

ORIGINAL

THE SUPREME COURT OF OHIO

AKRON BAR ASSOCIATION \* CASE NO. 2014-1388  
Relator \*  
vs. \*  
LARRY D. SHENISE \*  
Respondent \*

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**RESPONDENT'S OBJECTIONS TO THE FINDINGS OF FACT AND CONCLUSIONS  
OF LAW AND RECOMMENDATION OF THE BOARD OF COMMISSIONERS ON  
GRIEVANCES AND DISCIPLINE RESPONSE TO THE ORDER TO SHOW CAUSE  
ENTERED AUGUST 28, 2014**

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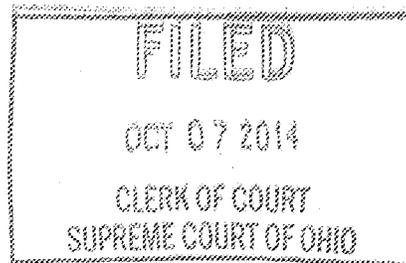
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Now comes Respondent, Larry D. Shenise, and hereby submits objections to the Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline (Board) in response to the Order to Show Cause entered August 28, 2014. Respondent further objects to the Hearing Panels refusal to allow the testimony of Attorney Warner Mendenhall as an expert witness an issue not addressed in the Board's Report.

### **PRELIMINARY STATEMENT**

At the outset Respondent wishes to make clear that he does not challenge the findings of the Board with respect to violations of Prof. Cond. R. 1.1, Prof. Cond. R. 1.4(c) or Prof. Cond. R. 3.4(c) as it pertains to the trial court's post judgment discovery order.

### **OBJECTIONS**

#### **I.**

#### **RESPONDENT'S ACTIONS DO NOT CONSTITUTE A PATTERN OF MISCONDUCT AND SHOULD NOT BE CONSIDERED AN AGGRAVATING FACTOR**

While Respondent's post judgment actions in not responding to discovery warrant the finding of a violation pursuant to Prof. Cond. R. 1.1 and Prof. Cond. R. 3.4(C) they do not constitute a pattern of misconduct. The first point is the discovery issues are all contained within one case.

Subsequent to a judgment being entered against the Littles the Plaintiff served a discovery request, including a request for a deposition on July 22, 2010. Respondent met to discuss the matter with his client. Respondent's Hearing Exhibit Q. When Defendant's did not respond Plaintiff filed a motion to compel on September 9, 2010. Respondent's Hearing Exhibit Q. Respondent after discussions with his client filed a motion for leave to respond on October 4, 2010. It was Respondent's belief at that time that William Little would be able to obtain the necessary documents needed for his bankruptcy prior to the date granted for leave to file. As

Respondent testified that did not happen and he allowed the situation to snowball. On January 11, 2011 the Court granted the motion to compel. Respondent's Hearing Exhibit Q. When no response was made a motion to show cause was made. Ultimately, the Court issued its notice of a show cause hearing on March 17, 2014 set for March 30, 2014. Respondent's Hearing Exhibit Q. As demonstrated below, Respondent was able to show through the corroboration testimony of Attorney Joel Reed that written notice of the hearing was not received. Board Findings of Fact and Conclusions of Law P. 8.

Prior to the hearing date set, new counsel for Leonard Little, John Guy filed a bankruptcy case and indicated application of the automatic stay. Board's Findings of Fact and Conclusions of Law P. 9. After Respondent and his client did not appear for the show cause hearing, which Respondent contends was held in violation of federal bankruptcy law, warrants were issued for both William and Leonard Little. Respondent testified that he was not aware of the warrants but never testified that the Court did not send notices. Because of the bankruptcy filing Respondent believes he may have not even reviewed the notices as his belief was the case was stayed. In the interim Leonard Little received notice of the capias, met with John Guy his bankruptcy attorney and was told to ignore the warrant. Board's Findings of Fact and Conclusions of Law P. 9. Ultimately Leonard Little was arrested on the capias and spent the better part of a day in jail.

If the issue of the unfortunate arrest of Leonard Little is removed from the equation the discovery issues go on every day in civil cases. Respondent has been on the other side numerous times and had to file a motion to compel and go to hearing to receive discovery for one reason or another. Respondent is not attempting to say that it's right and has already admitted that it created a violation, but Respondent contends that it does not establish a pattern of misconduct on his part.

The original complaint against Respondent did not originate from the Littles, but instead from a sitting Judge who was upset about comments in the newspaper as detailed below. The Littles had to be dragged into this case by the Bar Association. The original complaint did not relate to the actual handling of the Little case, that was developed by the Bar Association, who also reviewed Respondent's IOLTA account records even though fees were never an issue in the case and more importantly the period reviewed did not even encompass the representation period of the Little's.

## II.

### **REALTOR FAILED TO ESTABLISH BY CLEAR AND CONVINCING EVIDENCE THAT RESPONDENT VIOLATED PROF. COND. R. 1.2**

While Respondent accepts the Board's finding of a violation of Prof. Cond. R. 1.1 for the mistakes made in the handling of the Little matter, those mistakes were not the result of Respondent exceeding his authority as expressed by the client which is needed for a finding pursuant to Prof. Cond. R. 1.2.

Although it is not spelled out in so many words in the Board's Findings of Fact and Conclusions of Law the only action that Respondent took during the course of his representation of the Little's that could be seen as open to consideration pursuant to Prof. Cond. R. 1.2 is the dismissal of the counter claim against Lake Family Properties and that was done after full consultation with William Little. See Hearing Transcript page 71, ¶20 through page 72, ¶17.

## III.

### **REALTOR FAILED TO ESTABLISH BY CLEAR AND CONVINCING EVIDENCE THAT RESPONDENT VIOLATED PROF. COND. R. 1.4(a)(1), PROF. COND. R. 1.4(a)(3) AND PROF. COND. R. 1.4(b)**

The issue Respondent raises here is what is Respondent being sanctioned for, non-communication or for not enough or understandable communication. Respondent takes that the position that the Board's decision is based on non-communication based on specific findings.

At page 7 of the Board's Findings of Fact and Conclusions of Law it states that Respondent after receiving notice of deposition as to the Littles and a request for production did not inform his clients of either. The testimony of William Little demonstrates that is an inaccurate statement of fact. Mr. Little in questioning by Relator at p. 58, ¶23 was asked the following question by Relator:

Do you remember being told by Mr. Shenise that the lawyer for Rundown Ghost Town (RDGT) wanted to take your deposition And that of your father concerning collection of the Judgment? This would have been in June or July of 2010?

Mr Little responded to the question as follows:

I remember conversation about that, but--

At p. 59, ¶22, Little was asked if he had told his father about the deposition. Mr Little responded to the question as follows:

I cant—that might have been the time—that might have been the time we met with my father. (Hearing Tr. P. 60 ¶2)

More importantly Mr. Little went on to say:

I mean, there's so many times I was with Larry over Jeff Lake. (Hearing Tr. P. 60 ¶4)

That statement in and of itself establishes there were a significant number of meetings between William Little and Respondent and with that the corresponding communication that took place at those meetings.

At P. 8, ¶18 of the Board's Findings of Fact and Conclusions of Law it states "Consistent with his prior conduct, Respondent did not tell the clients of this motion" or of the granting of

the motion, in referring to the motion to compel filed September 9, 2010. Respondent's Hearing Exhibit Q.

However William Little was asked the following question by Relator:

Do you remember Mr. Shenise ever telling you the court has ordered you and your father to give depositions and turn over documents and also been ordered to pay \$410 for attorney fees.

Mr. Little Responded as follows:

I remember the first part of that question. As far as the money is concerned, no. I don't remember that. (Hearing Tr. P. 66, ¶18)

That testimony contrary to the Board's findings illustrates that were discussions with Respondent and at least William Little concerning the motion and the Court's order.

Mr. Little in further questioning by Relator was asked the following question:

Now, were you ever told that Rundown Ghost Town was seeking information about your finances and your father's finances in order to try to collect that judgment? (Hearing Tr. P. 67, ¶16)

Mr. Little responded to the question as follows:

I remember at one point we had a meeting about depositions (Hearing Tr. P. 67, ¶ 10)

He then further stated:

That -- as I said before, I think that was the time that Larry might have told my father that he needs to get counsel and that he was going to try to get it extended. (Hearing Tr. P. 67, ¶13)

An important point to make is Mr. Little made several statements to the effect that he did not remember, when asked about certain conversations he had with Respondent, Mr. Little never stated the conversation did not take place. Not remembering three and four years later is far distant from definitively saying no we never had that conversation.

William Little was also asked the following questions as to whether he ever received documents from Respondent by mail or in person at his office. He responded that he did to both questions. Hearing Tr. P. 75, ¶13

At p. 87, ¶18 of the hearing transcript William Little testified that Respondent tried to have frank discussions with him about everything.

Leonard Little testified that he met with Respondent on approximately four occasions.) and each time his son William was present. Hearing Tr. P. 182, ¶16182, ¶16 When asked by Respondent what was discussed Leonard indicated the lawsuit against Billy, meaning his son and why he Leonard was dragged into it. Hearing Tr. P. 182, ¶16. Ultimately, under questioning by the Panel Chair, Mr. Rodeheffer, Leonard simply admitted that he really didn't remember what was discussed in his meetings with Respondent. Hearing Tr. P. 194, ¶13.

However, the testimony of William Little clearly establishes that the Littles were informed of both the depositions and the request for production as well as there was ongoing communication with regard to the case.

Based on the foregoing Respondent respectfully requests that the Court dismiss the findings of violations of Prof. Cond. R. 1.4(a)(1), Prof. Cond. R. 1.4(a)(3) and 1.4(b)

#### IV.

#### **REALTOR FAILED TO ESTABLISH BY CLEAR AND CONVINCING EVIDENCE THAT RESPONDENT VIOLATED PROF. COND. R. 3.5(a)(6) REGARDING COMMENTS MADE TO AKRON BEACON JOURNAL REPORTER PHIL TREXLER**

Initially, the Board's finding contains a material misstatement of fact with regards to the statements made by Respondent. At P. 10 of the Board's Findings of Fact and Conclusions of Law the Report states "Respondent admits to making all of the foregoing comments with the exception that he denies telling the reporter that Judge Gallagher failed to notify him of the

hearing” In actuality Respondent admitted to making the statement concerning not receiving notice. The entire issue surrounding notice was whether or not Respondent received written notice of the show cause hearing of March 30, 2011. As the Board’s findings illustrated Respondent supported his position that he did not with the testimony of Attorney Joel Reed, who would have been the one to actually see the notice as he was checking Respondent’s mail while Respondent was out of town. Respondent’s position at the hearing and to date was the statement concerning the warrants was never made. It is important to note that the statement was paraphrased by the reporter, who this Court is well aware never presented himself to testify.

"Relator must prove by clear and convincing evidence the facts necessary to establish a violation of a Disciplinary Rule." *Disciplinary Counsel v. Bunstine*, 123 Ohio St.3d 298, 2009-Ohio-5286, 915 N.E.2d 1224, ¶ 12, citing Gov.Bar R. V(6)(J) and *Disciplinary Counsel v. Jackson* (1998), 81 Ohio St.3d 308, 310, 691 N.E.2d 262. The only evidence before the Panel of what was said to the reporter was that of the testimony provided by Respondent there was no contradicting testimony presented.

Respondent has never accused the Court of not mailing the notices. Respondent’s position has been all along that I was aware as of late March (pursuant to a phone conversation held with Attorney Guy) that bankruptcy had been filed on behalf of Leonard Little and it was assumed that pursuant to 11 U.S.C. §362 a stay of proceedings was in effect as of March 21, 2011, which would have been nine days prior to the scheduled show cause hearing. As to the warrants for whatever reason Respondent was not aware of them, which very well could have been the Respondent not giving the notice proper attention after the bankruptcy filing. See Respondent’s testimony at Hearing Tr. P. 258, ¶6 – P. 259, ¶13 and also P. 263, ¶12 - P. 264, ¶11.

The issue with the finding is determining what weight it was given with regard to the finding that Respondent's statements violated the Rules of Professional Conduct. The Board's finding was that "Respondent clearly could have been more conservative in his comments about the Court." Board Report P. 14. What comments, the comments actually made or the comments the Board thought were made?

First Respondent has established that he did not receive the initial notice of hearing from the Court. That was through the testimony of Attorney Reed. Judge Gallagher's clerk testified that she contacted Respondent by phone the day of the hearing and left a message. Respondent made two points in that regard. At the show cause hearing that was finally held Judge Gallagher in discussing the newspaper article stated that he had taken the time to research the Court's file and the record. Respondent's Exhibit T, P. 12 and also "There's no way I can tell whether we gave you a courtesy call or not. Maybe we didn't." Respondent's Exhibit T, P. 15, L. 24. As Respondent stated in his post-hearing brief is it not fair to assume since this telephone issue was part of the notice issue in the newspaper article and Judge Gallagher had thoroughly prepared for the hearing, regarding notice issues he would have discussed this telephone issue with his bailiff and/or legal assistant. In other words at a hearing on March 28, 2012, the Judge stated there was no way to determine if a call was made but two years later, after the Judge files his complaint his legal assistant is sure the call was made. The other point to be made with regards to the telephone call is that from day one of the Bar Association investigation, Respondent requested that his telephone records be subpoenaed and they never were.

At P. 14, ¶32 in the Board's Findings of Fact and Conclusions of Law, the Board stated "At the time of his interview, Respondent believed that he had not been notified of the hearing and expressed in the interview that he believed to be true facts." The findings of the Board also

do indicate that that any remark was made directly about Judge Gallagher. The Board also noted that the comments that despite the fear of Judge Gallagher that the issue involving Leonard Little's arrest would reflect negatively in his campaign the issue was never raised and he was reelected. Hearing Tr. P. 413.

Prof. Cond. R. 3.5(a)(6) is analogous to former DR 7-106(C)(6). In *Disciplinary Counsel v. Gardner*, 99 Ohio St.3d 416, 2003-Ohio-4048, 793 N.E.2d 425 in a multi-page motion for reconsideration before an appellate court the attorney in that case alleged the "affirmation of his client's conviction resulted not from error, but from prosecutorial bias and corruption" of the court. Gardner openly challenged the integrity of the Court. In *Disciplinary Counsel v. Grimes*, 66 Ohio St.3d 607, 614 N.E.2d 740 (1993), the attorney was disciplined for making inappropriate and disrespectful statements about a judge to a newspaper reporter and making inappropriate statements to a judge during a hearing. In *Akron Bar Assoc. v. Dicato*, 130 Ohio St.3d 394, 2011-Ohio-5796, 958 N.E.2d 938 the attorney during a telephone conversation with Judge's bailiff about fee applications that were awaiting the judge's approval, the attorney called the judge a lying, cheating bitch.

Each of those cases in contrast to Respondent's statements involved a direct attack on a judge or judges. As noted before Respondent never even mentioned Judge Gallagher's name to the Beacon Journal reporter.

In determining that an objective-version of the actual malice test with regards to statements made by lawyers the Court in citing to *Standing Commt. on Discipline, U.S. Dist. Court, Cent. Dist. of Calif. v. Yagman* (C.A.9, 1995), 55 F.3d 1430 stated "Ethical rules that prohibit false statements impugning the integrity of judges, by contrast, are not designed to shield judges from unpleasant or offensive criticism, but to preserve public confidence in the

fairness and impartiality of our system of justice. See *In re Terry*, 271 Ind. 499, 502, 394 N.E.2d 94, 95 (1979); *In re Graham*, 453 N.W.2d 313, 322 (Minn.1990).

Respondent also relies on the dissent of Justice Peiffer in the opinion written with regards to Relator's motion to hold Phil Trexler in contempt. Justice Peiffer stated that even if the lawyer involved "said every word attributed to him" in the newspaper story "those statements are not evidence of misconduct on his behalf"

## V.

### **THE HEARING PANEL ERRED IN EXCLUDING THE TESTIMONY OF ATTORNEY WARNER MENDENHALL AS AN EXPERT WITNESS WITH REGARDS TO THE ISSUE OF THE BANKRUPTCY AUTOMATIC STAY**

At the outset Respondent admits that had he done a better job of monitoring of post bankruptcy notices of the trial court he most likely would have become timely aware of the filing of warrants against the Littles for failure to attend the March 30, 2011 show cause hearing. At that point he would have been able to notify his then client William Little of the situation as well as advise Leonard Little's then current counsel of the situation. Respondent would have had a duty to go through that counsel and not talk to Leonard Little directly. But ultimately that would not have changed what happened with regards to the ultimate arrest of Leonard Little. As the Board stated "The panel is willing to concede the incarceration of Leonard Little was in no small part due to the poor advise that Guy provided to Leonard." The bottom line is that even had Respondent informed Attorney Guy when the first notice of the capias came out on April 13, 2011. Respondent's Hearing Exhibit Q. the advice he gave to Leonard Little to ignore the warrant would have been the same that he gave when the second notice of the capias came out two weeks later on April 27, 2011. Respondent's Hearing Exhibit Q. That is the notice that Leonard Little stated that he received and discussed with Attorney Guy and was told to ignore.

The Board, regardless of the notice issue, has failed to acknowledge the fact that the show cause hearing held by Judge Gallagher on March 30, 2011 that set the entire warrant issue in motion should not have taken place and was held contrary to federal bankruptcy law.

In *In re Benalcazar*, 283 B.R. 514 (Bkrctcy. N.D. Ill. 2002), the Court held that civil contempt proceedings initiated by a plaintiff against a defendant was a private litigant pursuing its individual interests in enforcing a court order to assist in collecting a judgment--not a governmental unit enforcing the governmental unit's police or regulatory power. Accordingly, the police power exception of § 362(b)(4) did not apply and the plaintiff's actions would be subject to the automatic stay. The Court also held that the proceedings are initiated by the plaintiff's filing of an order to show cause. That is exactly what took place in the Little case on February 14, 2011 (Respondent's Hearing Exhibit Q)

Respondent specifically objects to the exclusion of his expert witness who was prepared to testify to the applicability of the automatic stay on civil contempt proceedings. Respondent formally objected to the disqualification on the record at the time of hearing. Hearing Tr. P. 570. Attorney Warner Mendenhall testified that he had filed over 300 bankruptcy cases. Hearing Tr. P. 563. He further testified that he had participated in all aspects of bankruptcy proceedings and attended at least 6 hours a year in bankruptcy CLE classes. The panel excluded his testimony because he had never been involved in a proceeding in state court where civil contempt proceedings were held after the filing of bankruptcy. This Court is asked to take note of the obvious in that judges simply do not hold such hearings in contravention to federal law.

The Panel acknowledges that Attorney John Guy on March 21, 2011, nine days before the contempt hearing that set everything in motion, filed bankruptcy on behalf of Leonard Little. At that point all further proceedings should have been stayed.

While Respondent takes responsibility for his actions, Respondent should not be held accountable for the improper actions of others, even if that includes the mistake of a trial judge. It is impossible to tell what weight the Board has given the arrest of Leonard Little and exactly where that issue fits with the specific violations found by the Board, however if the warrants should never have been issued in the first place because the hearing should have never been held in the first place, then the Court is asked to weight that factor in mitigation in determining Respondent's sanction.

## VI.

### **THE SANCTION IS NOT PROPORTIONATE TO THE CONDUCT ALLEGED**

The primary purpose of the disciplinary process is not to punish the offender but to protect the public from lawyers who are unworthy of the trust and confidence essential to the attorney-client relationship." *See, e.g., Disciplinary Counsel v. Agopian*, 112 Ohio St.3d 103, 2006-Ohio-6510, 858 N.E.2d 368, ¶ 10.

However the sanction proposed in this case is not proportionate to the conduct the Board found to have violated the Rules of Professional Conduct. Even if this Court accepts none of Respondent's arguments herein the sanction is excessive. The Board recommends a two year suspension all stayed on condition of probation.

In *Columbus Bar Assn. v. Bhatt*, 133 Ohio St.3d 131, 2012-Ohio-4230, 976 N.E.2d 870, the Court issued a public reprimand to an attorney who neglected two client matters, failed to keep those clients reasonably informed about their matters, and failed to notify them that his professional-liability insurance lapsed for several months during his representation. See also *Akron Bar Assn. v. Freedman*, 128 Ohio St.3d 497, 2011-Ohio-1959, 946 N.E.2d. 753 (publicly reprimanding an attorney who failed to communicate with clients in a timely manner, failed to

keep them reasonably informed of the status of their case, and failed to notify the clients that he did not maintain malpractice insurance or that they could be entitled to a refund of any unearned portion of a nonrefundable fee); *Disciplinary Counsel v. Dundon*, 129 Ohio St.3d 571, 2011-Ohio-4199, 954 N.E.2d 1186 (publicly reprimanding an attorney who neglected a client matter, failed to regularly communicate with the client, and failed to timely respond to requests for a refund of the client's attorney fees).

In *Disciplinary Counsel v. Grimes*, the Court issues a public reprimand for the attorney's conduct in making disrespectful statements about a judge to the newspaper and added to that were inappropriate comments made in court.

In *Akron Bar Assn. V. Deloach*, 133 Ohio St.3d 329, 2012-Ohio-4629, 978 N.E.2d 181, an attorney already on probation for previous disciplinary violations involving dishonesty, failed to notify clients of the lack of malpractice insurance and in that case a public reprimand was also issued.

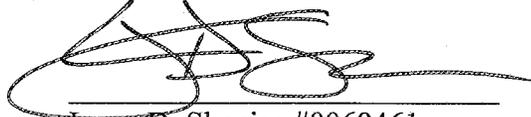
Whether two separate sanctions of a public reprimand can still result in a public reprimand is a decision for this Court to make based on the totality of the circumstances. However a period of two years is excessive and is designed to punish and not protect the public.

### **CONCLUSION**

Respondent has highlighted several direct misstatements of fact, which Respondent attributes in part to the fact that the hearings took place nearly six months apart because of the intervening motions by Relator that were considered by this Court with regards to the testimony of the Akron Beacon Journal reporter. In that regard, it is Respondent's position that a determination of the appropriate sanction cannot be properly made without knowing what weight was placed by the Panel on the incorrect facts, which is a issue that can't be determined from the

Board's Report and that forces this Court into a de novo position of review. However, if this Court finds that any of the misstated facts were used directly to find a violation then it is Respondent's position that without that fact Relator would not have met its burden of producing clear and convincing evidence and the violation should be dismissed. This is especially true with regards to the clear error on the part of the Board as to what statements Respondent made and did not make to the newspaper.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the forgoing Respondent's Objections to Findings of Fact, Conclusions of Law and Recommendation was served by regular mail this 7th day of October 2014 upon:

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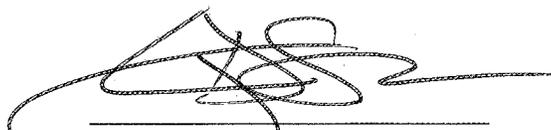
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# APPENDIX

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

In re: :  
Complaint against : Case No. 2013-037  
Larry Dean Shenise : Findings of Fact,  
Attorney Reg. No. 0068461 : Conclusions of Law, and  
Respondent : Recommendation of the  
Akron Bar Association : Board of Commissioners on  
Relator : Grievances and Discipline of  
 : the Supreme Court of Ohio  
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OVERVIEW

{¶1} This matter was heard on December 5, and 6, 2013 and May 22, 2014, in Akron before a panel consisting of Teresa Sherald, David Dingwell, and Stephen C. Rodeheffer, 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} Robert M. Gippin and Sharyl W. Ginther appeared on behalf of Relator. Respondent appeared pro se.

{¶3} The complaint filed by Relator on May 21, 2013 alleges multiple violations of the Rules of Professional Conduct arising out of Respondent's representation of William and Leonard Little. Generally speaking, the complaint alleges that Respondent did not have malpractice insurance during the representation, nor did he provide notice of his lack of insurance. Further, the complaint alleges numerous ethical shortcomings in the manner in which

Respondent discharged his professional obligations to the Littles. The final count of the complaint alleges misconduct toward the trial judge handling the Littles' case. As to each of the counts, the complaint alleged the following violations:

- **Count One**-Prof. Cond. R. 1.4(c) [a lawyer shall not fail to inform a client on a separate form if the lawyer does not maintain professional liability insurance in the required amount].
- **Count Two**-Prof. Cond. R. 1.1 [competence]; Prof. Cond. R. 1.2 [a lawyer shall abide by a client's decisions and shall consult with the client]; Prof. Cond. R. 1.3 [a lawyer shall act with reasonable diligence and promptness]; Prof. Cond. R. 1.4(a)(1) [a lawyer shall promptly inform the client of any decision or circumstance requiring the client's informed consent]; Prof. Cond. R. 1.4(a)(3) [a lawyer shall keep the client reasonably informed about the status of his case]; Prof. Cond. R. 1.4(b) [a lawyer shall explain the matter reasonably necessary to permit the client to make informed decisions]; Prof. Cond. R. 3.4(c) [a lawyer shall not knowingly disobey an obligation under the rules of a tribunal]; Prof. Cond. R. 3.4(d) [a lawyer shall not intentionally or habitually make a frivolous motion]; Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation]; and Prof. Cond. R. 8.4(d)[conduct prejudicial to the administration of justice].
- **Count Three**-Prof. Cond. R. 3.5(a)(6) [conduct degrading to a tribunal]; Prof. Cond. R. 4.1(a) [a lawyer shall not knowingly make a false statement to a third person]; Prof. Cond. R. 8.2(a) [a lawyer shall not make a statement that the lawyer knows to be false concerning the qualification or integrity of a judicial officer]; Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation]; Prof. Cond. R. 8.4(d) [conduct prejudicial to the administration of justice]; and Prof. Cond. R. 8.4(h) [conduct adversely reflecting on the lawyer's fitness to practice law].

{¶4} The panel having heard the evidence and considered the arguments of counsel as set forth in their post-trial briefs finds by clear and convincing evidence that Respondent has violated the following:

- **Count One:** Prof. Cond. R. 1.4(c);
- **Count Two:** Prof. Cond. R. 1.1, Prof. Cond. R. 1.2, Prof. Cond. R. 1.3, Prof. Cond. R. 1.4(a)(1), Prof. Cond. R. 1.4(a)(3), Prof. Cond. R. 1.4(b), Prof. Cond. R. 3.4(c); and
- **Count Three:** Prof. Cond. R. 3.5(a)(6).

{¶5} The panel finds that Relator has failed to prove the following violations:

- **Count Two:** Prof. Cond. R. 3.4(d), Prof. Cond. R. 8.4(c), and Prof. Cond. R. 8.4(d); and
- **Count Three:** Prof. Cond. R. 4.1(a), Prof. Cond. R. 8.2(a), Prof. Cond. R. 8.4(c), Prof. Cond. R. 8.4(d), and Prof. Cond. R. 8.4(h).

{¶6} Based upon these findings, it is the panel’s recommendation that Respondent be suspended from the practice of law for two years, with the entire period of the suspension stayed.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶7} Respondent was admitted to the practice of law in the state of Ohio on November 10, 1997 and is subject to the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

#### **Count One—Professional Liability Insurance**

{¶8} Relator’s complaint deals with the fact that Respondent allowed his malpractice insurance to expire on January 15, 2008; an allegation that Respondent has admitted to. According to his testimony, Respondent started a real estate title company that had an errors and omissions liability insurance policy. Respondent testified that after forming the company, only 25 percent of his time was spent with legal clients and the balance of his time was spent operating the title company. December 5, 2013 Hearing Tr. 30. Respondent did not reinstate his malpractice insurance until March 15, 2013. Respondent told the panel that he erroneously felt that his E&O coverage would cover his legal work. *Id.* However, this explanation is difficult to accept given the fact that he testified that he informed some of his contingent fee clients that he had no insurance. *Id.* at 203. Respondent has conceded that he violated Prof. Cond. R. 1.4(c), and the panel finds this constitutes clear and convincing evidence of the violation.

#### **Counts Two and Three – William and Leonard Little**

{¶9} The events began on July 2, 2004 when William Little entered into a ten-year lease of a mechanic’s garage owned by his Lake Family Properties, LLC (hereafter “LFP”). LFP

is a company owned by William Little's brother in-law, Jeff Lake. For reasons that were not entirely clear, William's father, Leonard, was required to co-sign the lease. The lease calls for monthly payments of \$2,420 and included an option to buy. To exercise the option, William had to pay off the first mortgage on the property and pay LFP a cash payment in the amount of which was dependent upon how far into the lease term the option was exercised. At the time the lease was executed by the parties, there was a single mortgage on the property. The loan that formed the consideration for the first mortgage was also secured by an assignment of rents to the mortgage. This assignment granted to the mortgagee the right to collect the rents on the property in the event LFP went into default on the loan. Shortly after the lease was signed, LFP encumbered the property with a second mortgage for \$100,000.

{¶10} Sometime in 2006, William Little began looking for financing that would allow him to buy the property under the lease option. Because of his credit problems, finding a company that would loan him the money proved difficult and he turned to a mortgage broker for help. Ultimately a bank was located that would provide funding for the purchase, but the transaction could not be completed because the cash payment that was to go to LFP was not enough for LFP to pay off the second mortgage. William testified that he lost \$10,000 he had to pay to the mortgage broker plus additional expenses. *Id.* at 44 and 117. William also felt that the rent he had been paying for two years was a waste of money. *Id.* at 121. In his mind, he concluded with some justification that his brother-in-law and LFP had defrauded him. *Id.* at 44. Unfortunately, rather than consulting an attorney at this time he simply stopped paying rent on the lease.

{¶11} During the term of the lease, the first mortgage was assigned and reassigned multiple times until a company called Rundown Ghost Town, LLC (hereafter "RGT") acquired

the mortgage on September 4, 2008. The new mortgagee was a company owned by Jeff Lake's accountant.

{¶12} Prior to the assignment of the mortgage to RGT, LFP had lost patience with the tenant and filed an eviction of the Littles on June 30, 2008 in the Akron Municipal Court. It was at this time, that William and Leonard retained Respondent. Respondent's marching orders were to defend the eviction and to file a counterclaim for the damages William claimed that he had suffered by reason of LFP being unable to give him a clear deed to the property when he had exercised his option to buy the property. As mentioned previously, William believed that his brother-in-law, Jeff Lake, was involved in a scheme to defraud him of the property and Respondent expressed these beliefs in the allegations set out in the counterclaim that he filed against LFP. Because the Littles' counterclaim involved damages that exceeded the jurisdiction of the municipal court, the case was transferred to the Summit County Court of Common Pleas where Judge Paul Gallagher was assigned to preside over the matter.

{¶13} Once RGT took over the first mortgage and mortgage note, it made an appearance in the litigation asking for an order permitting it to intervene as the assignee of the rents (both past and future), asking the trial court to bifurcate the claim for rents that was being made by the landlord from the Littles' counterclaim for damages, and asking that the court order the rents to be deposited into the court. Respondent did not file any memorandum or pleading in opposition to these motions and on January 20, 2009 Judge Gallagher sustained all three of the motions. It should be noted here that, contrary to the arguments of Relator, Judge Gallagher did not order that rents be paid. Rather, he ordered that if rents were paid (past and future) that those rents be paid into the court. This clarification is important because Relator argues that one of Respondent's shortcomings was not advising his clients to comply with this order and pay rent

while the proceedings were pending. The truth is that even if the Littles had resumed paying rent, this would not have cured their default under the lease because of the \$50,000 in back rent that was owed. Further, William made it clear to the panel that he had no intention of paying his brother-in-law rent— past or future.

{¶14} The litigation lay fairly dormant until on August 11, 2009 when RGT, through its legal counsel, Steven Baranek, filed its motion for summary judgment asking for a monetary judgment for the accumulated back rent. Respondent filed a brief in opposition; however, his principal argument was that a judgment should not be granted because RGT, as the assignee, was subject to the Littles' counterclaim against LFP. Unfortunately this argument had very little merit given the fact that even if RGT was answerable for LFP's misconduct, the trial judge eight months earlier had bifurcated the rent claim from the counterclaim. On May 21 2010, Judge Gallagher granted the motion for summary judgment and issued a judgment against both William and Leonard Little in the amount of \$114,000.

{¶15} Relator alleges that Respondent neglected the Littles' case by not responding to the original motions RGT filed and by not making a more credible argument in his memorandum in opposition to RGT's motion for summary judgment. The panel, however, declines to second-guess Respondent as to these matters. There is some merit to Respondent's explanation that expending time in opposing the motion to intervene, bifurcate, and pay rent into the court would have been a waste of the clients' money. On their face, the motions had merit and were going to be granted. While it could be argued that Respondent's memorandum opposing summary judgment posited a rather weak argument, it is doubtful that any response would have prevented a judgment from being granted to RGT since the Littles admitted not having paid the rent for over two years.

{¶16} After the summary judgment was issued, however, Respondent's conduct cannot be so easily ignored or excused.<sup>1</sup> Respondent's shortcomings began when counsel for RGT commenced proceedings to collect the judgment. On July 22, 2010, Respondent was served with a notice to take the Littles deposition on August 27, 2010. The notice contained a request that the Littles produce a number of different financial documents at the deposition. Respondent never informed the Littles of either the deposition or the fact that they were required to gather and produce the financial documents. To compound this neglect, Respondent made no attempt to discuss the deposition or document production with opposing counsel. Respondent simply did not attend and, of course, neither did the Littles. Respondent justified his conduct by contending in his testimony that it was not his obligation to assist a creditor in collecting a judgment against his clients. Respondent also contends that William Little would not have been able to find the documents in any event. Finally, Respondent testified that William was going to file bankruptcy anyway which would make all of the collection proceedings go away. *Id.* at 232.

{¶17} At the same time that Baranek began his discovery proceedings, he moved to have the judgment against the Littles converted to a final appealable order.<sup>2</sup> As with the discovery requests, Respondent did nothing to oppose the motion and, on September 28, 2010, the trial court granted RGT's motion. Although Respondent filed a notice of appeal from the judgment, he filed it a day late and misstated the date of the judgment as September 29, 2010 in the notice so that on its face the notice appeared timely. The error was picked up by opposing counsel who

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<sup>1</sup> Although Relator attempted to prove that Respondent failed to inform his clients about the May 21, 2010 judgment, both William and Leonard testified that they learned about the judgment sometime in 2010. William was told by Respondent and Leonard learned about it in August 2010 when he entered into a contract for his residence.

<sup>2</sup> This first judgment was not a final appealable order because it did not dispose of all of the claims pending in the action. Specifically, it did not resolve the eviction claim or the Littles' counterclaim.

filed a motion to dismiss the appeal. That motion was granted by the court of appeals on December 22, 2010.

{¶18} RGT filed a motion to compel discovery and for the imposition of sanctions on September 9, 2010 as a result of the Littles failure to appear for the deposition or produce the requested documents. Consistent with his prior conduct, Respondent did not tell the clients of this motion. The only thing Respondent did to protect his clients was to ask the trial court for an extension of time to respond to the motion, which an extension was given by Judge Gallagher. Notwithstanding having been given the additional time, Respondent filed nothing and did nothing. Consequently on January 11, 2011, Judge Gallagher granted RGT's motion and ordered that the Littles pay \$410 to RGT to reimburse for the court reporter fees and legal fees. Judge Gallagher further ordered the Littles to make themselves immediately available for a deposition and to produce the documents that had been requested. Incredibly, Respondent again failed to inform his clients of this more recent and significant development.

{¶19} Understandably, the Littles did not comply with Judge Gallagher's order and on February 4, 2011 Baranek filed his motion to hold the Littles in contempt. Judge Gallagher issued an order on March 17, 2011 ordering the Littles to appear before him on March 30, 2011 at 1:30 p.m. to show cause why they should not be held in contempt. Respondent testified that when this March 17, 2011 order was issued he was out of town and did not return until March 28, 2011. *Id.* at 252. Respondent further contended that he never received a copy of the order although the courts records show that it was mailed to him. *Id.* and Relator's Ex. 30. Respondent corroborates his assertion that he did not receive the order through the testimony of a colleague who monitored his mail during his absence. Joel Reed testified that he retrieved Respondent's mail each day of the week that Respondent was gone and that there was no hearing

notice or order regarding the March 30, 2011 hearing. May 20, 2014 Hearing Tr. 546.

Respondent testified that he did not receive or see the notice in his mail after his return.

{¶20} Judge Gallagher convened the hearing for contempt as scheduled. When neither the Littles nor Respondent appeared, the judge's assistant placed a phone call to Respondent's office. No one answered the phone though the assistant contends that a voicemail message was left for Respondent. Respondent denies that such a message was left on his machine. On April 13, 2011, Judge Gallagher issued a *capias* (bench warrant) for both of the Littles, a copy of which was mailed to Respondent. A *nunc pro tunc* *capias* was issued on April 27, 2011 to correct the address of the Littles and the second order was also mailed to Respondent. Respondent testified that he does not remember seeing either order. Thus, despite the trial court following its usual procedures for mailing and notifying counsel, Respondent denies receiving the March 17, 2011 order, denies getting the phone call on March 30, 2011, and denies seeing a copy of the April 13, 2011 *capias* or the April 27, 2011 *capias*.

{¶21} While all of the foregoing events were taking place, on March 21, 2011 Leonard Little through attorney John Guy, filed his petition in bankruptcy. Guy did not file a notice with the trial court of this proceeding although the attorney for RGT was somehow aware of the bankruptcy filing at the time of the March 30, 2011 hearing. It was his and Judge Gallagher's position, however, that the bankruptcy did not affect the trial court's authority to issue sanctions for violations of its orders which is why they proceeded notwithstanding the filing. After the issuance of the judicial warrants, Guy became aware of their existence and attempted by phone call to convince Judge Gallagher to withdraw the warrant against his client. Judge Gallagher refused and, according to the testimony of Leonard Little, Guy told him to ignore the warrants. Respondent denies that he knew of the warrants until the events described below took place.

{¶22} On January 31, 2012, Leonard Little was involved in a minor fender bender accident when he ventured out to the local gas station for fuel and cigarettes. At his insistence, the police were called so that a report could be made. When the investigating officer ran his driver's license, the warrant was discovered and Leonard was immediately handcuffed and taken to jail where he sat six hours before Judge Gallagher released him.

{¶23} A journalist from the Akron Beacon Journal by the name of Phillip Trexler learned of the incident and he interviewed both Leonard and Respondent. A request for a comment from Judge Gallagher was declined. During this interview, Respondent made a number of comments which caused the judge to file a complaint against Respondent with Relator. The following comments attributed to Respondent motivated Judge Gallagher to file this complaint:

- (a) According to Little and his attorney, no one told them of the judge's order.
- (b) Attorney Larry Shenise, who handled the civil lawsuit for Little and his son, William, said no one from Gallagher's court notified him by mail or a phone call of the March hearing the Littles missed.
- (c) No notice, he [Respondent] said, was sent by the court on the subsequent arrest warrants.
- (d) "If we would have known, we would have been there. But they never bothered to say 'Hey, you're supposed to be here for a hearing. We're going to issue warrants for your clients if you don't appear.'"
- (e) "They didn't do anything," he said. "I would have thought the court would have had the courtesy to say 'Hey, you're supposed to be here.'"

{¶24} Respondent admits to making all of the foregoing comments with the exception that he denies telling the reporter that Judge Gallagher failed to notify him of the hearing.<sup>3</sup> Judge

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<sup>3</sup> Relator attempted to subpoena the reporter, Phillip Trexler, to appear and testify at Respondent's hearing. The Akron Beacon Journal filed a motion with the Board asking that the subpoena be quashed. That motion was denied by the panel and the newspaper filed an appeal of the ruling to the Supreme Court. Contemporaneous with that appeal, Relator filed a motion with the Court to have Mr. Trexler held

Gallagher testified that he was embarrassed by the comments that he felt were untrue. Further, it was an election year for him and he was concerned what affect the negative publicity would have on his campaign. The judge testified that in the end the issue never came up in the campaign and he was reelected. December 6, 2013 Hearing Tr. 413.

{¶25} On March 28, 2012, Judge Gallagher conducted a hearing with Respondent, the Littles, Guy, and the attorney for RGT, Beranek. During that hearing, Respondent remained steadfast that he did not get notice of the March 30, 2011 hearing. Ultimately, Judge Gallagher dismissed the contempt finding that the Littles were not given notice. It should be further noted, that Judge Gallagher did not impose any sanctions on Respondent for failing to appear on March 30, 2011.

{¶26} Respondent denies being at fault for Leonard's unfortunate incarceration. Respondent contends that Guy became Leonard's lawyer in March when Leonard hired him to file bankruptcy. Further, Respondent sent Leonard a letter on March 16, 2011 telling him that he felt his representation of Leonard was at an end. Unfortunately, Respondent failed to file a notice of withdrawal with the trial court so that as far as Judge Gallagher and his court were concerned, Respondent remained the attorney of record.

{¶27} Respondent further minimizes his conduct regarding the failure to keep the Littles informed by contending that the plan all along had been for the Littles to file bankruptcy. There were delays in getting this done, according to Respondent, because William was unable to get documents together that were needed to prepare bankruptcy schedules. While this may be true, William's neglect in following through with getting the materials to him cannot be an excuse for allowing the discovery issues to deteriorate to the point that a motion for contempt was filed.

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in contempt for failure to appear as subpoenaed. The Supreme Court dismissed the appeal and overruled the motion for contempt. See *Akron Bar Assn. v. Shenise*, 03/17/2014 Case Announcements, 2014-Ohio-962. When the hearing was reconvened on May 10 2014, Relator elected not to reissue the subpoena.

Further while William may have been neglectful in following through, the same cannot be said of Leonard who, from all appearances, presented himself as a responsible and conscientious retiree who had assets that needed protected. Respondent admitted that he never discussed the situation with Leonard or otherwise let him know of the efforts being made by RGT. In the end, the panel is forced to conclude that Respondent was woefully deficient in protecting the interests of his clients and keeping them informed of the progress of their case.

{¶28} There is an additional component of Respondent's representation of Leonard Little that formed a basis of Relator's complaint. Leonard Little and his wife Barbara were the settlors of the Little Family Revocable Living Trust. The couple's residence was owned by the trust. The residence was put on the market for sale in 2010 and a sale of the property was concluded in February 2011. Because of its judgment, RGT convinced the title company handling the transaction to escrow the net sale proceeds pending a resolution of how they should be distributed. On February 11, 2011, Respondent filed a motion in the litigation asking that one-half of the sale proceeds be paid over to Barbara Little since there was no judgment against her. In support of this argument, Respondent quoted portions of the trust agreement and cited R.C. § 5805.06(A)(2). Unfortunately, the section cited by Respondent addresses irrevocable trusts rather than revocable trusts. This mistake was pointed out to Judge Gallagher by counsel for RGT who alleged in his memorandum that Respondent had intentionally misrepresented the law and the provisions of the trust. Respondent was forced to admit that he had made a mistake, which admission was made all the more humbling by reason of the fact that Respondent in his motion had charged Baranek with being neglectful in his reading of the law. Judge Gallagher ultimately dismissed Respondent's motion and RGT was able to pocket all of the money.

{¶29} Relator alleges that Respondent intentionally tried to mislead the trial court and opposing counsel. While it must be admitted that Respondent's work product in filing the motion was clearly wanting, the panel does not feel that Relator has proven by clear and convincing evidence that Respondent intentionally tried to mislead the trial court. Respondent simply read the wrong portion of the statute and hastily used it to support his argument that half of the funds should go to Barbara Little. The error did not mislead either Judge Gallagher or opposing counsel and the trial court ultimately issued the correct decision.

{¶30} In looking at the body of work of Respondent in the Littles' case, the panel is obliged to conclude that Respondent did not provide competent representation to the Littles, at least after the judgment was entered and collection efforts begun. Further, it is clear that there was a complete lack of communication between Respondent and the clients who were left in the dark regarding their legal fortunes. Finally, Respondent's decision to consciously ignore the discovery requests, motions for sanction, and most surprisingly the motion for contempt, readily leads one to the conclusion that Respondent failed to act with reasonable diligence and promptness on behalf of the Littles and that he engaged in conduct prejudicial to the administration of justice in the Little case.

{¶31} The panel is willing to concede that the incarceration of Leonard Little was in no small part due to the poor advice that Guy provided to Leonard. Nonetheless because Respondent declined or neglected to withdraw from Leonard's case, he retained the responsibility to monitor the outcome of the motion for contempt and take appropriate steps to protect Leonard's interests. Had he done so, Respondent would have become aware of the outstanding warrant for his client and, hopefully, he would have taken steps to avoid what ultimately happened to Leonard.

{¶32} The matter involving the comments to the newspaper is not as clear. At the time of his interview, Respondent believed that he had not been notified of the hearing and expressed in the interview what he believed to be the true facts. A violation of Prof. Cond. R. 4.1(a), Prof. Cond. R. 8.2(a), and Prof. Cond. R. 8.4(c) requires that the conduct be knowingly done. The panel does not feel that the evidence in this case has proven that. For the same reasons, the panel does not find that the statements amount to a violation of Prof. Cond. R. 8.4(d) or Prof. Cond. R. 8.4(h).

{¶33} On the other hand, Respondent clearly could have been more conservative in his comments about the court. Viewed in their entirety, the comments imply that Judge Gallagher acted impetuously and in a heavy handed manner in dealing with an elderly man. As such, Respondent's comments were degrading to Judge Gallagher and his staff and the panel finds the comments to have violated Prof. Cond. R. 3.5(a)(6).

{¶34} For the foregoing reasons, the panel finds by clear and convincing evidence that Respondent violated the following with respect to Counts Two and Three: Prof. Cond. R. 1.1; Prof. Cond. R. 1.2; Prof. Cond. R. 1.3; Prof. Cond. R. 1.4(a)(1); Prof. Cond. R. 1.4(a)(3); Prof. Cond. R. 1.4(b); Prof. Cond. R. 3.4(c); and Prof. Cond. R. 3.5(a)(6). The panel further recommends that the following violations alleged in Counts Two and Three be dismissed: Prof. Cond. R. 3.4(d); Prof. Cond. R. 4.1(a); Prof. Cond. R. 8.2(a); Prof. Cond. R. 8.4(c); Prof. Cond. R. 8.4(d); and Prof. Cond. R. 8.4(h).

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

{¶35} Under BCGD Proc. Reg. 10(B)(2), the panel finds the following mitigating factors present in this case:

- Respondent has no prior disciplinary record.

- Respondent's violations did not arise out of either a dishonest or selfish motive.
- Respondent cooperated throughout the disciplinary process.
- Respondent apparently has a good reputation as a lawyer. Respondent currently is involved in representing the Akron Police Department and Fire Department in a class action that has been going on for some years. A member of the class action testified that Respondent was representing the class action members with diligence and competence. May 20, 2014 Hearing Tr. 571-575.

{¶36} Under BCGD Proc. Reg. 10(B)(1), the panel finds the following aggravating factors present in this case.

{¶37} There is a pattern of misconduct on the part of Respondent. On multiple occasions he had the opportunity and responsibility to redirect the downward spiral of his clients' legal fortunes after the judgment was taken, and he failed to do so.

{¶38} Other than admitting that he should have had malpractice insurance, Respondent is slow to admit that he did anything wrong in his representation of the Littles. As noted previously, Respondent contends that the incarceration of Leonard Little was all Guy's fault even though Respondent was the attorney of record. Respondent explains his failure to deal with the ongoing post-judgment discovery issues by contending that William should have been more diligent in assisting in getting the information needed to file his bankruptcy. Had the bankruptcy been filed, Respondent contends, none of what happened would have taken place. Lethargic and irresponsible clients are common in the practice of law and perhaps William Little was one of these. However, if the client's lack of cooperation becomes an issue a lawyer's remedy is to take the necessary steps to withdraw not ignore the client's affairs.

{¶39} The Littles were not well-educated people. Both father and son were blue-collar individuals who were not well versed in the legal system. As such, they were vulnerable clients

who needed expert guidance on getting through what was a very difficult time in their lives. Respondent failed to give them that guidance.

{¶40} The issue of restitution is somewhat problematic. The sanction imposed by the trial judge in its order of January 11, 2011 ordering the Littles to pay RGT \$410 was an order directed to the Littles, not Respondent. The Littles have never reimbursed RGT for its out of pocket expense for their nonattendance at the August 27, 2010 deposition that, as noted in this report, they were never aware of. No one has ever asked or ordered Respondent to pay this, so it cannot be said that he has failed to pay a legal obligation.

{¶41} An even murkier issue is whether Respondent owes Leonard Little anything for his six-hour stay in the Akron Police Department holding tank. During his testimony, Leonard made no request to the panel for restitution and the panel is certainly not free to speculate on an amount of monetary compensation that would compensate Leonard for his humiliation and temporary loss of freedom.

{¶42} Finally, when considering the issue of restitution one must also ask whether Respondent has some responsibility for the judgments taken against the Littles and their subsequent bankruptcies.<sup>4</sup> Respondent contends that nothing he could have done would have prevented the judgment that was entered, or prevented Leonard Little from losing the proceeds from the sale of his residence. Based upon this assumption, Respondent argues that the Littles were not damaged monetarily by anything that he did or did not do.

{¶43} In some respects, this argument has merit. Before William and Leonard walked into Respondent's office they owed over \$50,000 in back rent. Even considering the money, William lost in his failed attempt to buy the leased premises; the back rent that the pair owed far

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<sup>4</sup> William testified that his financial problems were such that he would have filed bankruptcy even if there had been no judgment taken against him.

and away exceeded that number. Thus, the Littles were in default of the lease from the start and a judgment in some amount was probably inevitable. On the other hand, an argument could be made that had Respondent established and maintained a line of communication with the Littles and the attorney for RGT, it is possible that a settlement of the judgment could have been reached.<sup>5</sup> While Respondent's neglect foreclosed this possibility, in the end it would be conjecture to put a specific dollar amount on the damage caused by that neglect.

{¶44} Relator argues that Respondent be indefinitely suspended from the practice of law. However, the argument in favor of this sanction presumes a finding by the panel that Respondent violated all of the disciplinary rules charged, including the ones charging dishonesty and misrepresentation. In contrast, Respondent argues for a public reprimand. Respondent's argument presumes that his only transgression consisted of his not having insurance.

{¶45} A review of the decisions where neglect and related conduct form the basis for disciplinary action run the gamut as far as the sanction is involved. Of the cases researched, the sanction is, more often than not, a term suspension with a portion or all of it stayed. In *Cleveland Metro. Bar Assn. v. Johnson*, 127 Ohio St.3d 97, 2010-Ohio-4832, the Supreme Court imposed a one-year suspension, with six months stayed on a lawyer with prior discipline for the same type of conduct as was evidence by Respondent in this case. The lawyer repeatedly failed to appear at conferences, attend depositions, meet other discovery deadlines, initiate discovery of her own, and respond to dispositive motions. In one case, her client suffered an avoidable \$331,279.80 judgment. In *Columbus Bar Assn. v. Dice*, 120 Ohio St.3d 455, 2008-Ohio-6787, a criminal defense attorney who filed an appellate brief six months late, failed to appear for oral

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<sup>5</sup> Baranek testified that he sent Respondent a letter offering to discount the judgment by 15 percent if a cash payment was received. However, this was 15 percent of the \$114,000 judgment. Respondent never responded with a counter offer. In the end, the only funds that Leonard lost was the \$68,000 seized from the sale of his home. William Little lost no money.

arguments, and failed to cooperate, received a one-year suspension, with six months stayed. In *Mahoning Cty. Bar Assn. v. Zena*, 137 Ohio St.3d 456, 2013-Ohio-4585, the respondent received a one-year suspension all stayed for his failure to file an answer to a counterclaim in a case in which he had filed the initial complaint, his failure to respond to discovery requests, his failure to attend a hearing on sanctions as a consequence of his not responding to discovery, and his failure to communicate with his client. This attorney also was practicing without malpractice insurance.

{¶46} The panel rejects the suggestion that an indefinite suspension is needed in this case or that a public reprimand is sufficient punishment. The issue of the sanction in this case comes down to whether Respondent should receive any time off or whether the suspension imposed should be stayed. Certainly, granting Respondent a reprieve from an actual suspension would be an easier conclusion to reach if Respondent accepted responsibility for the debacle that was his clients' case; a debacle that was of his making. On the other hand, the panel must be mindful of the effect an actual suspension would have on Respondent's long-time representation of the Akron Police Department and others.

{¶47} In the end, it must be conceded that an actual suspension of Respondent is not necessary to protect the public. During these proceedings, Respondent exemplified competency and an understanding of the law in a manner consistent with the work that apparently he has done for other clients. The Littles' case appears to be an isolated instance of Respondent simply not thinking through the consequences of the decisions that he made on their behalf. Consequently, the panel declines to recommend an actual suspension.

{¶48} The panel recommends that Respondent be suspended from the practice of law for two years, with the entire period stayed. The panel further recommends that Respondent be on probation for this two-year period and that, as a condition of that probation, he commits no

further misconduct. Notwithstanding the absence of a legal obligation to pay, the panel feels that the financial loss sustained to RGT is Respondent's responsibility and for this reason further recommends that as an additional condition of his probation he make restitution in the amount of \$410 to Rundown Ghost Town, LLC.

**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 August 8, 2014. The Board adopted the findings of fact, conclusions of law, and recommendation of the panel and recommends that Respondent, Larry Dean Shenise, be suspended from the practice of law in Ohio for two years with the suspension stayed in its entirety on conditions contained in ¶48 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.**



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RICHARD A. DOVE, Secretary