

ORIGINAL

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

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| In Re: | : | |
| Complaint against | : | SCO Case No. 2013-1885 BOC Case No. 2013-049 |
| Shawn Javon Brown | : | Findings of Fact, |
| Attorney Reg. No. 0079331 | : | Conclusions of Law and |
| Respondent | : | Recommendation of the |
| Cleveland Metropolitan Bar Association | : | Board of Commissioners on |
| Relator | : | Grievances and Discipline of |
| | : | the Supreme Court of Ohio |

MOTION FOR DEFAULT JUDGMENT
PURSUANT TO GOV. BAR R. V, SECTION 6a(F)

{¶1} This matter was referred to Master Commissioner Bernard K. Bauer on July 3, 2014 by the secretary of the Board for disposition pursuant Gov. Bar R. V, Section 6a(F)(2)(a).

{¶2} This action was commenced with the filing of a complaint against Respondent by Relator on September 11, 2013. Eight counts alleged misconduct on the part of Respondent involving the handling of matters on behalf of seven clients while he was under suspension and his failure to participate in the disciplinary process regarding these matters.

{¶3} Attempts to serve Respondent with process in this disciplinary case are detailed in the affidavit of Richard A. Dove that was filed with the Supreme Court on December 2, 2013.

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{¶4} On January 8, 2014, an interim default suspension was issued in this matter pursuant to Gov. Bar R. V, Section 6a(B)(1). *Cleveland Metro. Bar Assn. v. Brown*, 2014-Ohio-16.

{¶5} On June 3, 2014, upon the motion of Relator, this matter was remanded to the Board to initiate default proceedings under Gov. Bar R. V, Section 6a(D).

{¶6} On July 3, 2014, Relator filed its motion for default pursuant to Gov. Bar R. V, Section 6a(F).

{¶7} On July 3, 2014, this matter was referred for disposition pursuant to Gov. Bar R. V, Section 6a(F)(2)(a).

{¶8} For the reasons which follow, the master commissioner recommends that Respondent be disbarred.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶9} Based upon the materials offered in support of the motion for default, the master commissioner makes the following findings upon clear and convincing evidence:¹

¹ Relator is reminded that the motion for default should be accompanied by “[s]worn or certified documentary *prima facie* evidence in support of the allegations made.” Gov. Bar R. V, Section 6a(F)(1)(b).

Further, in *Dayton Bar Assn. v. Seabee*, 104 Ohio St.3d 448, 2004-Ohio-6560, the Court stated that “(a) motion for default in a disciplinary proceeding supported only by summary, conclusory, and hearsay-filled affidavits is not supported by the *prima facie* evidence of misconduct required by [former] Gov. Bar R. V, Section 6(F). Local bar associations appearing as relators in disciplinary hearings should therefore provide affidavits executed by the grievants themselves in moving for default. Where the grievant is unavailable, an affidavit executed by an investigator may suffice, but the affidavit must delineate why the grievant's sworn statement is unattainable in addition to reciting the investigator's own knowledge of the alleged misconduct.”

Finally, it should be noted that “[t]he relator shall have a continuing duty to preserve evidence necessary to establish the misconduct alleged in the complaint filed with the Board.” Gov. Bar R. V, Section 6a(G).

These elementary principles are noted in this report because they have not been honored in this case, though they are required to facilitate an orderly procedure which complies with due process for those purportedly aggrieved, the public in general, and Respondent.

Here, while there is evidence of misconduct on the part of Respondent sufficient to justify disbarment, in many instances the process has been abused to the detriment of Respondent's former clients and the public in general.

For example in Count III, Relator alleges that the client had paid Respondent \$2,000 for the representation and that Respondent neglected the client's legal matters, but there is no proof before me respecting the amount paid or such other allegations of misconduct other than those found, except in the unsworn statement of the client's successor lawyer appended to the affidavit of assistant counsel for Relator.

{¶10} Respondent was admitted to practice law in the state of Ohio on November 7, 2005 and subject to the Ohio Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

{¶11} At all times material to this complaint, Respondent was suspended from the practice of law in Ohio.

{¶12} On November 3, 2009, Respondent was suspended for failure to register. *In re Attorney Registration Suspension of Brown*, 2009-Ohio-5786.

{¶13} On October 13, 2011, Respondent was indefinitely suspended from the practice of law and ordered to pay restitution to three clients. *Cleveland Metro. Bar Assn. v. Brown*, 130 Ohio St.3d 147, 2011-Ohio-5198.

Count I-Kyle Thomas Allen, Chardon Municipal Court

{¶14} On May 24, 2012, while under suspension, Respondent filed a consolidated notice of appearance and motion for continuance in *State of Ohio v. Kyle Thomas Allen*, Case Nos. 2012 CR B 00440, 2012 CR B 00441, and 2012 CR A 00444, pending in the Chardon Municipal Court.

{¶15} On May 30, 2012, Respondent appeared in Chardon Municipal Court on Allen's behalf and waived Allen's preliminary hearing.

{¶16} Relator alleged that Respondent violated Prof. Cond. R. 5.5(a), Prof. Cond. R. 8.4(c), Prof. Cond. R. 8.4(d), and Prof. Cond. R. 8.4(h).

{¶17} Based upon clear and convincing evidence, the master commissioner concludes that Respondent has violated Prof. Cond. R. 5.5(a) [practicing law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction]; Prof. Cond. R. 8.4(d) [conduct

In Count IV, a number of other allegations are made including amounts paid by the client, but the only proof offered in support of these allegations is contained in the hearsay contained in paragraph 30 of the affidavit of assistant counsel for Relator. A similar problem appears in Count VI.

prejudicial to the administration of justice]; and Prof. Cond. R. 8.4(h) [conduct adversely reflecting upon his fitness to practice law].

{¶18} However based upon the evidence submitted, the master commissioner cannot conclude that Respondent violated Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation] and recommends that such allegation of misconduct be dismissed.

Count II-Darnell Boykin, Erie County Common Pleas Court

{¶19} On April 26, 2012, Respondent filed an entry of appearance and motions on behalf of Darnell Boykin in *State of Ohio v. Darnell Boykin*, Case No. 2012-CR-027, pending in the Common Pleas Court of Erie County.

{¶20} On April 26, 2012, Respondent appeared in court for Boykin's arraignment.

{¶21} On June 4, 2012, Respondent filed a motion for a continuance on Boykin's behalf.

{¶22} Relator alleged that Respondent violated Prof. Cond. R. 5.5(a), Prof. Cond. R. 8.4(c), Prof. Cond. R. 8.4(d), and Prof. Cond. R. 8.4(h).

{¶23} Based upon clear and convincing evidence, the master commissioner concludes that Respondent has violated Prof. Cond. R. 5.5(a); Prof. Cond. R. 8.4(d); and Prof. Cond. R. 8.4(h).

{¶24} However based upon the evidence submitted, the master commissioner cannot conclude that Respondent violated Prof. Cond. R. 8.4(c) and recommends that such allegation of misconduct be dismissed.

Count III-Michael Perryman, Cuyahoga County Common Pleas Court

{¶25} On December 8, 2011, a civil action was filed by Amber Davenport against Hannah's Child Development Center and Michael Perryman in *Amber Davenport v. Hannah's Child Development Center, et al.* Cuyahoga County Common Pleas Case No. CV-11-770879.

{¶26} On January 24, 2012, Respondent filed an entry of appearance and motion for a continuance on Perryman's behalf.

{¶27} On February 7, 2012, Respondent filed an answer on Perryman's behalf.²

{¶28} Relator alleged that Respondent violated Prof. Cond. R. 1.3, Prof. Cond. R. 1.5(a), Prof. Cond. R. 5.5(a), Prof. Cond. R. 8.4(c), Prof. Cond. R. 8.4(d), and Prof. Cond. R. 8.4(h).

{¶29} Based upon clear and convincing evidence, the master commissioner concludes that Respondent has violated Prof. Cond. R. 5.5(a); Prof. Cond. R. 8.4(d); and Prof. Cond. R. 8.4(h).

{¶30} However based upon the evidence submitted, the master commissioner cannot conclude that Respondent violated Prof. Cond. R. 1.3 [diligence]; Prof. Cond. R. 1.5(a) [collecting an illegal or clearly excessive fee]; and Prof. Cond. R. 8.4(c) and recommends that such allegations of misconduct be dismissed.

Count IV-Kristie Baker, Lorain County Common Pleas Court

{¶31} On July 12 and 13, 2012, Respondent filed an entry of appearance, motion for continuance, and answer and counterclaim on behalf of Kristie Baker in *Baker v. Baker*, Case No. 12DR075440, in the Domestic Relations Division of the Lorain County Common Pleas Court.³

{¶32} Relator alleged that Respondent violated Prof. Cond. R. 1.3, Prof. Cond. R. 1.5(a), Prof. Cond. R. 5.5(a), Prof. Cond. R. 8.4(c), Prof. Cond. R. 8.4(d), and Prof. Cond. R. 8.4(h).

² Though Relator alleged that Perryman paid Respondent a \$2,000 retainer for the representation and that he ignored discovery requests resulting in sanctions and the granting of summary judgment, insufficient proof was submitted regarding these allegations.

³ Though Relator alleged that Baker paid Respondent a retainer of \$1,400 to represent her and \$750 to represent her friend, Matthew McCann; that Respondent failed to appear at a case management conference and hearing; and that Respondent failed to serve opposing counsel with a copy of Baker's answer, insufficient proof was submitted regarding these allegations.

{¶33} Based upon clear and convincing evidence, the master commissioner concludes that Respondent has violated Prof. Cond. R. 5.5(a); Prof. Cond. R. 8.4(d); and Prof. Cond. R. 8.4(h).

{¶34} However based upon the evidence submitted, the master commissioner cannot conclude that Respondent violated Prof. Cond. R. 1.3; Prof. Cond. R. 1.5(a); and Prof. Cond. R. 8.4(c) and recommends that such allegations of misconduct be dismissed.

Count V-Deborah A. Broski, Real Property Transfer

{¶35} On March 29, 2012, Deborah A. Broski met with Respondent and paid him a \$550 retainer to transfer her late mother's interest in real estate to her father.

{¶36} Respondent promised to complete the work within 30 days.

{¶37} After 30 days, Broski contacted Respondent who advised her that he had the new deed and would deliver it to her.

{¶38} When the deed was not delivered, Broski discovered that Respondent's license had been suspended through an Internet search.

{¶39} Respondent has done nothing to affect the transfer of Broski's late mother's property interest to her father and has not returned the funds she paid him.

{¶40} Relator alleged that Respondent violated Prof. Cond. R. 1.3, Prof. Cond. R. 1.5(a), Prof. Cond. R. 5.5(a), Prof. Cond. R. 8.4(c), Prof. Cond. R. 8.4(d), and Prof. Cond. R. 8.4(h).

{¶41} Based upon clear and convincing evidence, the master commissioner concludes that Respondent has violated Prof. Cond. R. 1.3; Prof. Cond. R. 1.5(a); Prof. Cond. R. 5.5(a); Prof. Cond. R. 8.4(d); and Prof. Cond. R. 8.4(h).

{¶42} However based upon the evidence submitted, the master commissioner cannot conclude that Respondent violated Prof. Cond. R. 8.4(c) and recommends that such allegation of misconduct be dismissed.

Count VI-Matthew J. McCann, Rocky River Municipal Court

{¶43} On July 2, 2012, Respondent appeared via video in the Rocky River Municipal Court on behalf of Matthew J. McCann in *Fairview Park v. Matthew J. McCann*, Rocky River Municipal Court Case No. 12CRB1601.

{¶44} Respondent appeared with McCann in Rocky River Municipal Court on July 16 and July 30, 2012.⁴

{¶45} Relator alleged that Respondent violated Prof. Cond. R. 1.3, Prof. Cond. R. 1.5(a), Prof. Cond. R. 5.5(a), Prof. Cond. R. 8.4(c), Prof. Cond. R. 8.4(d), and Prof. Cond. R. 8.4(h).

{¶46} Based upon clear and convincing evidence, the master commissioner concludes that Respondent has violated Prof. Cond. R. 5.5(a); Prof. Cond. R. 8.4(d); and Prof. Cond. R. 8.4(h).

{¶47} However based upon the evidence submitted, the master commissioner cannot conclude that Respondent violated Prof. Cond. R. 1.3; Prof. Cond. R. 1.5(a); and Prof. Cond. R. 8.4(c) and recommends that such allegations of misconduct be dismissed.

Count VII-Christine A. Herdmann, Lakewood Municipal Court

{¶48} On August 20, 2012, Christine A. Herdmann engaged Respondent to represent her in an OVI charge pending against her in Lakewood Municipal Court.

{¶49} Herdmann negotiated an \$800 flat fee with Respondent and her mother paid \$200 toward the fee.

⁴ Relator alleged that McCann paid Respondent \$750 toward a retainer of \$1,500 to represent him. However, insufficient proof was submitted regarding this allegation.

{¶50} Respondent appeared with Herdmann in Lakewood Municipal Court on August 27, 2012.

{¶51} Relator alleged that Respondent violated Prof. Cond. R. 1.5(a), Prof. Cond. R. 5.5(a), Prof. Cond. R. 8.4(c), Prof. Cond. R. 8.4(d), and Prof. Cond. R. 8.4(h).

{¶52} Based upon clear and convincing evidence, the master commissioner concludes that Respondent has violated Prof. Cond. R. 1.5(a); Prof. Cond. R. 5.5(a); Prof. Cond. R. 8.4(d); and Prof. Cond. R. 8.4(h).

{¶53} However based upon the evidence submitted, the master commissioner cannot conclude that Respondent violated Prof. Cond. R. 8.4(c) and recommends that such allegation of misconduct be dismissed.

Count VIII-Failure to Cooperate

{¶54} During Relator's investigation of the grievances filed against Respondent, Relator made at least 14 attempts to contact Respondent in person, by mail, and by telephone.

{¶55} At least one letter sent by certified mail was signed for and several letters sent by ordinary mail were not returned.

{¶56} On October 6, 2012, Respondent was personally served with a package containing copies of all of the grievances and requesting his written response to the allegations.

{¶57} Respondent did not respond to the service of October 6, 2012.

{¶58} Relator alleged that Respondent violated Gov. Bar R. V, Section 4(G) and Prof. Cond. R. 8.1(b).

{¶59} Based upon clear and convincing evidence, the master commissioner concludes that Respondent has violated Gov. Bar R. V, Section 4(G) and Prof. Cond. R. 8.1(b) [failure to cooperate].

AGGRAVATION, MITIGATION, AND SANCTION

{¶60} Based upon the materials submitted in support of the motion for default, there are the following aggravating factors: prior disciplinary offenses; a pattern of misconduct; multiple offenses; a lack of cooperation in the disciplinary process; and harm to vulnerable victims.

{¶61} From the record, it appears that there are no mitigating factors present.

{¶62} Relator has recommended disbarment as the appropriate sanction for Respondent.

{¶63} Disbarment is the presumptive sanction for continuing to practice law while under suspension. *Disciplinary Counsel v. Fletcher*, 135 Ohio St.3d 404, 2013-Ohio-1510, ¶10.

{¶64} Here, Respondent continued to practice law on numerous occasions following his suspension and showed a total disregard for his obligations under Ohio's disciplinary system.

{¶65} Accordingly, the master commissioner recommends that Respondent be disbarred.

BOARD RECOMMENDATION

Pursuant to Gov. Bar Rule V, Section 6a, the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on October 3, 2014. The Board amended the findings of fact and conclusions of law to specifically find that Respondent's conduct was egregious and merits a separate finding of violations of Prof. Cond. R. 8.4(h). *Disciplinary Counsel v. Bricker*, 137 Ohio St.3d 35, 2013-Ohio-3998, ¶21. The Board then adopted the amended findings of fact and conclusions of law and the recommendation of the master commissioner and recommends that Respondent, Shawn Javon Brown, be permanently disbarred. 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", written over a horizontal line.

RICHARD A. DOVE, Secretary