

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

12-0316

In Re:	:	
Complaint against	:	Case No. 11-010
Sakeya M. Stubbs	:	Findings of Fact,
Attorney Reg. No. 0071309	:	Conclusions of Law, and
	:	Recommendation of the
Respondent	:	Board of Commissioners on
	:	Grievances and Discipline of
Columbus Bar Association	:	the Supreme Court of Ohio
	:	
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 December 22, 2011 by the Secretary of the Board pursuant to Gov. Bar R. V, Section 6(F)(2) for ruling on the 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 Sakeya M. Stubbs, Ohio Supreme Court was admitted to the practice of law in Ohio on November 8, 1999.

{¶ 3} Respondent received a six-month stayed suspension and one year of monitored probation after Respondent had falsified a document in an attempt to convince the Ohio Bureau of Motor Vehicles that she had been properly insured at the time she had received a traffic

citation. The sanction was imposed June 21, 2006. *Columbus Bar Assn. v. Stubbs*, 109 Ohio St.3d 446, 2006-Ohio-2818.

{¶ 4} Respondent had an attorney registration suspension from December 3, 2007 to January 11, 2008. *In re Attorney Registration Suspension of Stubbs*, 116 Ohio St.3d 1420, 2007-Ohio-6463.

{¶ 5} She had a second attorney registration suspension from November 3, 2009 to March 5, 2010. *In re Attorney Registration Suspension of Stubbs*, 123 Ohio St.3d 1475, 2009-Ohio-5786.

{¶ 6} In *Disciplinary Counsel v. Stubbs*, 128 Ohio St.3d 344, 2011-Ohio-553, the Supreme Court found that an indefinite suspension was warranted for Respondent's conduct, which included depositing earned fees and payments for court-appointed cases into a client trust account, failing to maintain accurate records for her trust account, using trust account to pay personal and office expenses, causing trust account to become overdrawn, using \$5,489 in personal injury settlement funds to pay her own bills rather than client's medical bills as attorney had agreed, and failing to respond to or cooperate in disciplinary investigation. These acts violated numerous rules including those requiring attorney to maintain a record for each client on whose behalf funds are held, requiring attorney to maintain a record for the attorney's client trust account, prohibiting conduct that is prejudicial to the administration of justice, and prohibiting conduct that adversely reflects on attorney's fitness to practice law. Respondent failed to respond to the complaint, and the matter proceeded on Relator's motion for default judgment.

{¶ 7} Relator in *Disciplinary Counsel v. Stubbs, supra*, filed the amended complaint on May 14, 2010. The Supreme Court's decision indefinitely suspending Respondent was issued February 15, 2011.

{¶ 8} The pending complaint against Respondent involves ten separate counts of alleged misconduct.

{¶ 9} With regard to the Kacey R. Noel grievance detailed in Count I, Relator sent Respondent a letter on February 14, 2008, with a copy of the grievance and requesting her response. Respondent replied with a letter.

{¶ 10} With regard to the Deramus Thomas grievance detailed in Count II, Relator sent Respondent a letter on March 28, 2008, with a copy of the grievance and requesting her response. A certified follow up letter was sent on April 28, 2008. The green card confirming receipt was signed on April 29, 2008. Clous affidavit, Exhibit B. Respondent failed to respond to this letter.

{¶ 11} With regard to the Gary Salyer grievance detailed in Count III, Relator sent Respondent a letter on January 14, 2009, with a copy of the grievance and requesting her response. A certified follow-up letter was sent on February 5, 2009. The green card confirming receipt was signed on February 6, 2009. Clous affidavit, Exhibit C. Respondent failed to respond to this letter.

{¶ 12} With regard to the Roland Pschibul grievance detailed in Count IV, Relator sent Respondent a letter on September 2, 2009, with a copy of the grievance and requesting her response. Respondent contacted Relator and requested an extension of time to file a response, stating that she had just returned from vacation. An extension to respond was granted until September 25, 2009. When no response was received, a certified follow-up letter was sent on October 6, 2009. The green card confirming receipt was signed on October 7, 2009. Respondent failed to respond to this letter. Clous affidavit, Exhibit D.

{¶ 13} With regard to the Mary Mims grievance detailed in Count V, Relator sent Respondent a letter on October 21, 2009, with a copy of the grievance and requesting her response. A certified follow up letter was sent on November 13, 2009. The green card confirming receipt was signed on November 16, 2009. Clous affidavit, Exhibit E. Respondent failed to respond to this letter.

{¶ 14} With regard to the Patricia Hall grievance detailed in Count VI, Relator sent Respondent a letter on February 3, 2010, with a copy of the grievance and requesting her response. A certified follow up letter was sent on February 17, 2010. The green card confirming receipt was signed on February 18, 2010. Clous affidavit, Exhibit F. Respondent failed to respond to this letter.

{¶ 15} With regard to the Adoption Matter detailed in Count VII, Relator sent Respondent a letter on January 8, 2010, with a copy of the grievance and requesting her response. A certified follow-up letter was sent on January 26, 2010. Clous affidavit, Exhibit G. Respondent failed to respond to this letter.

{¶ 16} With regard to the Reana Allen grievance detailed in Count VIII, Relator sent Respondent a letter on March 24, 2010, with a copy of the grievance and requesting her response. A certified follow-up letter was sent on April 28, 2010. Respondent signed the green card confirming receipt on an unrecorded date. Clous affidavit, Exhibit H. Respondent failed to respond to this letter.

{¶ 17} With regard to the Chantel Boyd grievance detailed in Count IX, Relator sent Respondent a letter on March 23, 2010, with a copy of the grievance and requesting her response. A certified follow up letter was sent on May 18, 2010. Respondent signed the green

card confirming receipt on an unknown date. Clous affidavit, Exhibit I. Respondent failed to respond to this letter.

{¶ 18} In March 2010, Relator, having not received any response to requests for information from Respondent on eight of nine pending grievances (a response was received for the first matter), sent Respondent a notice of deposition on April 8, 2010 and request for production of documents. Clous affidavit, Exhibit J. Respondent did not appear for the deposition and did not otherwise communicate with Relator. Relator made a record of the nonappearance. Motion for Default, Ex. 20.

{¶ 19} Relator tendered a complaint against Respondent to the probable cause panel of the Board of Commissioners on Grievances and Discipline on December 1, 2010. Prior to filing, Relator sent a copy of the complaint to Respondent. Clous affidavit, Exhibit K.

{¶ 20} On February 14, 2011, the complaint was certified for probable cause, and the Secretary of the Board of Commissioners sent a notice to respondent of filing of complaint and an entry.

{¶ 21} On October 27, 2011, Relator contacted Respondent in an attempt to determine her intentions regarding the complaint. Respondent indicated that she would file an answer within the next two weeks and requested a copy of the complaint. Relator sent Respondent a copy of the complaint via Respondent's e-mail address.

{¶ 22} Respondent has not answered the complaint. Respondent has not filed any other pleading in this proceeding, and on December 21, 2011, Relator moved for default judgment against Respondent.

{¶ 23} Prima facie documentary evidence in support of the allegations made regarding the misconduct of Respondent is set forth in the following:

1. Affidavit of A. Alysha Clous, Columbus Bar Association Assistant Bar Counsel, detailing Relator's notices to Respondent of the grievances that formed the basis of the complaints in this case and this motion;

2. Affidavit of Yvonne L. Twiss, Esq., member of subcommittee assigned to investigate these matters;

3. Kacey R. Noel grievance, filed February 13, 2008;

4. Affidavit of Kacey R. Noel, dated August 23, 2011;

4A. Respondent's response to Noel grievance, dated February 21, 2008;

5. Certified Attorney Registration Information from the Ohio Supreme Court Director of Attorney Services Division, dated October 7, 2011;

6. Roland Pschibul grievance, filed September 2, 2009;

7. Affidavit of Roland Pschibul, dated August 13, 2011;

8. Certified copy of affidavit filed in *Pschibul v. Pschibul*, Franklin County Court of Common Pleas, Case No. 09 DR 0188;

9. Patricia Hall grievance, filed February 2, 2010;

10. Affidavit of Patricia Hall, dated August 5, 2011;

11. Kelly Patton, Esq. (adoption matter) grievance, dated January 7, 2010;

12. Affidavit of Kelly Patton, Esq., dated August 3, 2011;

13. Reana Allen grievance, filed March 19, 2010;

14. Affidavit of Reana Allen, dated August 12, 2011;

15. Certified copy of docket for *Allen v. Epie*, Franklin County Court of Common Pleas, Case No. 09 DR 3444;

16. Deramus H. Thompson grievance, filed March 6, 2008;

17. Gary Salyer grievance, filed January 13, 2009;
18. Mary Mims grievance, filed October 20, 2009;
19. Chantel Boyd grievance, filed March 22, 2010;
20. Transcript of attempted April 8, 2010 deposition of Respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Count I—Kacey R. Noel Matter

{¶ 24} Kacey E. Noel, who was accused of writing bad checks, gave Respondent a \$500 retainer to represent her in the criminal matter. Respondent agreed to represent her. Ms. Noel also gave Respondent a \$100 gift card and loaned her a computer.

{¶ 25} Respondent was suspended at the time Ms. Noel hired her and paid the retainer. Respondent informed Ms. Noel that she needed the retainer in order to pay the reinstatement fee. The suspension was due to Respondent's failure to register and was in effect from December 3, 2007, through January 11, 2008. [*In re Attorney Registration Suspension of Stubbs*, 116 Ohio St.3d 1420, 2007-Ohio-6463].

{¶ 26} Respondent attempted to work out an agreement for Ms. Noel with the creditors. Despite these attempts, Ms. Noel was indicted on December 19, 2007. Ms. Noel felt that Respondent had failed to adequately represent her, and she requested the return of her retainer and her property. Respondent did not return either the retainer or the property.

{¶ 27} Respondent and Ms. Noel then exchanged a number of increasingly uncivil telephone messages. Respondent filed a criminal complaint with the Columbus City Attorney because she felt threatened by Ms. Noel. The matter was dismissed, however, because the telephone messages were subject to attorney-client privilege.

{¶ 28} Respondent's conduct with regard to Count I violates the following provisions of the Code of Professional Conduct: Prof. Cond. R. 1.1[competence]; Prof. Cond. R. 1.5(a) [illegal or clearly excessive fee]; Prof. Cond. R. 1.16(d) [termination of representation]; Prof. Cond. R. 1.6(a) [confidentiality of information]; Prof. Cond. R. 5.5(a)[unauthorized practice of law]; and Prof. Cond. R. 8.4(h) [conduct adversely reflecting on fitness to practice].

Count IV—Roland Pschibul Matter

{¶ 29} Respondent represented Robyn Pschibul, wife of the grievant, in a custody matter regarding her minor daughter, Rachel. The domestic relations matter began in May 2009. During the course of that representation, Respondent notarized and filed an affidavit purportedly signed by the minor child.

{¶ 30} The minor child did not sign the affidavit. The minor child was not in Respondent's presence when Respondent notarized the document.

{¶ 31} Respondent submitted an improperly notarized and falsified affidavit to the Court. The child's father, Roland Pschibul, filed a grievance with Relator on September 2, 2009.

{¶ 32} Respondent's conduct with regard to Count IV violates the following provisions of the Code of Professional Conduct: Prof. Cond. R. 8.1(b) [failure to respond to a disciplinary authority]; Prof. Cond. R. 8.4(h); and Gov. Bar R. V, Section 4(G) [duty to cooperate in a disciplinary investigation].

Count VI—Patricia Hall Matter

{¶ 33} On November 10, 2010, Patricia Hall retained Respondent to represent her in a divorce case. She paid a retainer of \$285.

{¶ 34} Whenever Ms. Hall inquired as to the date her divorce would be filed, Respondent either failed to return her telephone call or gave her a false date. Respondent never filed Ms. Hall's case.

{¶ 35} Ms. Hall requested a refund of her retainer. Respondent agreed to the refund, but when Ms. Hall arrived at Respondent's office as directed, the office was closed. She has never received a refund of her retainer.

{¶ 36} Ms. Stubbs' license to practice law was suspended from November 3, 2009 through March 5, 2010 due to her failure to register. *In re Attorney Registration Suspension of Stubbs*, 123 Ohio St.3d 1475, 2009-Ohio-5786.

{¶ 37} Respondent was not licensed to practice law at the time she collected the retainer from Ms. Hall and agreed to commence the representation; however, she never informed the client that she was not eligible to practice law at that time.

{¶ 38} Respondent's conduct with regard to Count IV has violated the following provisions of the Code of Professional Conduct: Prof. Cond. R. 1.1; Prof. Cond. R. 1.5(a); Prof. Cond. R. 1.16(d); Prof. Cond. R. 5.5(a); Prof. Cond. R. 8.1(b); Prof. Cond. R. 8.4(h); and Gov. Bar R. V Section 4(G).

Count VII—Adoption Matter

{¶ 39} This matter was brought to Relator's attention by the Honorable Kelly C. Patton, Magistrate of the Franklin County Probate Court.

{¶ 40} Respondent represented prospective parents in an adoption matter. This matter was filed on October 15, 2009. The matter was scheduled for hearing for December 8, 2009.

{¶ 41} On December 7, 2009, Respondent attempted to obtain a continuance. Her efforts failed, and the client appeared for the hearing on December 8, 2009.

{¶ 42} Respondent appeared for the hearing only after receiving telephone calls from the adopting parents from the courthouse. Respondent then proceeded to counsel her client and a representative from Franklin County Children Services about the need for a continuance due to a factual matter.

{¶ 43} In the meantime, Magistrate Patton discovered that Respondent's license to practice law had been suspended on November 3, 2009. She asked the adopting parents if they were aware of the suspension and they reported that they were not. Ms. Stubbs' license to practice law was suspended from November 3, 2009 through March 5, 2010 due to her failure to register. *In re Attorney Registration Suspension of Stubbs, supra.*

{¶ 44} The matter was continued until January 4, 2010 when the adopting parents appeared with new counsel.

{¶ 45} Respondent's conduct with regard to Count VII violates the following provisions of the Code of Professional Conduct: Prof. Cond. R. 1.1; Prof. Cond. R. 1.3; Prof. Cond. R. 1.4(a)(3) [a lawyer shall keep the client reasonably informed about the status of the matter]; Prof. Cond. R. 5.5(a); Prof. Cond. R. 8.1(b); Prof. Cond. R. 8.4(c); Prof. Cond. R. 8.4(h); and Gov. Bar R. V Section 4(G).

Count VIII—Reana Allen Matter

{¶ 46} Reana Allen hired Respondent to represent her in a divorce matter. She paid Respondent an initial payment of \$150 in September 2009. When Ms. Allen attempted to communicate with Respondent, Ms. Allen was informed by Respondent that she had made several trips to court on Ms. Allen's behalf and that a trial was set for March 23, 2010 at 9:00 a.m. However, the court docket for the matter confirms that there were no hearings or appearances by Respondent after the initial filing of the complaint on September 1, 2009.

{¶ 47} Ms. Allen attempted to reach Respondent by telephone and email to resolve her issues but did not receive a response. An attorney from the Legal Aid Society made an appearance on Ms. Allen's behalf on March 4, 2010, and the divorce was completed on July 12, 2010.

{¶ 48} Respondent's conduct with regard to Count VIII has violated the following provisions of the Code of Professional Conduct: Prof. Cond. R. 1.1; Prof. Cond. R. 1.3; Prof. Cond. R. 1.4(a)(3); Prof. Cond. R. 1.5(a); Prof. Cond. R. 1.16(d); Prof. Cond. R. 5.5(a); Prof. Cond. R. 8.1(b); Prof. Cond. R. 8.4(h); and Gov. Bar R. V Section 4(G).

Count X—Failure to Cooperate

{¶ 49} Requests for Affidavits from the grievants in Complaint Counts II [Deramus H. Thompson], Count III [Gary Salyer], Count V [Mary Mims] and Count IX [Chantel Boyd] were not returned. As a result, the Master Commissioner cannot find the violations alleged in those counts of the complaint by clear and convincing evidence. Nonetheless, and despite numerous requests by Relator, Respondent has failed to respond to those grievances.

{¶ 50} Respondent agreed to appear at a deposition scheduled for April 8, 2010. Respondent was served with a "Notice of Deposition and Request for Production of Documents" by certified mail.

{¶ 51} Respondent failed to appear at the deposition and did not attempt to explain her non-appearance.

{¶ 52} Respondent's conduct with regard to Count X has violated the following provisions of the Code of Professional Conduct: Prof. Cond. R. 8.1(b) and Gov. Bar R. V Section 4(G).

MITIGATING FACTORS

{¶ 53} None of the mitigating factors found in BCGD Proc. Reg. 10(B)(1) is applicable.

AGGRAVATING FACTORS

{¶ 54} There are multiple offenses that demonstrate a pattern of misconduct through neglect of matters entrusted to the Respondent, resulting in harm to clients, and a lack of cooperation in the disciplinary process. Furthermore, there is no evidence of financial restitution to the clients harmed by the Respondent's conduct.

{¶ 55} Eight of the nine aggravating factors set forth in CGD Proc. Reg. 10(B)(1) are present here:

- Prior disciplinary offenses;
- Dishonest or selfish motives;
- Pattern of misconduct;
- Multiple offenses;
- Lack of cooperation in the disciplinary process;
- Refusal to acknowledge the wrongful nature of conduct;
- Vulnerability of and resulting harm to victims;
- Failure to make restitution.

{¶ 56} As noted above, Respondent received a six-month stayed suspension and one year of monitored probation, which had been imposed after Respondent had falsified a document, effective June 21, 2006. Respondent had attorney registration suspensions from December 3, 2007 to January 11, 2008 and from November 3, 2009 to March 5, 2010. Finally, the Supreme Court found that an indefinite suspension was warranted for Respondent's conduct beginning February 15, 2011.

RECOMMENDED SANCTION OF RELATOR

{¶ 57} Relator recommends that Respondent be permanently disbarred from the practice of law.

RECOMMENDATION OF MASTER COMMISSIONER

{¶ 58} Substantially all the misconduct of the Respondent herein preceded or overlapped the misconduct for which the prior sanction of the Supreme Court of Ohio was imposed in February 2011. There is some question as to whether the Board would have recommended or the Court would have imposed a different sanction had these matters been heard and determined in that first disciplinary proceeding.

{¶ 59} The Supreme Court noted in *Cuyahoga Cty. Bar Assn. v. Marosan*, 109 Ohio St.3d 439, 2006-Ohio-2816 that each case of charged misconduct is an independent action. This means that the sanction imposed in each case must be justified based on the ethical duties violated, the actual or potential injury caused, the attorney's mental state, the existence of aggravating or mitigating circumstances, and sanctions imposed in similar cases. *Disciplinary Counsel v. Bowman*, 110 Ohio St.3d 480, 2006-Ohio-4333, ¶20; *Disciplinary Counsel v. Beeler*, 105 Ohio St.3d 188, 2005-Ohio-1143, ¶25. Accord, *Disciplinary Counsel v. Young*, 113 Ohio St.3d 36, 2007-Ohio-975, ¶31.

In *Young*, the Supreme Court noted,

Consecutive suspensions serve to ensure a lawyer's rehabilitation and thereby protect the public from additional misconduct. Thus, in *Marosan*, when the lawyer had already violated conditions of a partially stayed two-year suspension, leading us to revoke the stay, we ordered him, in a second disciplinary proceeding, to serve a six-month suspension at the end of the two-year period. [Citation omitted.] Similarly, we ordered a second indefinite suspension to be served consecutively in *Cuyahoga Cty. Bar Assn. v. King* [citations omitted], because of the serious nature of the misconduct.

Respondent has not failed to comply with our previous indefinite suspension order or his treatment regime; however, the misconduct involved in this case is serious and gives further indication that respondent presents a considerable threat to the public and cannot be permitted to return too soon to the practice of law. The combination of respondent's abandonment of his duties to his incompetent ward and the significance of his prior disciplinary record, which includes acts so egregious that the board recommended that he be disbarred, far outweigh the evidence of good character and cooperation. The board was thus justified in

recommending a sanction that further delays respondent's possible return to the practice of law. *Id.* at ¶32-33.

{¶ 60} Indefinite suspension from the practice of law, with the suspension to run consecutively to previously imposed indefinite suspension, was warranted in attorney disciplinary case where attorney met client, accepted a retainer fee of \$350, failed to reply to client's repeated attempts to contact attorney, failed to do any work for client, and violated the professional rules. *Cuyahoga Cty. Bar Assn. v. King*, 109 Ohio St.3d 95, 2006-Ohio-1932.

{¶ 61} After carefully reviewing the evidence, and based upon the forgoing authority, I believe the appropriate sanction for Respondent's misconduct is an indefinite suspension from the practice of law in Ohio, and the indefinite suspension in the present case should run consecutively to the indefinite suspension that Respondent is currently serving in *Disciplinary Counsel v. Stubbs*, 128 Ohio St.3d 344, 2011-Ohio-553.

RECOMMENDATION

Pursuant to Gov. Bar Rule 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 and Conclusions of Law of the Master Commissioner. After carefully considering the pervasiveness of Respondent's misconduct, the Board revised the sanction recommended by the Master Commissioner and recommends the Respondent, Sakeya M. Stubbs, be permanently disbarred from the practice of law in Ohio. The Board further recommends that the cost of these proceedings be taxed to the 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**