

ORIGINAL

IN THE SUPREME COURT OF OHIO

Disciplinary Counsel,
Relator,

Case No 2013-1257

v.
Stephen Leslie Becker,
Respondent.

Practice of Law Case

Respondent's Objections
To Board Findings and
Recommendation and Brief
In Support

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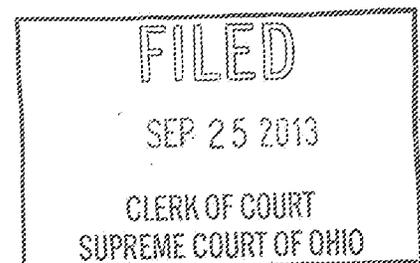


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No authorities cited.

Respondent's Objections

1. Respondent objects to the Panel's finding that Respondent has failed to make restitution to victims.
2. Respondent objects to the Panel's finding that the investment of Guardianship funds in a first mortgage on real estate in Ohio is a "flagrant act of self dealing" and a violation of any disciplinary rule.
3. Respondent objects to the Panel's finding that the Respondent's Gambling Addiction does not qualify as a mitigating factor and is worthy of no consideration in evaluating Respondent's case and sanction.
4. Respondent objects to the Panel's finding that Respondent has failed to accept full responsibility for his actions.
5. Respondent objects to the Panel's recommendation of disbarment.

Brief in Support of Respondent's Objections

Respondent is somewhat reluctant to make objections or argument. Apparently, the Disciplinary process is one in which being adversary is viewed, at least by the panel in this case, as "failing to accept responsibility", not being remorseful for admitted improper conduct and generally bad form. Respondent has practiced law in Ohio for over 37 years, and much of Respondent's practice involved litigation in the adversary process. Respondent has great respect for the process as being the most certain and best method to resolve issues and disputes and reach the truth. This 37 year experience is difficult to just put aside in this instance.

Respondent does not agree with Disciplinary Counsel and the panel about certain issues in this case. This does not mean that Respondent has an "evil" personality, is not remorseful for his bad conduct, and does not recognize wrongdoing which he has admitted. Respondent had a gambling addiction which was at the root of his improper handling of funds entrusted to him. He has taken steps to deal with the problem and has not gambled in almost 3 years. One cannot engage in self flagellation for wrongdoing everyday for the rest of his life. In order to continue living one must move on. Attempting to move on and find some value in a life does not mean responsibility is not accepted and remorse is not present.

Objection #1

Respondent objects to the panel's finding that Respondent failed to make restitution to all victims. No one testified at the hearing that Respondent owed any money to them or anyone else as a result of the conduct outlined in the Complaint. Attorney Brock testified that all financial matters between Respondent and his former law firm had been resolved. No claims against the law firm by any client, or indeed any relative of Respondent have been made. Despite the best efforts of Disciplinary Counsel to destroy Respondent's relationship with his brother, cousin and daughter, to this day Respondent has a close loving relationship with these members of his family, all of whom support Respondent and make no claims against him. None of these alleged "victims" of Respondent's conduct testified at the hearing despite Respondent's agreement with Disciplinary Counsel that their testimony could be by phone or deposition. If restitution has not been made, to whom is it owed, and how much is owed? The record is completely devoid of any evidence on this issue. The only evidence is from Attorney Brock, who testified that all matters were resolved and from Respondent, whose testimony that money owed was paid prior to any case being filed or complaint made was used by the panel to show that Respondent did not accept responsibility or have remorse for his conduct.

Objection #2

Respondent objects to the finding of the panel that Respondent's investment of Guardianship funds in a first mortgage on Ohio real estate in 1992 was a disciplinary violation. Respondent testified that he researched the issue at the time and found that a first mortgage on Ohio real estate was a permitted investment under the Ohio Revised Code, and that Jack and Cindy Stevenson were not prohibited parties by any Ohio rule, statute or policy. The panel found that "Respondent did not discuss this "loan" with Christopher's parents in advance, nor did he disclose it the probate court." (Panel Decision page 4 paragraph 15). Neither the Panel nor Disciplinary Counsel has ever cited any law or precedent to indicate why an investment of Guardianship funds in a permitted investment under the Ohio Revised Code is a Disciplinary violation. No one has testified or cited any rule, law or statute requiring the investment to be "discussed with the parents in advance". The parents of a ward have no legal standing to approve or oppose the investment of Guardianship funds. The panel found that the investment was not disclosed to the Probate Court. This is a completely inaccurate statement not supported by the facts or the evidence in the case. The Guardian's fifth partial account filed April 26, 1994 in the Allen County Probate Court clearly lists "Mortgage-2480 S. Kemp Road, Lima, Ohio" as an investment held by the Guardianship, and shows a balance or value to the estate of

\$58,550.69. The account discloses the total amount of interest received by the Guardianship for the period of the account \$14,030.18, and this includes interest from the mortgage investment as well as other bank interest received. The account was filed with the Probate Court and approved and accepted. Someone needs to explain to Respondent why there is something wrong here. Perhaps the answer is that the transaction has “the appearance of impropriety” or “just doesn’t look right”. If this is enough to rise to the level of violation of Disciplinary Rules and lead to sanctions to Respondent we are indeed on a slippery slope, where impressions and subjective determinations rather than clear and convincing evidence are used to determine one’s professional fate. The fact is that the investment was beneficial to the estate and caused no loss or harm to anyone, as the mortgage was fully paid with an above market rate of interest to the estate.

Objection #3

Respondent presented evidence in the form of live testimony from a qualified health professional, Dr. Hustak, that he suffered from an addiction to gambling and that the addiction was the root cause of his mishandling funds, and deceiving and concealing his problems and conduct from those close to him. The panel chose to ignore the testimony of Dr. Hustak and determine that the gambling addiction was not a mitigating factor in determining violations and sanctions. There is little that Respondent can add in regard to this issue. Either this court is going to agree with health care professionals and treat problem gambling as an illness subject to treatment and recovery, or take some outdated Victorian attitude that its all the fault of the addict and as such the addict is worthy of no consideration. The panel expounded at great length about the need for the disciplinary process to protect an unsuspecting public from Respondent's conduct. Although the panel tortures the facts of the case to find victims of Respondent's conduct, in fact no one from the public came forward either in a complaint to disciplinary counsel or to testify in the hearing of this case to say that they had been harmed by Respondent's conduct. The only reason there is a disciplinary case at all is that Respondent self reported and members of Respondent's former law firm, on advice of Counsel and because they feared claims being made against the firm filed a Complaint. Respondent testified that he has taken practical steps to control his gambling addiction, and that he has not engaged in gambling in almost 3 years. No one disputed this testimony and Dr. Hustak supported it.

Objection #4

Respondent has addressed this objection in the preamble to his brief. Respondent self reported the conduct giving rise to the case and has made restitution to anyone claiming to be harmed by Respondent. He has sought treatment from a health care professional, taken medication for a time, and engaged in a practical program to remove the possibility of using funds of others for gambling. He has essentially abandoned his previously lucrative law practice and is now out of work and destitute, living off the efforts of a very understanding and supportive spouse. He has no savings, no retirement of any kind, and approaches the age of 64 years without a future plan of any kind. His life is a shambles of its former iteration. Acceptance of responsibility for his actions comes in the form of getting up everyday and trying to move on. Respondent again points out that he understood the disciplinary process to be an adversary procedure, where disagreement with Disciplinary Counsel and disputing certain issues would not add up to a determination of failure to be remorseful and accept responsibility.

Objection #5

Respondent objects to the disbarment recommendation. Respondent suffers from an addiction and has taken steps to address the addiction. He has an otherwise excellent record of successful law practice of over 35 years with no complaints from the public, and even in this proceeding, the complaint is the result of self reporting and his former law firm, not clients or any members of his family or the public. Obviously a suspension with conditions on reinstatement is appropriate.

Respectfully submitted,



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PROOF OF SERVICE

A copy of the foregoing Objections and Brief in Support was served on Jonathan A. Coughlan and Karen H. Osmond, Disciplinary Counsel, 250 Civic Center Drive, Suite 325, Columbus, Ohio 43215-7411 and on Richard A. Dove, Secretary, Board of Commissioners, 65 South Front Street, 5th Floor, Columbus, Ohio 43215-3431 by hand delivery on the 25th day of September, 2013.



Robert K. Leonard