

ORIGINAL

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

In re

Complaint against

Kenrth Norman Shaw  
Attorney Reg. No. 0005525

13-0923  
Case No. 12-096

Respondent

Disciplinary Counsel

Relator

Findings of Fact,  
Conclusions of Law, and  
Recommendation of the  
Board of Commissioners on  
Grievances and Discipline of  
the Supreme Court of Ohio

FILED  
JUN 07 2013  
CLERK OF COURT  
SUPREME COURT OF OHIO

OVERVIEW

This matter was submitted to the panel consisting of Sharon L. Harwood, Patrick L. Sord David E. Tschantz, chair, all of whom are duly qualified members of the Board, as a fully fled case. None of the panel members reside in the appellate district from which the complaint originated. Respondent appeared pro se. Relator appeared by and through its counsel Stacy S. Beckman.

The parties submitted stipulations and joint exhibits and waived a formal hearing on this n

Respondent was charged in the complaint with the following: Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation]; DR 1-102(A)(5) and Prof. Cond. [conduct prejudicial to the administration of justice]; DR 1-102(A)(6) and Prof. Cond. [conduct adversely reflecting on fitness to practice law]; Prof. Cond. R. 5.5(a) [practice in violation of the regulations governing the profession in that

jurisdiction]; DR 7-106(A) and Prof. Cond. R. 3.4(c) [knowingly disobeying an obligation under the rule of a tribunal]; and Gov. Bar. R. V, Section 8(E) [failure to perform the duties of a suspended attorney].

{¶4} Relator has withdrawn its allegation of a violation of Prof. Cond. R. 8.4(c).

{¶5} Respondent stipulated that his conduct violated the remaining rules as charged, and the panel concludes that Relator proved violations of these rules by clear and convincing evidence.

{¶6} Based on the conclusions of law, the stipulations of the parties concerning matters in mitigation and aggravation, case precedent established by the Supreme Court of Ohio, and the recommendation of the parties, the panel recommends the imposition of an indefinite suspension.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

{¶7} Respondent is an attorney who has been licensed to practice law in Ohio since 1980.

{¶8} On September 23, 2010, Respondent was suspended from the practice of law for two years, with one year stayed, by order of the Supreme Court based on the fact that he “\* \* \* named his five children as beneficiaries in a trust he prepared for a client, borrowed \$13,000 from the same client without advising her of the inherent conflict of interest, and then failed to repay the loan as agreed, and accepted attorney fees for a guardianship without obtaining prior approval from the probate court \* \* \*.” *Disciplinary Counsel v. Shaw*, 126 Ohio St.3d 494, 2010-Ohio-4412, ¶1.

{¶9} To date, Respondent has not applied for reinstatement nor has he been reinstated to the practice of law.

{¶10} Respondent has stipulated to the violations alleged in Count I of the complaint, which occurred in conjunction with Respondent's representation of four clients: Mildred Patterson, Myra Stanley, Eva Rosian, and Clara DeVito.

{¶11} All of the conduct alleged in this count arose out of legal work performed by Respondent for the above-listed clients while his license was under suspension. The specific work that he performed for each client is detailed in the stipulations.

{¶12} Respondent has stipulated to the violations alleged in Count II of the complaint, which arose out of Respondent's payment to himself of attorney fees out of the proceeds of two estates which he was serving as counsel, without the required approval of the probate court, and his failure to return a portion of those fees which were overpaid. Respondent further stipulated that some of the misconduct alleged in this count occurred prior to February 1, 2007.

{¶13} The specific conduct in which Respondent engaged is detailed in the stipulations.

{¶14} Relator has withdrawn its allegation of a violation of Prof. Cond. R. 8.4(c).

{¶15} Based on the stipulated conduct and the violations stipulated by the parties, the panel finds by clear and convincing evidence that Respondent violated in Count I, Prof. Cond. R. 8.4(h), Prof. Cond. R. 5.5(a), and Gov. Bar R. V, Section 8(E) and in Count II, Prof. Cond. R. 3.4(c), Prof. Cond. R. 8.4(d), Prof. Cond. R.8.4(h), DR 1-102(A)(5), DR 1-102(A)(6), and DR 7-106(A).

#### **AGGRAVATION, MITIGATION, AND SANCTION**

{¶16} With regard to the factors in aggravation that may be considered in favor of a more severe sanction for professional misconduct listed in BCGD Proc. Reg. 10(B)(1), the parties stipulated, and the panel finds, by clear and convincing evidence, that Respondent has had prior disciplinary offenses and engaged in a pattern of misconduct.

{¶17} The parties did not stipulate, but based on the clear and convincing evidence of the stipulated facts, the panel finds that Respondent's actions caused harm to vulnerable clients and that, although Relator withdrew the charge of a violation of Prof. Cond. R. 8.4(c), Respondent acted with a dishonest and selfish motive.

{¶18} With regard to the factors in mitigation that may be considered in favor of a less severe sanction for professional misconduct listed in BCGD Proc. Reg. 10(B)(2), the parties stipulated and the panel finds, by clear and convincing evidence, that Respondent cooperated with Relator's investigation and the subsequent disciplinary proceedings against him.

{¶19} The panel reviewed the parties' jointly recommended sanction in light of the findings of fact, conclusions of law, factors in mitigation and aggravation, and precedent established by the Supreme Court of Ohio.

{¶20} With regard to precedent established by the Supreme Court of Ohio, the panel reviewed *Disciplinary Counsel v. Meehan*, 133 Ohio St.3d 51, 2012-Ohio-3894 (respondent given a 24-month suspension, with all 24 months stayed for practicing law in violation of jurisdictional regulations and engaging in conduct prejudicial to the administration of justice and that adversely reflected on his ability to practice law) in which the respondent engaged in the practice of law while under an administrative suspension for failure to renew his registration. In that case, the respondent was given a stayed suspension because of a diagnosed mental health condition, no prior discipline, full and free cooperation during relator's investigation, and evidence of good character and reputation.

{¶21} At the other end of the spectrum of sanctions imposed by the Court in cases where a lawyer practiced while under suspension is the case of *Cleveland Metro. Bar Assn. v. Cicirella*, 133 Ohio St.3d 448, 2012-Ohio-4300. In that case, the respondent's conduct was found

in violation of DR 1-102(A)(4) [conduct involving dishonesty, fraud, deceit, or misrepresentation], DR 1-102(A)(6) [conduct that adversely reflects on the lawyer's fitness to practice law], and DR 3-101(B) [practicing law in a jurisdiction in violation of the regulation in that jurisdiction]. In that case, the respondent, although under an indefinite suspension, continued to practice law and accept payment of fees from clients and did not complete the work for which she was paid. In addition, she did not cooperate with the relator in its investigation or even file an answer to the relator's complaint. The result was that she was disbarred.

{¶22} Somewhat in between, and more on point with the instant case, is the case of *Disciplinary Counsel v. Higgins*, 117 Ohio St.3d 473, 2008-Ohio-1509. In that case, the respondent, while under suspension for failure to comply with registration requirements, undertook representation of a client in a divorce and child custody case and did not reveal to the client that his license had been suspended. He filed the case on behalf of the client, but then neglected the client's case and took and then failed to refund fees. The respondent in that case also did not defend himself against the disciplinary action filed against him, and the master commissioner recommended an indefinite suspension. The Board and the Court concurred, although one justice dissented in favor of permanent disbarment. In its opinion in that case, the Court noted that the presumptive sanction for practicing while under suspension and then failing to cooperate was an indefinite suspension.

{¶23} The panel is mindful that the Court has since held that disbarment is the presumptive sanction for continuing to practice law while under suspension. *Disciplinary Counsel v. Sabroff*, 123 Ohio St.3d 182, 2009-Ohio-4205. However, the panel here agrees with Relator that the mitigating factors of cooperation with, and full and free disclosure to, Relator,

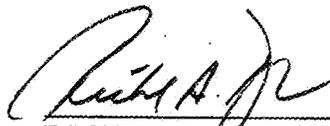
coupled with Relator's decision to withdraw the charged violation of Prof. Cond. R. 8.4(c), weigh in favor of the possibility of this Respondent's return to practice at an appropriate time.

{¶24} In light of the Court's rulings in the cases cited above, the panel unanimously recommends acceptance by the Board of the agreed sanction of an indefinite suspension.

### **BOARD RECOMMENDATION**

Pursuant to Gov. Bar R. V, Section 6, the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on June 6, 2013. The Board adopted the Findings of Fact, Conclusions of Law, and Recommendation of the panel and recommends that Respondent, Kenneth Norman Shaw, be suspended indefinitely from the practice of law in Ohio. The Board further recommends that the costs 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