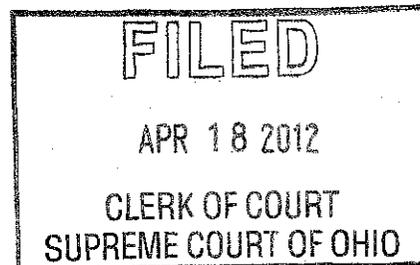


BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO



In Re:	:	
Complaint against	:	Case No. 11-026
Joseph David Ohlin Attorney Reg. No. 0031532	:	Findings of Fact,
	:	Conclusions of Law and
Respondent	:	Recommendation of the
	:	Board of Commissioners on
Trumbull County Bar Association	:	Grievances and Discipline of
	:	the Supreme Court of Ohio
Relator	:	
	:	

MOTION FOR DEFAULT JUDGMENT

{¶1} This matter was referred to Master Commissioner, Judge W. Scott Gwin, on February 23, 2012, 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). Based on the extent of Respondent's misconduct, as established by the evidence presented in support of the motion for default judgment, and the presence of significant aggravating factors, the Master Commissioner recommends Respondent be permanently disbarred from the practice of law in Ohio.

PROCEDURAL HISTORY

{¶2} On August 24, 2010, the Supreme Court of Ohio indefinitely suspended Respondent's license to practice law in *Disciplinary Counsel v. Ohlin*, 126 Ohio St.3d 384, 2010-Ohio-3826, 934 N.E.2d 323. The prior case involved three counts of misconduct occurring between 2002 and 2007, plus counts for failing to cooperate and for failure to provide his new

residence and business addresses to the Office of Attorney Services. The misconduct in the instant case occurred during roughly the same time period as the prior case.

{¶3} On December 11, 2008, Tamika L. Berry filed a grievance against Respondent. On February 5, 2009, Carrie B. Stanley filed a grievance against Respondent. On March 30, 2009, Randall L. Miller filed a grievance against Respondent. On July 21, 2009, Tyler Slabaugh filed a grievance against Respondent. On April 27, 2009, Larry Donaldson filed a grievance against Respondent, and on November 5, 2007, Dennis E. Brake filed a grievance against Respondent.

{¶4} Upon receipt of each grievance, Relator sent a notice of the filing of the grievance to Respondent, along with a copy of the grievance.

{¶5} On February 25, 2011, Relator filed its complaint with the Board and on April 8, 2011, a probable cause panel found probable cause for the filing of a formal complaint and ordered the complaint be certified to the Board. On April 11, 2011, the complaint was accepted for filing and the Board sent notice by certified mail to Respondent of the filing of the complaint, along with a copy of the complaint. The notice of the filing of the complaint advised Respondent his written answer was due within twenty days after April 14, 2011. The certified mail receipt indicates Respondent received the complaint on April 18, 2011. On February 22, 2012, Relator filed its motion for default judgment. Respondent has never filed an answer or responded in any other way in this action.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Count One—Berry Matter

{¶6} Tamika L. Berry retained Respondent on or about September 13, 2004, to represent her in a personal injury action stemming from an automobile accident on June 22,

2003. Respondent filed a complaint for personal injury in the Trumbull County Court of Common Pleas on June 22, 2005. Respondent never consulted with Berry about the accident or the possible outcome of her case. He did not notify her of any court dates or depositions.

{¶7} Subsequently, Respondent failed to comply with discovery requests from the opposing party, and the court granted a motion to compel. Eventually, the opposing party filed a motion to dismiss the complaint, and on October 10, 2006, Respondent voluntarily dismissed the case without prejudice.

{¶8} Respondent did not notify Berry that he had voluntarily dismissed her personal injury case, and never re-filed the complaint. Berry tried numerous times to contact Respondent without success, and when she finally went to his office she found it closed. She states Respondent promised to take care of her medical bills but did not do so.

{¶9} In *Disciplinary Counsel v. Plough*, 126 Ohio St.3d 167, 2010-Ohio-3298, the parties stipulated, and the Board found, Plough had violated Prof. Cond. R 8.4(d). The Supreme Court found the misconduct occurred before the effective date of the Rules. The court concluded Plough had violated DR1-102(A)(5), which prohibited the same behavior as the Rule. *Id.* ¶14. In this matter, Respondent's misconduct in the Berry matter occurred both during the time governed by the Code of Professional Responsibility and the Rules of Professional Conduct. Although the Relator charged only rule violations, the misconduct is also governed by parallel provisions of the Code of Professional Responsibility.

{¶10} Respondent's conduct with regard to the Berry matter violates the following provisions of the Rules of Professional Conduct and the Code of Professional Responsibility:

- Prof. Cond. R. 1.3 [diligence]; DR 6-101(A)(3) [neglect] and DR 7-101(A)(1) [failing to seek the lawful objectives of the client];
- Prof. Cond. R. 1.4(a)(1) [failing to promptly inform the client of any decision or

circumstances with respect to which the client's informed consent is required]; there is no specific parallel Code section, but the behavior also falls under DR 7-101(A)(1) [failing to seek the lawful objectives of the client]; and

- Prof. Cond. R. 1.4(a)(2)[failing to keep the client reasonably informed about the status of the matter]; there is no specific parallel Code section, but the behavior also falls under DR 7-101(A)(1) [failing to seek the lawful objectives of the client].

Count Two—Stanley Matter

{¶11} In 2004, Carrie B. Stanley retained Respondent to represent her in a personal injury action arising out of an automobile accident that occurred in October, 2003. On February 8, 2005, Respondent filed a personal injury action on behalf of Stanley. On February 6, 2008, the court entered judgment finding the case was settled and dismissed it without prejudice.

{¶12} Respondent never advised Stanley her case had been settled and dismissed, and she never received any money. Stanley made numerous attempts to contact Respondent concerning the progress of her case, but was unsuccessful. When she went to Respondent's office, she found it was closed. Stanley believes Respondent settled her case and kept her money. The record contains no evidence regarding the amount of the settlement or whether Stanley had medical bills or other unreimbursed damages.

{¶13} Respondent's conduct with regard to the Stanley violates Prof. Cond. R. 1.4(a)(1) and Prof. Cond. R. 1.4(a)(2).

Count Three—Miller Matter

{¶14} Randall L. Miller retained Respondent to represent him in a personal injury matter after an automobile accident that occurred on September 10, 2004. Miller's grievance does not indicate the date he retained Respondent.

{¶15} Sometime in September 2005, Respondent settled the personal injury claim with the tortfeasor's insurer, Nationwide Insurance Company. Miller owned an insurance policy with

Allstate Insurance Company. Allstate denied Miller's underinsured motorist claim because Respondent settled the claim without permission. Miller terminated his involvement with Respondent and retained a new attorney, who advised him Respondent should have given Miller a settlement disbursement sheet at the time the money was distributed from the settlement with Nationwide. Despite requests, Respondent did not provide a settlement disbursement sheet.

{¶16} Attached to the grievance were copies of disbursement checks from Nationwide to Randall Miller and Respondent in the amount of \$12,500 and two checks written against Respondent's Trust Account to Randall Miller in the amount of \$3,000 and \$1,500. Miller states he has never been advised of how much Respondent kept as his fee and what, if any, bills he paid out of the settlement funds. Miller does not allege he has unpaid medical bills or other unreimbursed damages.

{¶17} Respondent's conduct with regard to the Miller matter violates the following:

- DR 1-102(A)(5) [conduct prejudicial to the administration of justice];
- DR1-102(A)(6) [conduct that adversely reflects on the lawyer's fitness to practice];
- DR6-101(A)(3) [neglect];
- DR7-101(A)(2) [intentionally failing to carry out a contract of employment entered into with a client for professional services];
- DR7-101(A)(3) [concealing or knowingly failing to disclose that which he is required to reveal by law]; and
- DR9-102(B)(3) [failing to maintain complete records, all funds, securities, and other properties of a client coming into the possession of a lawyer and failing to render appropriate accounts to his clients regarding them].

{¶18} Relator also alleges a violation of DR 9-102(E)(1) [failing to maintain the funds of clients or third persons in an interest-bearing trust account that is established at an eligible depository institution]. However, the evidence shows both checks were drawn on accounts titled

Joseph D. Ohlin Trust and there is no evidence in the record these accounts do not qualify as IOLTA accounts. Relator did not prove this violation by clear and convincing evidence, and it is dismissed.

Count Four—Slabaugh Matter

{¶19} Tyler Slabaugh's mother retained Respondent in January 2003, to represent Slabaugh in a personal injury claim resulting out of an automobile accident which occurred on November 13, 2002. In 2008, her claim was settled for \$8,500. Respondent told Slabaugh her insurance company, State Farm, had a claim for \$5,000 it paid for MedPay, but he had negotiated with the insurance company and it had agreed to accept \$2,500 in repayment. Slabaugh's bill from Cortland Clinic was \$1,953. Out of the settlement, Respondent retained \$4,453 to pay State Farm and Cortland Clinic. Slabaugh calculated there should be more than \$1,200 left for her after Respondent received his fee of one-third. Respondent told her there were court fees to deduct, and he gave her a check for \$1,000.

{¶20} In 2009, Slabaugh received a bill for \$1,953 from Cortland Clinic. Slabaugh alleges both she and her husband attempted to call Respondent, but their calls went to voicemail and the voicemail box was so full they could not leave messages. When they were able to contact him, Slabaugh asked for copies of the case file, bills, and checks, but Respondent never provided her with her file. Respondent did not set up a meeting to discuss the matter as he had promised.

{¶21} Slabaugh contacted the tortfeasor's insurance company, Nationwide, and learned that Nationwide had paid her insurance company directly for the \$5,000 MedPay. Nationwide told Slabaugh the \$8,500 settlement was for her damages, Respondent's fee, and the Cortland Clinic bill. Slabaugh believes Respondent kept the \$2,500 he claimed to have paid to State Farm

and the \$1,953 that should have been paid to Cortland Clinic, for a total of \$4,453 more than his fee.

{¶22} Respondent's actions occurred both before and after the effective date of the Rules of Professional Responsibility but Relator charged only under the Rules. Pursuant to *Plough, supra*, the following Code sections parallel the Rule violations. Respondent's conduct with regard to the Slabaugh matter violates the following provisions of the Rules of Professional Conduct and the Code of Professional Responsibility:

- Prof. Cond. R. 1.5(a) and DR 2-106(A) [making an agreement for, charging, or collecting an illegal or clearly excessive fee];
- Prof. Cond. R. 1.15(a) [failing to hold property of clients or third persons that is in a lawyer's possession separate from the lawyer's own property, and failing to maintain a record of the date, amount, payee, and purpose of each disbursement made on behalf of such client], DR 9-102(B)(4) [failing to promptly pay or deliver to the client the funds in possession of the lawyer which the client is entitled to receive], and DR 9-102(B)(3) [failing to render appropriate accounts to his client regarding the client's funds]; and
- Prof. Cond. R. 8.4(c) and DR 1-102(A)(4) [conduct involving dishonesty, fraud, deceit, or misrepresentation].

Count Five—Donaldson Matter

{¶23} Larry Donaldson retained Respondent on May 31, 2008, to represent him in a misdemeanor theft case. Donaldson gave Respondent a \$2,000 retainer, and asked Respondent to attend the arraignment with him. Respondent did not attend the arraignment and sent no one in his place. After numerous tries, Donaldson's wife contacted Respondent, and informed him Donaldson no longer wanted Respondent to represent him. Although Respondent promised to return the retainer within two weeks, as of the date of the grievance, Donaldson had not received a refund of his retainer nor any other contact from Respondent.

{¶24} Respondent's conduct with respect to the Donaldson matter violates Prof. Cond.

R. 1.3 and Prof. Cond. R. 1.5(b)(1).

{¶25} Relator also alleges violations of Prof. Cond. R. 1.5(b)(2) and Prof. Cond. R. 1.15. However, Relator has not presented clear and convincing evidence to prove these alleged violations.

Count Six—Brake Matter

{¶26} Sometime in 2002, Dennis Brake retained Respondent to represent him in a personal injury case arising out of an automobile accident on March 20, 2002. In March 2004, another attorney from Respondent's office filed a lawsuit on Brake's behalf. Later, the other attorney left his position, and Respondent became responsible for Brake's lawsuit.

{¶27} Brake alleges Respondent received \$1,000 from Brake's insurance company for med pay and has improperly held the funds for five years. Respondent told Brake not to worry about the doctor bill because Brake's sister-in-law worked for the doctor, so he would write off the bill. The doctor bill is \$3,391.

{¶28} The case went to arbitration several months before Brake filed the grievance on November 5, 2007. Brake understood he was to receive a certain (unspecified) amount. Thereafter, Respondent informed Brake he would receive about half what Brake thought he should receive, based on what he understood from the arbitration discussion.

{¶29} Brake asked Respondent for proof there is a settlement offer, and for proof of the amount, but Respondent has not provided it. Brake refused to settle unless he saw a breakdown of the disbursements, but Respondent did not provide this.

{¶30} Brake alleges Respondent told him Respondent had spoken with Dr. Montgomery about his bill and the doctor waived payment. In November 2007, Brake contacted Dr. Montgomery's office and was informed there was never any agreement that the bill did not need

to be paid. Brake alleges on November 5, 2007, Respondent told the doctor's office the matter had not been settled, but Respondent promised to pay the bill within two weeks, and was not going to charge Brake a fee for legal services.

{¶31} Respondent's conduct with regard to the Brake matter has violated Prof. Cond. R. 1.2(a) [failing to abide with a client's decisions concerning the objectives of representation and the means by which they are to be pursued]; Prof. Cond. R. 1.4(a)(1); and Prof. Cond. R. 1.15.

Respondent's Failure to Cooperate

{¶32} Respondent's conduct with regard to all these grievances has also violated Gov. Bar R. V, Section 4(G) [failing, neglecting, or refusing to assist in an investigation or hearing concerning disciplinary violations].

MITIGATING FACTORS

{¶33} The record does not contain any evidence of mitigating factors.

AGGRAVATING FACTORS

{¶34} At least eight of the nine aggravating factors set forth in BCGD Proc.Reg. 10(B)(1) are present here: prior disciplinary offenses; dishonest or selfish motive; a pattern of misconduct; multiple offenses; lack of cooperation in the disciplinary process; refusal to acknowledge the wrongful nature of his conduct; vulnerability of and resulting harm to the victims of the misconduct; and failure to make restitution.

RECOMMENDED SANCTION OF RELATOR

{¶35} Relator recommends an indefinite term of suspension.

RECOMMENDATION OF MASTER COMMISSIONER

{¶36} Based on the record, the Master Commissioner finds an indefinite suspension is not a severe enough sanction and recommends permanent disbarment.

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 Findings of Fact, Conclusions of Law, and Recommendation of the Master Commissioner and recommends that Respondent, Joseph David Ohlin, be permanently disbarred from the practice of law in the State of 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**