

No. 2012-318

IN THE SUPREME COURT OF OHIO

**UPON RESPONDENT'S OBJECTIONS TO THE FINDING OF FACTS,
CONCLUSIONS OF LAW AND RECOMMENDATIONS OF THE BOARD OF
COMMISSIONERS ON GRIEVANCES AND DISCIPLINE IN
BOARD CASE NO. 10-094**

**Columbus Bar Association
Relator,**

v.

**John Joseph Peden (0021233)
Respondent.**

**RELATOR'S ANSWER BRIEF TO THE
RESPONDENT'S OBJECTIONS**

**Lisa Pierce Reisz (0059290)
Bruce A. Campbell (0010802)
A. Alysha Clous (0070627)
Columbus Bar Association
175 South Third Street, Suite 1100
Columbus, OH 43215
Tel: 614-221-4112; Fax: 614-221-4850
bruce@cbalaw.org**

Counsel for Relator

**John Joseph Peden
3731 Laguna Drive
Columbus, OH 43232
Tel: 614-445-8287
j.peden.attorney@gmail.com**

Respondent, Pro Se

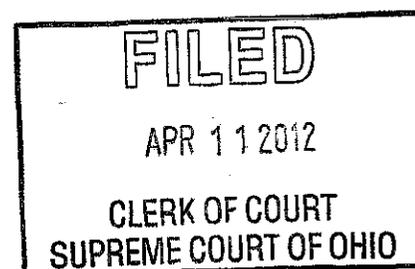


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RELATOR'S BRIEF

1. Introduction

Mr. Peden's filing entitled "Respondent's Reply to Show Cause Order" does not contain the requisite contents specified in the Court's Practice Rules Sec. 6 R. 6.2 and does not articulate specific Objections that he wishes to have the Court consider. What he has presented instead are short recitations of the facts as he sees them regarding Counts One (Plaisted/Wilmore), Two (Culwell), Three (Trust Account Overdrafts) Five (Petrovski) and Seven (King) of the First Amended Complaint. Relator presumes that Respondent does not contest the Board's Conclusions and Findings regarding Count Four (Nessley).

Additionally, Respondent concludes by asserting, "I feel that my contact [sic] does not warrant an indefinite suspension. A six month [sic] suspension or probation should apply."

Relator will address the fact and sanction issues separately.

2. Background of the Case

The Board of Commissioners extensively reported on the Respondent's prior disciplinary history in an initial section of its Findings. {¶¶ 4-12} It is unnecessary to repeat that recitation here; however, Relator does wish to point out an additional matter.

On December 29, 2011, this Court suspended Respondent for failure to fulfill his Continuing Legal Education requirements. It also imposed a monetary sanction of \$420. The Court's Registration Office reported to Relator on April 11, 2012, that the Court had not reinstated Respondent.

3. Respondent's Objections to the Board's Findings of Fact

In his Reply to Show Cause Order, Respondent fails to object to any of the Panel's Findings of Fact or Conclusions of Law. Instead, consistent with his conduct over the last eight years,

Respondent simply recites the same unsupported, unsubstantiated statements in defense of his conduct which he made during the July 2011 hearing and in numerous prior depositions. Like his legal representation of the Grievants in his case, his efforts here on his own behalf are meaningless. He has provided this Court with no basis on which to review any errors in the Panel's findings of fact, conclusions of law, or recommendation. Instead, he merely summarizes the work he believes he performed for each Grievant. Yet, a review of the record in this case shows that Respondent never submitted any evidence to support his view of these facts. He never produced any bills, invoices, trust account documents, ledgers or any other accounting or financial records which would demonstrate the work he performed for each Grievant or establish that he properly deposited and then withdrew their funds in his trust account.

To the contrary, the evidence presented at hearing from each Grievant shows a pattern of poor performance and misappropriated funds. Each Grievant testified that they retained Respondent to assist them with legal issues; gave Respondent a retainer; witnessed little or no work completed by Respondent; received incomplete and/or inaccurate case information and billing statements from Respondent; and did not receive a return of their unused retainer following Respondent's suspension by this Court in June 2009 or the Grievant's termination of Respondent based on his failure to complete the representation. Further, in none of the Grievants' respective matters did Respondent inform them that he did not have malpractice insurance, much less have them sign the notice required by ORPC 1.4. Indeed, Respondent has left a wake of incomplete work, unreturned phone calls, bounced checks, missing funds, and ultimately, injured clients.

Finally, Respondent has demonstrated almost no cooperation with the disciplinary process. He did not answer letters of inquiry sent to him by Relator about these grievances and he repeatedly failed to provide trust account information requested by Relator.

4. Respondent's Objection to the Board's Recommendation regarding Sanction

Respondent contends that he deserves either a six-month suspension or probation. He has cited no authority for this proposition. Given the circumstances of this case and Respondent's disciplinary record his proposal is completely at odds with established case law.

The Hearing Panel examined numerous documents and heard the testimony of Respondent, five of Respondent's clients, Respondent's Monitor, and an OLAP representative. Also, the Panel received into evidence a post-hearing Affidavit of the Director of OLAP indicating that Respondent had once again fallen out of compliance with his contract. Based on this record, the Panel found, and the Board agreed, that Respondent:

- 1) failed to perform competently and diligently in violation of ORPC 1.1 and 1.3
(four counts);
- 2) neglected to consult with and inform his clients about their cases in violation of ORPC 1.4(a)(3) & (4), *(five counts)*;
- 3) ignored his duty to reveal to his clients that he did not have professional liability insurance in violation of ORPC 1.4(c) *(five counts)*;
- 4) did not maintain unearned fees in an IOLTA account and did not maintain trust account records in violation of ORPC 1.15(a) *(six counts)*;
- 5) did not provide accountings to his clients and promptly deliver funds owing to them when requested in violation of ORPC 1.15(d) *(four counts)*;
- 6) withdrew from cases without giving notice or protecting the clients' interests in violation of ORPC 1.16(d) & (e) *(four counts)*;
- 7) failed to respond to disciplinary inquiries in violation of ORPC 8.1(b) *(five counts)*, and

8) exhibited conduct reflecting adversely on the fitness to practice in violation of ORPC 8.4(h) (*five counts*).

The Board concluded that respondent's conduct involved seven of the nine aggravating factors specified in BCGD Proc. Reg. 10(B)(a)-(i). Findings {¶88}. It found no mitigating factors. Findings {¶¶ 86 & 87}.

This Court has taken a firm stand in cases involving neglect of client affairs and trust account mismanagement. The Court has observed:

Even before the General Assembly authorized the creation of IOLTAs in R.C. 4705.09, we explained that the 'mishandling of client' funds either by way of conversion, commingling, or just poor management, encompasses an area of the gravest concern of this court in reviewing claimed attorney misconduct. *Columbus Bar Assn. v. Thompson* (1982), 69 Ohio St.2d 667, 669, 433 N.E.2d 602. (emphasis added.)

Disciplinary Counsel v. Crosby, 124 Ohio St.3d 226, 2009-Ohio-6763. {¶15}.

In a subsequent case involving a pattern of improper conduct including misuse of a trust account and the misappropriation of client funds, *Disciplinary Counsel v. Cantrell*, 125 Ohio St.3d 458, 2010-Ohio-2114, the Court cited a series of prior cases in support of its decision to suspend the respondent indefinitely. It observed that, "We are ever mindful that the primary purpose of the disciplinary process is not to punish the offender but to protect the public from lawyers who are unworthy of the trust and confidence essential to the attorney client relationship." {¶19}.

In *Disciplinary Counsel v. Miller*, 126 Ohio St.3d 221, 2010-Ohio-3287, the respondent took IOLTA funds on the premise that he had "virtually earned" the money in question, failed to notify his clients about his lack of malpractice insurance and did not fully cooperate with disciplinary authorities. {¶8}. The Court found that an indefinite suspension was appropriate. Again, in *Dayton Bar Ass'n. v. Wilson*, 127 Ohio St.3d 10, 2010-Ohio-4937, the Court held:

An indefinite suspension is an appropriate sanction for a lawyer who has violated the standards of professional competence, diligence and integrity by failing to maintain accurate records of the funds held in her client trust account, failing to promptly deliver funds that a client was entitled to receive, failing to provide diligent and competent legal representation to her clients, and failing to cooperate in the resulting disciplinary investigation. . . .

¶18}.

In *Columbus Bar Ass'n. v. Van Sickle*, 128 Ohio St.3d 376, 2011-Ohio-774, respondent, among other things, neglected the legal affairs of several clients and was only partially responsive to the disciplinary processes. Although respondent claimed that his conduct was a result of the fact that he was “dealing with a number of significant stressors . . .,” the Board and the Court found that he did not fulfill the requirements necessary to support mental health mitigation under BCGD Proc. Reg. 10(B)(2)(g). ¶10}. The Court issued an indefinite suspension and conditioned any future reinstatement on proof that he has participated in OLAP and has “submitted testimony from a qualified mental-health professional to demonstrate that he is capable of returning to the competent, ethical and professional practice of law.” ¶16}.

In *Columbus Bar Ass'n. v. Troxell*, 129 Ohio St.3d 133, 2011-Ohio-3178, the attorney failed to communicate with vulnerable clients, neglected their cases and did not deliver funds to which they were entitled. Also, he did not respond to the disciplinary inquiries. The Court observed:

The board has concluded that an indefinite suspension is appropriate, applying the rule that “ ‘[a] lawyer’s neglect of legal matters and failure to cooperate in the ensuing disciplinary investigation generally warrant an indefinite suspension from the practice of law in Ohio,’ ” *Cleveland Metro. Bar Assn. v. Kaplan*, 124 Ohio St.3d 278, 2010-Ohio-167, 921 N.E.2d 645, ¶ 15, quoting *Akron Bar Assn. v. Goodlet*, 115 Ohio St.3d 7, 2007-Ohio-4271, 873 N.E.2d 815, ¶ 20. (additional citation omitted). Having reviewed the record, weighed the aggravating and mitigating factors, and considered the sanctions imposed for comparable conduct, we agree that an indefinite license suspension is the appropriate sanction in this case.

¶16}. Significantly, in *all* of the cases cited above, the respondents had *no* prior disciplinary sanctions (although respondent Van Sickle did have a registration suspension).

Recently, in *Columbus Bar Ass'n. v. Boggs*, 129 Ohio St.3d 190, 2011-Ohio-2637, the Court issued an indefinite suspension with conditions on reinstatement in view of respondent's mishandling of his trust account, neglect of clients, failure to notify clients about his lack of malpractice insurance, and his improper accounting for trust account funds. There, as here, the respondent did have a prior disciplinary record. The Court held:

... [W]e note that this is respondent's third disciplinary action before this court. . . [H]e still has not rectified his unprofessional conduct. . . . Respondent still lacks the ability to represent clients appropriately, even though he has previously been disciplined for misconduct similar to the charges he is now facing. Thus, an indefinite suspension is appropriate in order to properly protect the public from further misconduct by respondent.

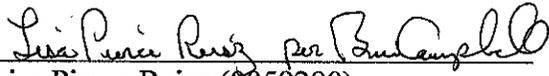
{¶30}.

That conclusion is equally applicable to the matter now before the Court.

CONCLUSION

The thrust of the Court's prior decisions is manifest. The appropriate sanction in this case, given Respondent's prior disciplinary history and his multiple violations of the Rules of Professional Conduct, is, at the very least, an indefinite suspension with reinstatement subject to the eight preconditions recommended by the Board.

Respectfully submitted,



Lisa Pierce Reisz (0059290)



Bruce A. Campbell (0010802)



A. Alysha Clous (0070627)

COUNSEL FOR RELATOR

CERTIFICATE OF SERVICE

Undersigned counsel for Relator mailed a true copy of Relator's Answer Brief to Respondent's Objections to Respondent John Joseph Peden (0021233) by regular U.S. Mail to 3731 Laguna Drive, Columbus, Ohio 43232 this 11th day of April, 2012.

A handwritten signature in black ink, appearing to read "Bruce A. Campbell". The signature is written in a cursive style with a large initial "B" and "C".

Bruce A. Campbell (0010802)