ruling on Relator's motion for default judgment. Master Commissioner Gwin then proceeded to prepare a report pursuant to Gov. Bar R. V, Section 6(J).

PRIOR PROCEDURAL HISTORY

{¶2} Respondent was admitted to the practice of law on November 6, 1989.

{¶3} Effective September 8, 1999, the Supreme Court of Ohio suspended Respondent from practicing law in Ohio for two years, with one year stayed, and ordered Respondent to pay $1,000 to her clients. *Cleveland Bar Assn. v. Cicirella* (1999), 86 Ohio St.3d 544. Respondent's adjudged misconduct consisted of handling a legal matter without adequate preparation, neglecting an entrusted legal matter, and failing to cooperate in a disciplinary proceeding.

{¶4} In April 2000, the Supreme Court of Ohio held Respondent in contempt for

failure to comply with the terms of the order of suspension by surrendering her certificate of admission and attorney registration card, and failing to file a timely affidavit of compliance. *Cleveland Bar Assn. v. Cicirella* (2000), 88 Ohio St.3d 1463.

{¶5} Effective January 30, 2002, the Supreme Court of Ohio suspended Respondent indefinitely from the practice of law. *Cuyahoga Cty. Bar Assn. v. Cicirella*, 94 Ohio St.3d 224, 2002-Ohio-643. The adjudged misconduct consisted of neglecting an entrusted legal matter, not maintaining complete records of all client funds coming into her possession or rendering appropriate accounts thereof, not promptly delivering to the client funds or property to which the client was entitled, engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, engaging in conduct prejudicial to the administration of justice, engaging in conduct adversely reflecting on her fitness to practice law, and neglecting or refusing to assist or testify in a disciplinary investigation or hearing.

{¶6} Effective December 5, 2005, the Supreme Court of Ohio suspended Respondent from the practice of law for failing to register with the Office of Attorney Services as required by Gov. Bar R. VI. *In Re: Leonette F. Cicirella,* 107 Ohio St.3d 1431, 2005-Ohio-6408.

{¶7} As a result of the above history, Respondent's license to practice law has been continuously suspended since September 8, 1999.

PROCEDURAL HISTORY RELEVANT TO THIS CASE

{¶8} On October 19, 2010, Helen Hydash filed a grievance against Respondent. On December 22, 2010, Relator sent Respondent a letter via certified mail, requesting her written response by January 5, 2011, to the grievance filed against her. The letter was signed for on January 10, 2011. Relator telephoned and spoke to Respondent who acknowledged receiving the certified letter. On January 19, 2011, Relator left a phone message for Respondent reminding

her to submit her response. On January 21, 2011, Respondent left Relator a voice mail message advising that Respondent would try to get her response out by January 24, 2011, and would call Relator after she mailed the response. On January 26, 2011, Relator had received no written response from Respondent and assigned the grievance to attorney Virginia Brown of Relator's certified grievance committee to investigate.

{¶9} Between January 26, 2011 and February 25, 2011, Attorney Brown left Respondent several voicemail messages regarding the grievance filed against her. On February 25, 2011, Attorney Brown sent Respondent a letter by certified mail requesting a meeting to investigate the grievance. Respondent did not respond, and on March 8, 2011, Attorney Brown sent Respondent a second letter requesting a meeting.

{¶10} On April 26, 2011, Relator sent Respondent a letter via regular and certified mail informing her that Relator's certified grievance committee found probable cause to believe Respondent may have violated the Rules of Professional Conduct. On July 15, 2011, Relator sent Respondent a notice of intent to file a formal complaint via regular and certified mail, and requested her written response to the draft complaint by July 29, 2011. The certified mail was signed for, and Respondent never responded to the letter.

{¶11} On August 15, 2011, a probable cause panel of the Board found probable cause for the filing of the formal complaint. The same day, the complaint was filed. Respondent was served on August 24, 2011. On September 29, 2011, Relator sent Respondent a notice of intent to file a motion for default. Relator did not receive a response to the notice. On January 18, 2012, Relator filed its motion for default, which contained a certificate of service by regular and

certified mail sent January 17, 2012.[1] To date, Respondent has not responded to the grievance or filed any pleadings.

FINDINGS OF FACT

{¶12} In 2005, Helen Hydash retained Respondent to perform legal services including the drafting of living trusts for Hydash and her son, Gary. Respondent, who was under suspension, accepted the engagement and performed the services. Respondent did not advise Hydash of the suspension.

{¶13} On June 19, 2010, after Gary had passed away, Hydash retained Respondent to perform legal services including the preparation of documents and other work necessary to change ownership and beneficiary designations on her late son's various investment accounts with DWS Investments and to transfer title of his vehicle. Hydash was elderly and suffered from macular degeneration, so Respondent filled out the retainer check and Hydash signed it. Hydash paid, and Respondent accepted, a $250 retainer.

{¶14} Aside from requesting the necessary paperwork from DWS where Gary's investments were held, Respondent failed to perform any of the legal services she had agreed to undertake. The paperwork supplied by DWS was wrong, and Respondent failed to follow up and procure the correct paperwork.

{¶15} Hydash alleges she attempted on multiple occasions to reach Respondent without success. Respondent did not return Hydash's calls. After several months, Hydash gave up on Respondent and, with the assistance of her daughter, was able to obtain and complete the

[1] The Board acknowledges that the certificate of service contained in the motion for default does not indicate service at the address designated in Respondent's Supreme Court attorney registration record. See Gov. Bar R. V, Section 6(F)(1)(e). However, the Board and Relator have served Respondent at the address stated in the certificate throughout these proceedings. In addition, the business address in Respondent's attorney registration record is not current because Respondent has been suspended since 1999 and has not registered with the Supreme Court since 2001.

appropriate paperwork from DWS. With the help of the title bureau, Hydash was able to obtain ownership of her son's vehicle. Hydash alleged she did all the work she had hired Respondent to do, and as of July 20, 2011, Respondent had not returned the retainer or any of Hydash's original documents, including Gary's original will.

CONCLUSIONS OF LAW

{¶16} Respondent's actions took place before and after February 1, 2007, when the Supreme Court of Ohio adopted the Rules of Professional Conduct to supersede and replace the Ohio Code of Professional Responsibility. Both the Code and the Rules apply here.

{¶17} Respondent's misconduct in 2005 violated the following provisions of the Ohio Code of Professional Responsibility: DR3-101(B) [practicing law in a jurisdiction where to do so is in violation of regulations of the profession in that jurisdiction]; DR1-102(A)(4) [conduct involving dishonesty, fraud, deceit, or misrepresentation]; and DR1-102(A)(6) [conduct that adversely reflects on the lawyer's fitness to practice law].

{¶18} Respondent's misconduct in 2010 violated the following provisions of the Rules of Professional Conduct: Prof. Cond. R. 1.3 [diligence]; Prof. Cond. R. 1.4(a)(3) [failing to keep the client reasonably informed about the status of the matter]; Prof. Cond. R. 1.4(a)(4) [failing to comply as soon as practicable with reasonable requests for information from the client]; Prof. Cond. R. 1.15(d) [failing to promptly deliver to the client or third person any funds or property in her possession that the client or third person is entitled to receive]; Prof. Cond. R. 5.5(a) [practicing law in a jurisdiction in violation of the regulations of the legal profession in that jurisdiction]; Prof. Cond. R. 8.1(b) [failing to respond to a demand for information from a disciplinary authority]; Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation]; Prof. Cond. R. 8.4(d) [conduct that is prejudicial to the administration of

justice]; and Prof. Cond. R. 8.4(h) [conduct that adversely reflects on the lawyer's fitness to practice law]. Respondent's conduct also violates Gov. Bar R. V, Section 4(G) [refusing to assist in a disciplinary investigation or hearing].

{¶19} Relator alleges violations of Prof. Cond. R. 1.4(a)(1) [failing to promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required by these Rules]; and Prof. Cond. R. 1.4(a)(2) [failing to reasonably consult with the client about the means by which the client's objectives are to be accomplished]. The evidence in the record does not prove these violations by clear and convincing evidence. Relator also alleges violations of Prof. Cond. R. 5.5(b)(1) [establishing an office or other systematic continuous presence in this jurisdiction for the practice of law without authorization]; and Prof. Cond. R. 5.5 (b)(2) [holding oneself out to the public or otherwise representing oneself as being admitted to practice in a jurisdiction when she is not]. These provisions only apply to lawyers not admitted in Ohio. Because Respondent is a lawyer admitted to practice in Ohio (although under suspension), the evidence in the record does not prove these violations by clear and convincing evidence.

MITIGATING FACTORS

{¶20} The record does not contain any information with regard to mitigating circumstances.

AGGRAVATING FACTORS

{¶21} At least seven of the nine aggravating factors set forth in BCGD Proc. Reg. 10(B)(1) are present here:

- Prior disciplinary offenses;
- Dishonest or selfish motive;
- Multiple offenses;
- Lack of cooperation in the disciplinary process;

- Refusal to acknowledge the wrongful nature of her conduct;
- Vulnerability of and resulting harm to the grievant; and
- Indifference to making restitution.

APPLICABLE CASE LAW

{¶22} In *Disciplinary Counsel v. Sabroff*, 123 Ohio St.3d 182, 2009-Ohio-4205, the Supreme Court found it appropriate to disbar an attorney for practicing law while under suspension, violating the Rules of Professional Conduct, and failing to cooperate with the investigation into the grievances. Id. at ¶21, citations deleted. *Accord Disciplinary Counsel v. Frazier*, 110 Ohio St.3d 288, 2006-Ohio-4481, at ¶54 [citations omitted].

RECOMMENDED SANCTION OF THE RELATOR

{¶23} Relator recommends that Respondent be disbarred from the practice of law in Ohio. Relator also recommends that Respondent be ordered to pay restitution to Hydash, and to give Hydash her file.

RECOMMENDATION OF MASTER COMMISSIONER

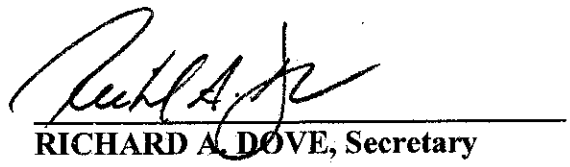
{¶24} In light of Respondent's prior disciplinary history and her continuing to defy the dictates of the Supreme Court of Ohio by practicing law while under suspension, I concur in the recommendation of Relator and recommend Respondent be disbarred from the practice of law. I also recommend that Respondent be ordered to pay $250 in restitution to Hydash (the amount of the retainer) and to give Hydash her file.

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 February 10, 2012. The Board adopted the Findings of Fact, Conclusions of Law, and Recommendation of the Master Commissioner and recommends that Respondent, Leonette F. Cicirella, be permanently

disbarred from the practice of law in Ohio. The Board also recommends that Respondent be ordered to pay $250 in restitution to Hydash and to give Hydash her file. 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 Recommendations as those of the Board.



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