

ORIGINAL

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

In re:	:	13-1983
Complaint against	:	Case No. 12-081
Paul Dare Harmon Attorney Reg. No. 0023923	:	Findings of Fact, Conclusions of Law, and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio
Respondent	:	
Disciplinary Counsel	:	
Relator	:	

OVERVIEW

{¶1} This matter was heard on August 19, 2013, in Columbus before a panel consisting of Martha Butler Clark, David E. Tschantz, and Judge Beth Whitmore, chair. None of the panel members resides in the district from which the complaint arose or served as a member of a probable cause panel that reviewed the complaint pursuant to Gov. Bar R. V, Section 6(D)(1).

{¶2} Respondent appeared at the hearing pro se. Heather Hissom Coglianese appeared on behalf of Relator.

{¶3} Relator's complaint alleges that Respondent violated the following: Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation]; Prof. Cond. R. 8.4(d) [conduct that is prejudicial to the administration of justice]; and Prof. Cond. R. 8.4(h) [conduct that adversely reflects on the lawyer's fitness to practice law].

FILED  
DEC 17 2013  
CLERK OF COURT  
SUPREME COURT OF OHIO

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶4} Respondent was admitted to the practice of law in the state of Ohio on November 2, 1979. Respondent is subject to the Ohio Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio. Respondent has spent most of his career as a solo practitioner in Licking County, Ohio, and has primarily focused on family law. Hearing Tr. 13-14.

{¶5} Respondent testified that in 2004 he experienced a “personal crisis.” Hearing Tr. 75. Respondent did not handle this crisis well and made a series of poor financial choices. Hearing Tr. 75-76. Respondent did not provide any specific details of this crisis. Respondent did submit a letter he had sent to his bankruptcy attorney. Motion to Dismiss, Ex. J, p. 1. In that letter, Respondent states that his wife had made some painful disclosures to him in 2004 and that he “escaped into alcohol and gambling.” Motion to Dismiss, Ex. J, p. 1. During this time, Respondent made two unsuccessful campaigns for judge, which contributed to his financial stress. Hearing Tr. 49, 74, 81. Respondent used his retirement savings to fund his election campaigns. Hearing Tr. 81. In the spring of 2009, Respondent’s operating bank account for his law firm was attached by his creditors. Joint Ex. 2, Creditor’s Hearing Tr. 8. Respondent stopped using this account and began paying bills by cash, cashier’s check, and through another bank account solely owned by his wife. Stipulations, ¶4; Hearing Tr. 21-22.

{¶6} In August 2009, Respondent consulted with a bankruptcy attorney about filing for bankruptcy protection. Stipulations 3. Respondent admitted that he did not read the bankruptcy petition prepared by his attorney. Hearing Tr. 33. Instead, Respondent merely signed the documents where he was told to and trusted that his attorney had properly completed the appropriate disclosures. Hearing Tr. 100. A Chapter 7 petition was filed on Respondent’s behalf

in December 2009. Stipulation 6. This petition did not properly disclose all of Respondent's assets. Hearing Tr. 16.

{¶7} Excluded from the petition were the following assets: (1) Respondent's interest in a pending defamation lawsuit he filed in October 2009, (2) his interest in his wife's bank account, (3) a security deposit associated with his office space lease, (4) stocks, and (5) accounts receivable. Respondent does not dispute that these assets were not listed. Stipulations 7, 8, 20. Instead, Respondent argues that the omission was due to his attorney's malpractice and his own lack of knowledge of bankruptcy law. Hearing Tr. 91, 100-101. Respondent steadfastly maintains that his bankruptcy attorneys committed malpractice. Hearing Tr. 42-43, 47-48, 54, 58, 77, 81, 88-93, 99-101, 102-103.

{¶8} After the bankruptcy petition was filed, Respondent testified at a creditor's meeting on January 19, 2010. Stipulations 13. Respondent was represented by counsel. In response to the trustee's questions, Respondent testified that he had reviewed the bankruptcy petition before signing it and had disclosed all of his assets. Joint Ex. 2, Creditor's Hearing Tr. 4. Respondent specifically stated that he did not have a bank account or retirement account. Joint Ex. 2, Creditor's Hearing Tr. 7-8. Respondent further testified that he had about \$1,000 in accounts receivable, but told the trustee that the bills were not realistically collectable. Joint Ex. 2, Creditor's Hearing Tr. 8.

{¶9} Shortly after the creditor's meeting, the trustee was notified of Respondent's pending defamation lawsuit by the opposing counsel in that case. Stipulations 16. Respondent had filed a defamation action two months prior to filing for bankruptcy and sought \$500,000 in damages. Stipulations 5. On February 26, 2010, Respondent amended his bankruptcy petition to include the lawsuit. Stipulations 17. At the grievance hearing, Respondent testified that he

believed the lawsuit had merit, but no value because he would not be able to prove damages. Hearing Tr. 86-88. Respondent repeatedly faulted his attorney for not including the lawsuit in the original bankruptcy filing. Hearing Tr. 42-43, 47-48, 54, 58, 77, 81, 88-93, 99-101, 102-103. Respondent explained that he never read the documents and, even if he had, he would not have known the lawsuit was supposed to be disclosed. Hearing Tr. 92-93.

{¶10} At some point after the amendment to the bankruptcy petition an adversary proceeding was filed, Respondent hired new counsel. Stipulations 19; Hearing Tr. 43. Respondent was deposed a total of three times. Stipulations 19. The first two times, Respondent was represented by counsel. Hearing Tr. 43-44. Respondent appeared pro se at the third deposition. Joint Ex. 4. After the second deposition, Respondent's attorneys filed another amendment to his bankruptcy petition. Hearing Tr. 21. This amendment included the remaining undisclosed assets (*i.e.*, interest in wife's bank account, stocks, security deposit, and more accounts receivable). Joint Ex. 5. During his third deposition, Respondent explained that he had testified truthfully in the previous depositions, but was mistaken in his answers. Joint Ex. 4, p. 31. Ultimately, the bankruptcy court found that Respondent had knowingly made false oaths and refused to discharge his bankruptcy. Joint Ex. 7.

{¶11} At the grievance hearing, Respondent continually shifted the blame to his attorneys and the trustee. Respondent testified that neither of his attorneys had prepared him for the depositions. Hearing Tr. 44-45, 56. Because Respondent was unprepared, he answered the questions in the best way that he could. Hearing Tr. 44-45. Respondent testified that he did not lie, but he did make mistakes in his answers. Hearing Tr. 45. This included not disclosing that Respondent was using his wife's bank account when he was asked how he was paying his bills. Hearing Tr. 45. Respondent explained that he had filed malpractice actions against both of his

bankruptcy attorneys. Hearing Tr. 43, 48. The claims were dismissed, according to Respondent, when the trustee refused to investigate. Hearing Tr. 81. Respondent further testified that the trustee “targeted” him and refused to believe anything he told her. Hearing Tr. 43.

{¶12} Respondent testified that he entered into a contract with OLAP in October 2010. Hearing Tr. 35. Respondent did not remember the terms of the contract, but agreed that he had recently learned that the contract was for four years. Hearing Tr. 36. Respondent admitted that he had not been in contact with OLAP for a year-and-a-half. Hearing Tr. 37. The week before the hearing, Respondent revoked his release with OLAP. Hearing Tr. 36. Respondent explained that he did not want OLAP discussing his case with Relator because OLAP had no idea what was currently going on in his life. Hearing Tr. 36-37.

{¶13} Based upon the exhibits, stipulations, and the record of the hearing, the panel finds by clear and convincing evidence, that Respondent violated the following: Prof. Cond. R. 8.4(c), Prof. Cond. R. 8.4(d), and Prof. Cond. R. 8.4(h).

{¶14} By signing his bankruptcy petition, Respondent declared under the penalty of perjury that he had fully disclosed his finances. Joint Ex. 1; Hearing Tr. 32. Respondent further testified under oath that he had fully disclosed his assets. Joint Ex. 2, Creditor’s Hearing Tr. 4. In fact, Respondent had not. Stipulations 14; Hearing Tr. 16, 19. Respondent then amended his petition to include his pending lawsuit, but still failed to disclose various other assets. Stipulations 16, 20; Hearing Tr. 20-21. Respondent signed this amendment asserting that he had fully disclosed his finances. Stipulations 17, 20; Joint Ex. 3. Again, Respondent had not. Stipulations 20; Joint Ex. 3. It was only after depositions and another amendment to his petition that Respondent fully disclosed all of his financial assets. Stipulations 21; Hearing Tr. 20-30.

{¶15} Respondent argues that he simply did not review the documents, and, even if he had, he does not practice bankruptcy law so he would not have understood what needed to be disclosed. The panel is not persuaded by his argument. As the bankruptcy court found “one need not be a sophisticated bankruptcy attorney to understand the [petition’s] schedules. They are written in plain English that any literate person can understand.” Joint Ex. 7, pp. 13-14. Further, Respondent had several opportunities to correct the record and fully disclose all of his assets.

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

{¶16} The panel finds the following mitigating factors: (1) Respondent has been practicing law for approximately 35 years and has no prior disciplinary record; (2) the bankruptcy court refused to discharge Respondent’s bankruptcy and he has paid restitution to the trustee for the assets withheld; (3) according to Respondent, this has left him with approximately \$177,000 in debt that he must repay; (4) Respondent has fully cooperated in the disciplinary proceeding; and (5) Respondent’s misconduct did not harm any clients.

{¶17} The panel finds the following aggravating factor: Respondent has not accepted responsibility. According to Respondent, he is in this position because his attorneys committed malpractice, and the trustee was out to get him. Hearing Tr. 42-43, 47-48, 54, 58, 77, 81, 88-93, 99-101, 102-103. Respondent only admits to mistakes that led to his financial ruin, including alcohol and gambling. Hearing Tr. 75-76, 82. Respondent testified that he completed outpatient treatment for alcohol, but that his problem was not alcohol. Hearing Tr. 83-84. According to Respondent, his problem was that he could not handle a difficult time in his life. Hearing Tr. 84. Despite Respondent’s testimony that he shared his personal crisis in his pleading, he has offered no specific information as to the underlying crisis he was faced with. Hearing Tr. 75. Without

any understanding of what it was that Respondent faced, the panel is handicapped in our attempt to evaluate his ability to deal with crises in the future. Moreover, Respondent has offered no evidence that he has learned how to deal with life's difficulties should another arise. Respondent had a four-year contract with OLAP. Hearing Tr. 36. Not only has Respondent not kept in contact with OLAP, he placed the blame on OLAP. Hearing Tr. 38-39. According to Respondent, "it is OLAP's job to stay in touch with people they are trying to assess." Hearing Tr. 38. Further, Respondent revoked his OLAP release and objected to any testimony regarding his prior contract with OLAP. Hearing Tr. 65. This raises concern that Respondent is not being completely forthcoming. While there was no harm to clients in this matter, the panel has serious concerns about potential harm to future clients.

{¶18} Relator has recommended a one-year suspension with no time stayed. In support of its recommendation, Relator cites *Toledo Bar Assn. v. Miller*, 132 Ohio St.3d 63, 2012-Ohio-1880. The panel has found no case that is directly analogous, but agrees that *Miller* is instructive. The respondent withheld income from the bankruptcy court and used the escrow account of another client to pay a filing fee of a pro bono client. The respondent had no prior disciplinary actions and had "acknowledged his wrongdoing and [ ] expressed remorse." *Id.* at ¶12. The Court suspended the respondent for one year, with six months of the suspension stayed. *Id.* at 16.

{¶19} A violation of Prof. Cond. R. 8.4(c) will typically result in an actual suspension from the practice of law unless "significant mitigating factors that warrant a departure" from that principle are present. *Disciplinary Counsel v. Potter*, 126 Ohio St.3d 50, 2010-Ohio-2521, ¶10, quoting *Disciplinary Counsel v. Rohrer*, 124 Ohio St.3d 65, 2009-Ohio-5930, ¶45. In some disciplinary cases that involve dishonest, deceitful, or fraudulent conduct, the Supreme Court has

partially or fully stayed terms of suspension. *Disciplinary Counsel v. Stafford*, 131 Ohio St.3d 385, 2012-Ohio-909, ¶71-75 (reviewing *Cincinnati Bar Assn. v. Reisenfeld*, 84 Ohio St.3d 30, 1998-Ohio 307, *Disciplinary Counsel v. Fumich*, 116 Ohio St.3d 257, 2007-Ohio-6040, *Disciplinary Counsel v. Niermeyer*, 119 Ohio St.3d 99, 2008-Ohio-3824, and *Disciplinary Counsel v. Potter*, 126 Ohio St.3d 50, 2010-Ohio-2521). However, in these cases, and in *Miller*, the respondent had accepted responsibility. They are, therefore, distinguishable.

{¶20} Here, Respondent has not fully acknowledged his wrongdoing. Respondent continues to fault others for his failure to disclose all of his assets. “I didn’t lie to anybody at any time in this case. I didn’t commit fraud and I didn’t misrepresent anything. I should have known better, I should have been more careful, I should have paid more attention, I should have read everything front to back. But, I also believe that I should have been better represented.” Hearing Tr. 76-77. Moreover, Respondent testified at a creditor’s hearing, filed an amendment to his petition, and testified at two depositions before ultimately disclosing all of his assets to the bankruptcy court.

{¶21} The panel recognizes that Respondent has no prior disciplinary record and there was no harm to a client, however, Respondent has failed to accept responsibility. The panel concludes that his failure to accept responsibility warrants a more severe sanction than that imposed in *Miller*. See *Disciplinary Counsel v. Watson*, 95 Ohio St.3d 364, 2002-Ohio-2222, ¶10 (failure to accept responsibility warrants a more severe sanction).

{¶22} Respondent acknowledges that he is in his current financial position because he was unable to handle some difficulties in life. However, Respondent has offered us no reassurances that he is now able to handle the problems he might encounter. The panel is concerned that he continues to shift the blame to others. For the foregoing reasons, the panel

agrees with Relator and recommends a one-year suspension with no time stayed. Additionally, the panel recommends that Respondent be required to submit to an evaluation conducted by OLAP or a health care professional designated by OLAP, and comply with an OLAP contract, the content and duration of which to be determined by OLAP. The panel further recommends that Respondent's return to the practice of law be conditioned upon his then compliance with his OLAP contract.

### **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 December 12, 2013. The Board amended the findings of fact and conclusions of law recommended by the panel to make a specific finding that Respondent's conduct was sufficiently egregious to merit the additional finding of the Prof. Cond. R. 8.4(h) violation found by the panel. See *Disciplinary Counsel v. Bricker*, 2013-Ohio-3998, ¶21. The Board amended the sanction recommended by the panel and recommends that Respondent, Paul Dare Harmon, be suspended from the practice of law for two years, with one year stayed on the conditions contained in ¶22 of this report. 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.**



A handwritten signature in black ink, appearing to read "Richard A. Dove", is written over a horizontal line.

**RICHARD A. DOVE, Secretary**