

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

**12-0655**

<b>In Re:</b>	:	
<b>Complaint against</b>	:	<b>Case No. 10-008</b>
<b>Oscar Trivers Attorney Reg. No. 0019588</b>	:	<b>Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio</b>
<b>Respondent</b>	:	
<b>Ohio State Bar Association</b>	:	
<b>Relator</b>	:	

<p><b>FILED</b></p> <p>APR 18 2012</p> <p>CLERK OF COURT SUPREME COURT OF OHIO</p>
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**OVERVIEW**

{¶1} This matter was heard on September 12, 2011, in Columbus, Ohio, before a panel consisting of members Judge Thomas Bryant , Lawrence Elleman, and Judge Beth Whitmore, chair. None of the panel members resides in the appellate district where this matter arose or served on the probable cause panel that certified this matter to the Board. Relator was represented by Amelia Bower. Alvin Mathews, Jr. appeared on behalf of Oscar Trivers.

{¶2} The panel recommends Respondent be suspended from the practice of law for two years, with eighteen months of the suspension stayed on conditions set forth below.

**PROCEDURAL HISTORY**

{¶3} On February 8, 2010, Relator filed a complaint for disciplinary action against Respondent. After uncovering additional allegations of misconduct and after the filing of the original complaint, Relator was permitted to file an amended complaint. The amended

complaint, filed March 30, 2010, contained four counts. The first count alleged that Respondent improperly filed a Chapter 13 bankruptcy petition on behalf of a deceased individual. The second and third counts arose from Respondent's failure to file numerous pleadings and other bankruptcy filings on behalf of the clients he represented in bankruptcy court. Further, the first three counts alleged that Respondent had failed to comply with disgorgement orders on multiple occasions. The fourth count alleged that Respondent engaged in the practice of law while under suspension. The amended complaint charged Respondent with violations of the following Disciplinary Rules and Rules of Professional Conduct: DR 1-102, DR 2-106, DR 6-101, DR 7-101, DR 7-102, DR 7-106, Prof. Cond. R. 1.1, Prof. Cond. R. 1.3, Prof. Cond. R. 1.5, Prof. Cond. R. 3.1, Prof. Cond. R. 3.3, Prof. Cond. R. 3.4, and Prof. Cond. R. 8.4.

{¶4} On April 19, 2010, Respondent filed an answer to the amended complaint. After a lengthy period of discovery and motion filings, the parties filed stipulations on August 9, 2011. Respondent stipulated that his conduct in failing to file necessary documents in a timely manner and in disregarding orders of the bankruptcy court violated the Code of Professional Responsibility as well as the Rules of Professional Conduct. A formal hearing was held on September 12, 2011, in Columbus, Ohio.

#### **FINDINGS OF FACT**

{¶5} Respondent was admitted to the bar on May 13, 1960. After a few years with the Law Department of Cleveland and over twenty years with the Greater Cleveland Regional Transit Authority, Respondent moved into private practice. During the time frame relevant to this matter, Respondent shared an office space and secretary with five other attorneys, but operated as a solo practitioner. Respondent also maintained an active role in the community

throughout his career, serving on several boards and committees. Respondent did not have any disciplinary history until 2009, when he received a one-year suspension, with six months stayed. See *Ohio State Bar Assn. v. Trivers*, 123 Ohio St.3d 436, 2009-Ohio-5285. That matter arose from Respondent abusing his notary power and being present when a fraudulent document was created by another party. *Id.* at ¶9.

¶6 The allegations of misconduct in this case arose out of several bankruptcy matters and one matter in juvenile court. Respondent experienced numerous problems with missing filing deadlines, failing to attend hearings, and failing to respond to court orders. At the September 12, 2011 hearing, Respondent testified that many of his problems stemmed from the fact that the bankruptcy court used an electronic filing system for both orders and hearing notices and he was “not up on the electronic system as [he] should have been[.]” Hearing Tr. 31. Respondent further admitted that his office was “probably not equipped to follow through” on many of the bankruptcy matters he received. *Id.* Respondent stipulated that he no longer intends to engage in the representation of bankruptcy clients and testified to that fact at the hearing. Stipulations at ¶25; Hearing Tr. 87.

#### **Count 1—James M. Hoyle**

¶7 Respondent filed a Chapter 13 bankruptcy on behalf of Hoyle on November 13, 2006. Stipulations at ¶3; Joint Ex. A. Respondent filed the bankruptcy petition electronically, using an electronic version of Hoyle’s signature and never obtained a handwritten signature for purposes of filing a signature declaration form to accompany the electronic filing. Stipulations at ¶5-6. Respondent did not actually prepare the petition, as another attorney referred the matter to him and a paralegal prepared the petition before he received it. Hearing Tr. 45-46. At the time

Respondent filed the petition, Hoyle had been deceased for almost three years. Stipulations at ¶4: Respondent and Relator stipulated that Respondent “did not know that Hoyle was and had been deceased” at the time he filed the petition. Stipulations at ¶8. Yet, Respondent’s testimony was inconsistent on this point. The following exchanges took place at the hearing:

Q: \* \* \* So at the time this was signed, you did not think it was signed by an executor or an administrator of his estate; is that right?

A: I did not know at this time that he was deceased but I learned very shortly thereafter.

Q: Okay. So then it was -- You thought it was signed by him; is that right?

A: No, \* \* \* I talked to the executor of the estate, and I thought that they were the ones that were signing it, that’s correct.

Q: You thought that the executor was signing it even though you thought he was still alive?

A: Oh, that he was dead? No. When the matter first came to my attention?

Q: Yes, please explain.

A: I thought he was alive.

Q: Okay.

A: However, when the petition was filed, I knew that he had been deceased, and that the executor was the one acting on his behalf.

\* \* \*

Q: Did you actually look at the document \* \* \* before it was given to the paralegal to file?

A: Yes.

Q: You actually looked at it?

A: Yes.

Q: And so when you saw that signature \* \* \* “/s/ James Hoyle,” what did you think that meant?

A: I thought it meant that the estate, or the representative of the estate, had signed on his behalf.

Hearing Tr. 45-49

{¶8} Respondent’s testimony on this point was confusing, at best. In any event, Respondent indicated that he allowed the petition to remain filed even though he learned, at some point, Hoyle was deceased because Respondent mistakenly believed the petition could be pursued on behalf of the estate. Stipulations at ¶8; Tr. 36. Respondent admitted that he did not consult with anyone to determine whether an estate was eligible to file for Chapter 13 bankruptcy. Hearing Tr. 36.

{¶9} The bankruptcy court ultimately dismissed the Hoyle petition and ordered Respondent to disgorge the \$400 in attorney fees that he received for his legal services. Stipulations at ¶10; Joint Ex. B. Respondent and Relator stipulated that Respondent complied with the disgorgement order on July 6, 2007. Stipulations at ¶10. Respondent testified that since filing the Hoyle petition he has learned “that an estate is not an individual and cannot file a Chapter 13 bankruptcy.” Hearing Tr. 77.

**Count 2—Barbara Santos**

{¶10} Respondent filed a Chapter 13 bankruptcy petition on behalf of Barbara Santos on October 27, 2006. Stipulations at ¶11. The bankruptcy court dismissed the petition on December 4, 2006, however, because Respondent never filed the required Debtor’s certificate, indicating that Santos had completed the required credit counseling course, or a Chapter 13 plan. Stipulations at ¶12; Joint Ex. C. The bankruptcy court further ordered Respondent to disgorge

the \$500 in attorney fees that he received for his legal services. Stipulations at ¶12; Joint Ex. C.

{¶11} Respondent failed to comply with the disgorgement order. On June 26, 2007, the bankruptcy court issued another order, granting a contempt motion brought against Respondent on behalf of the Chapter 13 trustee. Joint Ex. C. The court ordered Respondent to pay a fine of \$15 per day for each day that he failed to disgorge his \$500 attorney fee award. Joint Ex. C. Still, Respondent failed to comply with the disgorgement order. On August 29, 2007, the bankruptcy court issued an order imposing sanctions against Respondent. Stipulations at ¶14; Joint Ex. C. The court ordered Respondent to purge the contempt against him by disgorging his fees. Joint Ex. C. The court further ordered Respondent to complete a mental health evaluation and demonstrate his ability to successfully represent debtors. Joint. Ex. C. The court banned Respondent from filing any further bankruptcy petitions in the Northern District of Ohio until he complied with the order. Joint Ex. C. Respondent certified to the bankruptcy court that he had complied with all its orders and moved for the reinstatement of his filing privileges on June 9, 2008. Stipulations at ¶15; Joint Ex. D. The bankruptcy court ultimately permitted Respondent to file Chapter 7 cases, but ordered that he seek permission to file any new Chapter 13 cases. Stipulations at ¶17; Joint Ex. F.

{¶12} Respondent testified that a certificate of credit counseling was required to be filed within days of filing a Chapter 13 petition, but he did not have a standard practice that his clients submit that certification to him before he would file their petitions. Hearing Tr. 49-50, 78. While Respondent acknowledged through his counsel that he “mishandle[d]” the Santos case, he once again primarily attributed his failure to comply with the bankruptcy court’s orders to his failure to be “up to speed on the electronic filing” system. Hearing Tr. 22-23. Respondent

admitted that he had a computer at his office and could not say why he did not receive the notices and orders the bankruptcy court issued on the Santos case. Hearing Tr. 41-42.

Respondent testified that, when he explained to the judge presiding over the Santos case that he had not received the orders, the judge relieved him of the \$15 per day penalty that was imposed as a sanction. Hearing Tr. 42. Respondent later re-filed the Santos case as a Chapter 7 case in May 2007, and Santos received a discharge. Hearing Tr. 15.

### **Count 3—Bankruptcy Court Practice**

{¶13} Respondent and Relator stipulated that Respondent also failed to timely file required documents in a number of other bankruptcy matters, including the cases of: Barbara Brown (06-13988); Athena Hagood (06-16561); Jacqueline Gardner (07-10258); Martie Cobbins (07-11143); Ike C. Osuji (08-18567); Essence Devore Davis (08-18953); and Sandra Oatman (08-20161). Stipulations at ¶19; Joint Ex. C, E. Respondent's failure to timely file documents caused the dismissal of several of the foregoing cases. Stipulations at ¶20. Once again, Respondent attributed his failure to timely file matters and to respond to orders to appear in these matters to "his failure to personally check his email account and receive court notices." Stipulations at ¶21; Hearing Tr. 38. Yet, he also failed to follow-up on his cases after filing them, despite admitting that he knew he should be receiving notice of certain items that routinely occur in bankruptcy matters, such as a meeting of creditors. Hearing Tr. 38-39.

### **Count 4—Engaging in Practice While Under Suspension**

{¶14} Relator's amended complaint also contained a fourth count, alleging that Respondent engaged in the practice of law in November 2009, while under the suspension he received from the Supreme Court of Ohio in October 2009. Amended Complaint at ¶25-27.

Specifically, the amended complaint alleged that Respondent represented Steve Allen in a Cuyahoga County case entitled *State of Ohio, Cuyahoga Support Enforcement Agency, ex rel Cherie Merritt, Relator v. Steve Allen, Defendant*. Amended Complaint at ¶26. Relator, however, neglected to make any reference to Count 4 in its prehearing brief or at the formal hearing. Moreover, none of the stipulations that Relator and Respondent entered into pertains to Count 4. In fact, the stipulations specifically provide that “[a]ll events described [therein] occurred prior to the October 13, 2009, suspension of Respondent’s license.” Stipulations at ¶2. Relator, therefore, did not set forth any evidence in Count 4.

### CONCLUSIONS OF LAW

{¶15} The parties have stipulated to the following disciplinary violations:

{¶16} Respondent violated DR 1-102(A)(5) and (A)(6) [conduct that is prejudicial to the administration of justice or other conduct that adversely reflects on the lawyer’s fitness to practice law]. Stipulations at ¶¶14, 19-20, 23.

{¶17} Respondent violated DR 6-101(A)(3) [neglect]. Stipulations at ¶¶12-14, 19-20, 23; Joint Ex. C, E.

{¶18} Respondent violated DR 7-102(A)(2) [knowingly advancing a claim or defense that is unwarranted under existing law]. Stipulations at ¶¶3-9, 23; Joint Ex. A.

{¶19} Respondent violated DR 7-106(A) [disregard or advise a client to disregard a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding]. Stipulations at ¶¶14, 18, 23; Joint Ex. C, E.

{¶20} Respondent violated Prof. Cond. R. 1.1 [competency]. Stipulations at ¶¶12-13, 19-20, 23.

{¶21} Respondent violated Prof. Cond. R. 1.3 [diligence]. Stipulations at ¶¶12-14, 19-20, 23; Joint Ex. C, E.

{¶22} Respondent violated Prof. Cond. R. 3.1 [bring or defend a proceeding or controvert an issue in a proceeding unless there is a basis in law and fact for doing so that is not frivolous]. Stipulations at ¶¶3-9, 23; Joint Ex. A.

{¶23} Respondent violated Prof. Cond. R. 8.4 [conduct that is prejudicial to the administration of justice or other conduct that adversely reflects on the lawyer's fitness to practice law]. Stipulations at ¶¶3-9, 12-14, 19-20, 23; Joint Ex. A, C, E.

{¶24} Based on its findings of fact the panel finds that the stipulated violations are supported by clear and convincing evidence stemming from Counts 1, 2, and 3. The panel adopts the stipulated violations in their entirety. The panel dismisses the violations alleged in Count 4 of the amended complaint, and the remaining violations set forth in ¶3 of this report as Relator failed to set forth sufficient evidence to support a finding of misconduct on those alleged violations. Gov. Bar R. V, Section 6(H).

#### MITIGATION

{¶25} Respondent and relator stipulated that mitigating factors exist in this case. Stipulations at ¶26. In particular, they stipulated that Respondent has been licensed to practice since 1960, he cooperated in the disciplinary proceedings, he did not possess any selfish motive in these matters, and he already received sanctions from the bankruptcy court for his role in those matters. Stipulations at ¶26. As character evidence, Respondent presented letters from Reverend Leon Stallworth; Nathaniel Simpson, President of Global Millennium, Inc.; Reginald Maxton; and Attorney William Moore. Joint Ex. I. All of the letters generally described Respondent as

being a well-regarded individual of good character as well as an active member of his community and church. *Id.* A psychiatric evaluation Respondent received indicated that he was fit and competent to continue practicing law, although the evaluation was completed in 2008. Joint Ex. H. There was no evidence that Respondent suffers from any substance abuse problems or mental health issues. Additionally, Respondent indicated that he was willing to work with a monitor, seek the assistance of co-counsel when necessary, and stop handling bankruptcy matters all together. Hearing Tr. 34, 63, 87.

#### AGGRAVATION

{¶26} The parties did not stipulate to any aggravating factors in this case, but the panel finds that certain aggravating factors exist. BCGD Proc. Reg. 10(B)(1). Respondent has a prior disciplinary record. *Ohio State Bar Assn. v. Trivers*, *supra*. Further, the panel finds that Respondent's repeated failure to timely file necessary documents, appear at hearings, and respond to orders demonstrates a pattern of misconduct. Respondent attributed the vast majority of his misconduct to his lack of technical know-how. He admitted that he had a computer; however, he could not explain why he did not receive the electronic notices of filings and orders from the court. He acknowledged that he failed to follow-up on his cases, despite knowing that certain items had to be filed or certain hearings had to be scheduled. Respondent's conduct also resulted in multiple offenses. Stipulations at ¶23.

#### RECOMMENDED SANCTION

{¶27} Relator agreed with Respondent's proposed sanction of a two-year suspension with eighteen months stayed on the condition that Respondent cooperate with an appointed monitor under Gov. Bar R. V, Section 9 and not commit any further violations. Stipulations at

¶24. In support of the recommendation, Relator offered *Cleveland Metro. Bar Assn. v. Nance*, 124 Ohio St.3d 57, 2009-Ohio-5957. The panel agrees that a two-year suspension, with the last eighteen months stayed upon certain conditions, is an appropriate sanction in this case. In determining the appropriate sanction, the panel considered the factual findings and mitigating and aggravating factors found above.

{¶28} The panel agrees that Respondent's conduct is analogous to the conduct set forth in *Nance*. In that case, the respondent repeatedly failed to comply with bankruptcy court filings, failed to appear as ordered, and failed to timely comply with orders to disgorge his fees. *Id.* at ¶2. Much like Respondent in this matter, *Nance* failed to offer an explanation for not appearing at hearings and was sanctioned by the bankruptcy court for his failure to comply with its orders. *Id.* at ¶9. Moreover, *Nance* had a history of prior discipline, which included a suspension, and was found to have committed multiple offenses. *Id.* at ¶12. The Supreme Court agreed that a one-year sanction, with the last six months stayed, was an appropriate sanction. *Id.* at ¶23. The Supreme Court further ordered *Nance* to complete certain CLE requirements and pay the costs/fines ordered by the bankruptcy court. *Id.*

{¶29} Although *Nance* is analogous to the case at hand, we agree that Respondent's conduct warrants an additional year of suspension, stayed upon the fulfillment of certain conditions. Respondent acknowledged his wrongdoing in this case, but still continued to place the majority of the blame on his failure to receive filings or notices rather than his failure to follow-up on his cases or better familiarize himself with electronic filings. Further, Respondent's misconduct was more widespread than the misconduct in *Nance*, as Respondent's conduct affected at least nine different bankruptcy cases, as compared to the three cases at issue

in *Nance*. Id. at ¶5-11. Respondent's misconduct in this matter also was similar to the misconduct he committed in his prior disciplinary case, which also stemmed largely from carelessness and lack of attention to detail. See *Trivers* at ¶3-6. See also, *Cincinnati Bar Assn. v. Trainor*, 129 Ohio St.3d 100, 2011-Ohio-2645, at ¶10-11 (approving similar sanction where the respondent had a history of similar disciplinary violations).

{¶30} The panel acknowledges that Respondent practiced law for over forty-five years without engaging in misconduct and that Respondent has a strong desire to continue practicing so as to reach his personal goal of fifty years practicing law. The panel further acknowledges that Respondent agreed that, if he were permitted to continue practicing, he would no longer practice bankruptcy law and would be willing to cooperate fully with an appointed monitor. In addition, Respondent indicated his willingness to restrict his practice to probate law, an area in which his testimony demonstrated greater proficiency without any allegations of misconduct. Therefore, we recommend that Respondent be suspended from the practice of law in Ohio for two years, with the last eighteen months stayed. Id. at ¶10-11 (adopting recommendation to suspend the respondent for two years, with eighteen months stayed, on the condition that he complete eighteen months of probation and be monitored by an attorney). The last eighteen months of Respondent's suspension will constitute a probation period, during which Respondent will be monitored, and will remain stayed on the following conditions:

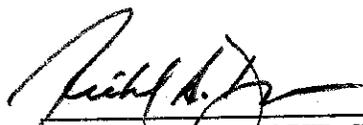
1. Respondent complete law-office management courses, which include time management and handling client communications.
2. Respondent shall complete eighteen months of probation and be monitored by an attorney appointed by Relator in accordance with Gov. Bar. R. V, Section 9(B).

3. Respondent commit no further misconduct during the two year period.

### **BOARD 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 April 13, 2012. The Board adopted the hearing panel's Findings of Fact and Conclusions of Law. The Board amended the sanction recommended by the panel and recommends that Respondent, Oscar Trivers, be suspended from the practice of law in Ohio for a period of two years, with one year of the suspension stayed. The partial stay of the suspension is conditioned on (1) Respondent's completion of six hours of continuing legal education on law office management, including time management and handling client communications, (2) Respondent's completion of one year of probation monitored by an attorney appointed by Relator in accordance with Gov. Bar R. V, Section 9(B), during which time the monitor shall ensure that Respondent practices only in areas in which he is competent, and (3) Respondent engaging in no further misconduct. 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.**



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