

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

14-1744

In Re:	:	
Complaint against	:	Case No. 2013-036
Raymond Thomas Lee III Attorney Reg. No. 0040765	:	Findings of Fact, Conclusions of Law, and Recommendation to 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 March 20 and 21, 2014, in Columbus before a panel consisting of Judge Lee H. Hildebrandt, Jr., Judge Matthew W. McFarland, and Sanford E. Watson, 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 pro se. Donald M. Scheetz appeared on behalf of Relator.

{¶3} The alleged misconduct in this proceeding involved: (1) Respondent's failure to act on behalf of and communicate with a client, Patricia Buhl, who was being prosecuted in a teacher disciplinary proceeding before the Kentucky Education Professional Standards Board; and (2) the failure to cooperate with disciplinary counsel in their investigation. Most of the underlying facts are not in dispute. Rather, Respondent argues as a matter of law he was immune from discipline and there was no attorney-client relationship because he represented Buhl's collective bargaining unit, but not Buhl personally.

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{¶4} In Count I of the complaint, Respondent is charged with the following violations of Kentucky Supreme Court Rules, pursuant to the choice of law provisions set forth in Prof.

Cond. R. 8.5:

- SCR 3.130(1.3) [diligence];
- SCR 3.130(1.4(a)(3)) [a lawyer shall keep the client reasonably informed about the status of the matter];
- SCR 3.130(1.4(a)(4)) [a lawyer shall promptly comply with reasonable requests for information];
- SCR 3.130(1.16(d)) [upon termination of representation, a lawyer shall take steps to surrender papers and property to which the client is entitled];
- SCR 3.130(5.5(a)) [a lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction]; and
- SCR 3.130(8.4(c)) [conduct involving dishonesty, fraud, deceit, or misrepresentation].

{¶5} In Count II of the complaint, Respondent was charged with the following violations:

- Gov. Bar R. V, Section 4(G) [duty to cooperate]; and
- Prof. Cond. R. 8.1(b) [a lawyer shall not, in response to a demand for information from a disciplinary authority, fail to disclose a material fact or knowingly fail to respond].

{¶6} Respondent denies all of the violations within the complaint.

{¶7} Based upon the evidence presented at the hearing of this matter and for the reasons set forth below, the panel recommends the Board find violations in Count I and II and agree with Relator's recommendation of a sanction of indefinite suspension.

{¶8} The parties entered into 12 stipulations of fact and stipulated to Exhibits 1 through 54. The stipulations were accepted and Exhibits 1 through 54 were admitted into evidence.

{¶9} Respondent offered Exhibit 55 during the second day of hearing. Relator objected to the use and admission of this exhibit because it was not produced by Respondent until the second day of hearing after Buhl testified. At the time of its production, Buhl had

already testified and left the jurisdiction. The panel reserved ruling on the admissibility of exhibit at the hearing.

{¶10} Exhibit 55 is a November 2 and 3, 2007 email exchange between Respondent and Buhl. It has some probative value in that the conversation therein directly relates to Buhl seeking advice regarding her employment. Because its probative value outweighs any prejudice to Relator, Exhibit 55 is admitted into evidence and will be considered by the panel in its recommendation.

{¶11} At the conclusion of the hearing, the panel granted the parties leave to submit post-hearing briefs on or before April 4, 2014. Without objection from Relator, Respondent was also given leave to submit character reference letters with his post-hearing brief. Both parties timely filed post-hearing briefs. Respondent's post-hearing brief did include two character reference letters that will be considered by the panel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶12} Respondent was admitted to practice law in the state of Ohio on November 21, 1983 and subject to the Ohio Rules of Professional Conduct and Rules for the Government of the Bar of Ohio.

{¶13} Respondent was suspended from the practice of law four times for failure to register with Supreme Court in the 2005-2006, 2007-2008, 2009-2010, and 2011-2012 biennia.¹ In each instance, Respondent was reinstated except for the 2011-2012 biennium suspension.² He

¹ *In re Attorney Registration Suspension of Lee*, 107 Ohio St.3d 1431, 2005-Ohio-6408; 116 Ohio St.3d 1420, 2007-Ohio-6463; 123 Ohio St.3d 1475, 2009-Ohio-5786; 130 Ohio St.3d 1441, 2011-Ohio-5890.

² Miscellaneous Orders 110 Ohio St.3d 1480, 2006-Ohio-4761; 118 Ohio St.3d 1523, 2008-Ohio-3532; 126 Ohio St.3d 1603, 2010-Ohio-4979.

received a separate suspension on December 17, 2010 for failure to complete continuing legal education requirements and has not since been reinstated to the practice of law in Ohio.³

{¶14} On May 17, 2011, the United States District Court for the Southern District of Ohio imposed a reciprocal suspension upon Respondent.

{¶15} Respondent is also licensed in the state of California.

Count I –The Buhl Matter

{¶16} Respondent has a “regular retainer” with the Federal Educators Association (“FEA”) under which he is paid a fixed fee per month to handle disciplinary matters involving members of the FEA’s collective bargaining unit. More than 50 percent of the matters Respondent handled for the FEA involve teacher discipline. His primary contact at the FEA was his ex-wife, Dorothy Lee. Dorothy was the general counsel for the FEA Stateside Region. Patricia Buhl was a member of the FEA collective bargaining unit.

{¶17} On October 5, 2007, Buhl resigned her position as a teacher at Pierce Elementary School in the Fort Knox Community Schools, Fort Knox, Kentucky. She resigned because her husband served in the United States Army and was transferred from Fort Knox to the Marshall Islands.

{¶18} On November 3, 2007, Respondent emailed Buhl in response to several emails she sent inquiring about whether she should or could file a grievance in connection with the investigation that was pending against her at the time she resigned from her employment with Fort Knox Community Schools. In the response, he noted that the position of the FEA was weakened by her resignation because she was no longer a member of the collective bargaining

³ *In re Lee*, 127 Ohio St.3d 1467, 2010-Ohio-6302.

unit and a grievance brought on her behalf by the FEA could be challenged because the FEA would lack “standing” to act on her behalf.

{¶19} On November 28, 2007, the Kentucky Education Professional Standards Board (“Kentucky Board”) sent Buhl a letter to inform her that she had been accused of misconduct as a teacher and to provide her with an opportunity to respond. The letter was sent to Buhl at her new address in Kwajalein Atoll, Marshall Islands. Relator’s Ex. 3.

{¶20} Upon receiving the letter from the Kentucky Board, Buhl sought the advice of her collective bargaining unit, the FEA. Buhl prepared a draft reply to the disciplinary letter and emailed it to Respondent and FEA staff members for their review on or about January 9, 2008. Relator’s Ex. 4.

{¶21} Respondent reviewed Buhl’s reply letter, provided comments, and recommended that she submit her draft as the reply. Respondent further indicated that he and Dorothy were preparing a “lawyer supplement” to her reply to be sent after her reply was submitted.

{¶22} Buhl made Respondent’s proposed changes and sent it back to him. Because she was out of the country, she asked Respondent and Dorothy to submit her reply letter. As requested, Respondent faxed Buhl’s reply letter to the Kentucky Board. Relator’s Ex. 5.

{¶23} On January 10, 2008, Respondent sent an email to Buhl’s husband confirming that Buhl’s reply had been sent to the Kentucky Board. Respondent indicated that there was “nothing to do at this time but to wait on the KY Board to ponder” and that “we” Respondent and the FEA would be submitting supplemental material. Neither Respondent nor the FEA ever sent any supplemental material to the Kentucky Board. Relator’s Ex. 6.

{¶24} On March 19, 2008, the Kentucky Board sent a letter to Buhl and copied Respondent notifying them that they would hold a hearing on the disciplinary complaint against her. Relator's Ex. 7.

{¶25} On April 29, 2008, Buhl emailed Respondent and others seeking advice as to what to do in response to the Kentucky Board. Respondent replied advising that there is no time limit for the Kentucky Board to act and there was nothing to do until a judge is assigned and a prehearing conference set. Respondent further indicated that "[w]e will naturally review the charges and take whatever action is appropriate based on the charges brought, if any." Relator's Ex. 8.

{¶26} On October 1, 2008 and again on June 5, 2009, Buhl emailed Respondent and Dorothy to check on the status of the complaint. Relator's Ex. 9-10. Neither Respondent nor Dorothy responded to either inquiry.

{¶27} On March 24, 2010, Attorney Courtney Baxter sent a letter to Buhl notifying her that she had been retained by the Kentucky Board to prosecute Buhl's disciplinary matter. The letter was sent to Buhl's old Kentucky address, notwithstanding the fact that the Kentucky Board had her new address in the Marshall Islands. The letter further indicated that Baxter attempted to reach Respondent but he had not responded to any of her phone calls. Relator's Ex. 11.

{¶28} On April 4, 2010, unaware of the letter from Baxter, Buhl emailed Dorothy to inquire about the complaint. Dorothy advised her that she should do nothing and should have no reason to believe the complaint was still under review. Relator's Ex. 12.

{¶29} On February 11, 2011, Baxter filed a Notice of Statement of Charges and Issues (the "complaint") with the Kentucky Board. Relator's Ex. 13. Service of the complaint went to Buhl's old Kentucky address.

{¶30} On February 15, 2011, Stuart W. Cobb, the hearing officer for the Kentucky Board issued a Notice Assigning Case, Order Setting Filing Requirements, and Scheduling Prehearing Conference. Relator's Ex. 14. The notice and order was served upon Buhl at her old Kentucky address and Respondent at his post office box – although the post office box number for Respondent was incorrect. Respondent has no recollection of ever receiving the order. Hearing Tr. 65.

{¶31} On March 2, 2011, Hearing Officer Cobb issued a Prehearing Conference Order setting forth attempts to serve Buhl at her last known address in the United States were returned undeliverable. Relator's Ex. 15. The order further indicated that they did not try to reach her in the Marshall Islands because the forwarding order had expired. Service of the order was sent to Buhl's old Kentucky address and a Rock T. Lee, an attorney in Cincinnati, not Respondent. Although service on Buhl was clearly defective, the order gives Baxter leave to file a motion for default judgment.

{¶32} Baxter, after numerous attempts, finally was able to contact Rock T. Lee and learn that she had attempted to contact the wrong attorney. To rectify that error, on February 28, 2011, she contacted Respondent. Respondent told Baxter that he had not heard from Buhl in a while and he was not sure if he **still** represented her. (Emphasis added.) He promised to make inquiry and get back to her. He denied receiving a copy of the complaint. Relator's Ex. 16.

{¶33} As a March 7, 2011, Baxter had not heard back from Respondent and so she filed a motion for default judgment on behalf of the Kentucky Board. *Id.* Buhl was again served at her old Kentucky address and Respondent was served at his post office box.

{¶34} On March 13, 2011, Buhl emailed Respondent and Dorothy notifying them that renters at their old Kentucky address forwarded her a copy of the prehearing conference order.

She asked Respondent and Dorothy that one of them contact the Kentucky Board to clear up the misunderstanding and expresses concern about a decision being made without their knowledge. She further adds that “[t]hey obviously have not reviewed anything in their files for surely there is information from you.” Relator’s Ex. 17. To the email she attached draft arguments prepared by her husband. Relator’s Ex. 18.

{¶35} On March 15, 2011, Hearing Officer Cobb issued a recommended order of default. Relator’s Ex. 19.

{¶36} On the same afternoon, Respondent emailed Baxter and indicates that Buhl has authorized him to represent her but he will need to move to be admitted *pro hac vice* because he is not licensed in Kentucky. Respondent then forwards his Baxter email to Buhl and promises to file a notice of appearance and a request to be admitted *pro hac vice* that same night. Relator’s Ex. 20.

{¶37} On March 16, 2011, Baxter and Respondent exchanged email messages and agreed to seek a new prehearing conference date from the hearing officer and open discussions regarding settlement. Relator’s Ex. 21. Respondent then sent a letter to the hearing officer seeking a date for a new prehearing conference and indicated that he intended to file a motion for admission *pro hac vice*. Relator’s Ex. 22. In a subsequent email, Baxter informed Respondent that she just received a copy of an order granting a default judgment against Buhl. Baxter recommends that Respondent file a motion to have the default judgment set aside and agrees to prepare a settlement proposal. Relator’s Ex. 21.

{¶38} Later that same afternoon, Respondent emailed Buhl forwarding a copy of the letter he sent the hearing officer and promising to get “something else” filed on Monday. Buhl replied thanking him and poses a number of questions about the case. Respondent never replied.

Relator's Ex. 23. Notwithstanding Respondent's representations and promises to Buhl to file something else on her behalf, he never filed a notice of appearance, never moved to be admitted *pro hac vice*, and never moved to set aside the default judgment.

{¶39} At the hearing of this matter, Respondent's explanation for his failure to act in this instance was as follows:

I didn't know how to get admitted *pro hac vice* in the first place. I have no clue how to get a default vacated. It's time to get a – It's time to get a Kentucky attorney. But – But we'll still do whatever we can for you, you know. I mean, that was – the union could still help Trish. We just – I couldn't represent her individually.

Because I – I didn't have the time, I didn't have the knowledge, I didn't have – I didn't – I didn't do – I didn't do teacher licensure. I wasn't a Kentucky attorney. And – And at this point, I was swamped. I had more work than I could properly handle just doing what I did without taking on something I didn't do. And, frankly, in fairness, I should have told her that a week or two earlier.

Hearing Tr. 86-87.

{¶40} By April 11, 2011, Buhl had not received any communications from Respondent and so she sent him an email seeking an update. Relator's Ex. 24. Respondent never replied.

{¶41} On May 16, 2011, the Kentucky Board issued a final order permanently revoking Buhl's teaching certificate. Relator's Ex. 25. Service of the order went to Buhl at her old Kentucky address. She never received it.

{¶42} On June 21, 2011, Buhl again sent an email to Respondent seeking an update. Relator's Ex. 26. Respondent never replied.

{¶43} On November 2, 2011, Buhl learns for the first time that her teaching certification in Kentucky has been revoked. She receives notice from Pennsylvania. Pennsylvania is her original state of certification and notified her because it was attempting to revoke her

Pennsylvania certification based upon the action taken by Kentucky. She emailed Respondent about the revocation. Relator's Ex. 27. Again, Respondent never replied.

{¶44} In an email exchange that begins on November 3, 2011, Dorothy replied to Buhl asking her to send all of the documents she had related to her certification. By the end of the email exchange on November 9, 2011, Buhl had sent Dorothy all of the documents and again asked Dorothy for her help and the assistance of Respondent who was copied on all of the email messages in the exchange. Relator's Ex. 28. Neither Respondent nor Dorothy responded to Buhl request for additional assistance.

{¶45} On November 21, 2011, Buhl emailed Respondent and Dorothy to notify them that she had retained new counsel, Jeffrey Walther and asked them to provide him with all information related to her matter. Relator's Ex. 31. Respondent never replied.

{¶46} On December 13, 2011, Walther sent a letter to Respondent requesting Buhl's file. Relator's Ex. 32. Respondent replied to Walther on December 16, 2011 and promised to "devote tomorrow" to getting Buhl's file. Relator's Ex. 33. Respondent never produced the file.

{¶47} On March 6, 2012, Walther sent a letter to Respondent asking him to explain why he abandoned his representation of Buhl. Relator's Ex. 34.

{¶48} On March 8, 2012, Walther negotiated a resolution for Buhl before the Kentucky Board that resulted in an agreed order that vacated her certification revocation and gave her a two-year suspension retroactive to May 16, 2011. Relator's Ex. 36.

{¶49} On March 16, 2012, Respondent emailed Walther and disputed the assertions in Walther's March 6, 2012 letter. Relator's Ex. 35.

{¶50} Buhl testified at the hearing of this matter and was a very credible witness. She specifically testified that at all relevant times she believed Respondent represented her before the

Kentucky Board and that she relied upon his representation while she was living outside of the United States. She further testified that Respondent never told her that he could not represent her before the Kentucky Board. When she found out that her Kentucky certification had been permanently revoked it was devastating.

{¶51} Buhl testified that “[t]his took a toll on my health, on my family, on my children. The whole process has been painful. I feared for my husband’s career for what happened to me, because it’s so public.” She fears going back into the classroom for fear she might be falsely accused. Buhl may never return to teaching even though her license will be restored. She believes that had she had different counsel from the start she would have had a better outcome. She filed the grievance against Respondent because she does not want anyone else to suffer through what happened to her. Hearing Tr., 246-247.

{¶52} Resolving the alleged violations in Count I of the complaint will require some analysis of the law related to Respondent’s two defenses; tort liability immunity and the lack of an attorney-client relationship between Respondent and Buhl.

Tort Liability Immunity

{¶53} Respondent argues that as an attorney acting on behalf of a union representing its collective bargaining unit, he is immune from federal and state law claims. Specifically, he asserts that the union’s immunity precludes him from being disciplined for his representation of Buhl because he was under retainer from her union and appeared on behalf of her union. The panel concludes that Respondent’s defense of immunity does not apply here for the following reasons.

{¶54} Respondent’s immunity defense is completely predicated on a body of law that provides attorneys acting as agents of a union immunity from tort liability claims. *See Atkinson*

v. Sinclair Refining Co., 370 U.S. 238, 248, 82 S.Ct. 1318, (1962) [holding that immunity is conferred upon those acting as agents for a union]; *Peterson v. Kennedy*, 771 F.2d 1244, 1258 (9th Cir.1985) [holding that tort liability immunity extends to outside union counsel hired and paid by the union to act for it]. The flaw in Respondent's analysis is that disciplinary actions are not tort claims. While Respondent may be entitled to immunity from a legal malpractice claim, that immunity does not abrogate the Supreme Court of Ohio's "right and responsibility to regulate licensed attorneys and the practice of law." *Sellers v. Doe*, 99 Ohio App.3d 249, 253, 650 N.E.2d 485 (10th Dist.1994) [affirming summary judgment on behalf of private attorneys appointed by a union to represent a teacher in a disciplinary matter]. Accordingly, tort liability immunity does not apply in the absence of state law claims, nor is it a defense to this or any other disciplinary matter within the jurisdiction of the Supreme Court of Ohio.

{¶55} Disciplinary actions fall within that inherent exclusive power of the Supreme Court of Ohio to admit, disbar, or otherwise discipline attorneys admitted to practice law in the State of Ohio. *Mahoning County Bar Ass'n v. Franko*, 168 Ohio St. 17, (1958), paragraph three of the syllabus. "The purpose of disciplinary actions is to protect the public interest and to ensure that members of the bar are competent to practice a profession imbued with public trust." *Fred Siegel Co., L.P.A. v. Arter & Hadden*, 85 Ohio St.3d 171, 178, 1999-Ohio-260. "These interests are different from the purposes underlying tort law, which provides a means of redress to individuals for damages suffered as a result of tortious conduct." *Id.* Here Relator is not bringing a tort claim, but seeking to protect the public interest. Therefore, Respondent's claimed immunity does not apply in this disciplinary proceeding.

Attorney-Client Relationship

{¶56} Having disposed of Respondent’s immunity defense, the panel now addresses the question of whether Respondent actually represented Buhl. Respondent claims that his contract was with the FEA, Buhl’s collective bargaining unit, not with her. He, therefore, argues that he could not have violated any duty to represent her. The panel disagrees and finds that there was an attorney-client relationship between Respondent and Buhl.

{¶57} There is no dispute that any attorney client relationship between Respondent and Buhl would be governed by Kentucky law. “[F]or conduct in connection with a matter pending before a *tribunal*, the rules of the jurisdiction in which the *tribunal* sits [apply], unless the rules of the *tribunal* provide otherwise.” Prof. Cond. R. 8.5(b)(1). In this instance, Kentucky law applies because Count I involves Respondent’s conduct in connection with a matter pending before the Kentucky Education Professional Standards Board.

{¶58} Under Kentucky law, an attorney-client relationship is a question of contract formation. *Innes v. Howell Corp.*, 76 F.3d 702, 711-712 (6th Cir.1996), citing *Daugherty v. Runner*, 581 S.W.2d 12, 16 (Ky.Ct.App.1979). The existence of the relationship hinges upon mutual accent, either expressed or implied by the conduct of the parties. *Id.* The attorney-client relationship can be implied if a party has a “reasonable belief or expectation” based upon the attorney’s conduct, that the attorney undertook the representation. *Lovell v. Winchester*, 941 S.W.2d 466, 468 (Ky.1997); *Pete v. Anderson*, 413 S.W.3d 291, 296 (Ky.2013).

{¶59} Contrary to Respondent’s argument about “clear consent” to representation, there was clear and convincing evidence in the record of conduct that would give Buhl a “reasonable belief or expectation” that he represented her. There were numerous instances where Respondent gave Buhl advice regarding the investigation being conducted by the Kentucky

Board. Respondent also led her to believe that he had drafted and would submit a “lawyer supplement” to her written rebuttal letter to the Kentucky Board’s initial investigatory letter.

{¶60} And later when Buhl learned the case against her would go forward, she asked Respondent for his help. Acting upon that request, Respondent contacted the hearing officer and opposing counsel on March 16, 2011 indicating that he would enter an appearance and move to be admitted *pro hac vice*. And he reported back to Buhl the same day with a copy of his letter to the hearing officer and promised to “get something else in Monday.” Based upon Respondent’s conduct on March 16, 2011 alone, it was reasonable for Buhl to believe or expect that he would represent her in the disciplinary proceeding.

{¶61} What is most troubling here is that after Respondent makes those promises, he fails to do anything. He never submitted the “lawyer supplement.” He did not enter an appearance or even attempt to move to be admitted *pro hac vice*. He does not advise his client that a default judgment had been entered against her. He does not take steps to have the default judgment set aside even though opposing counsel recommends it. Respondent stood by while the state of Kentucky permanently revoked his client’s teaching certificate. Moreover, he ignored multiple requests from Buhl for an update on the status of her case. And once Buhl retained new counsel, he failed to produce her file, notwithstanding requests from Buhl and her new counsel.

{¶62} Reviewing the record as a whole, there is clear and convincing evidence that at critical times in the proceedings, Respondent abandoned Buhl’s matter and abandoned Buhl. He did not act with reasonable diligence or promptness, failed to keep her informed, ignored reasonable requests for information, and failed to turn over her file when new counsel was retained. And to compound his abandonment of his client, Respondent never attempted to get

licensed in Kentucky and never told her that he cannot represent her. Instead, he let her believe that he was handling her matter while the state of Kentucky was taking steps to permanently revoke her license to teach. For the foregoing reasons, the panel finds clear and convincing evidence that Respondent violated the following Kentucky Supreme Court Rules: SCR 3.130(1.3), SCR 3.130(1.4(a)(3)), SCR 3.130(1.4(a)(4)), SCR 3.130(1.16(d)), SCR 3.130(5.5(a)), and SCR 3.130(8.4(c)).

Count II – Failure to Cooperate

{¶63} On May 22, 2012, Relator sent Respondent a certified letter of inquiry to the post office box Respondent registered with the Supreme Court of Ohio. The letter requested a response to the grievance filed by Buhl, an explanation as to why he was representing her while under federal and state suspension, and to address his underlying conduct in relation to a judgment obtained against him by Greg Tompkins. The letter set June 5, 2012 as a due date for the response. Relator's Ex. 38.

{¶64} On June 28, 2012, Relator sent a second certified letter of inquiry asking him to respond to the first letter of inquiry by July 12, 2012. Relator's Ex. 39.

{¶65} On August 9, 2012, Respondent was served with a subpoena to appear at a deposition in this matter. The subpoena was served by taping a copy to the door of his home. Relator's Ex. 41. Respondent failed to appear for the deposition and denies having received service of the subpoena.

{¶66} On November 2, 2012, Relator emailed Respondent that numerous attempts were made to contact him and that a formal disciplinary complaint was being prepared against him based upon his representation of Buhl. Relator's Ex. 43.

{¶67} In a November 5, 2012 email exchange, Respondent emailed Relator in response and claimed that he responded to the first letter of inquiry indicating that he never represented Buhl. Relator replied indicating that he never received Respondent's letter. Relator asked Respondent to send his initial response, a current address, and a valid telephone number. Respondent replied with a current address and telephone number but did not send a copy of his response to the initial inquiry as requested. *Id.*

{¶68} On November 15, 2012, Relator emailed Respondent asking him to respond to the letter of inquiry. Respondent replied on November 19, 2012 and indicated that he recently moved, he was still unpacking, and had not found his file on that matter. *Id.*

{¶69} On January 8, 2013, Relator sent Respondent a letter seeking a response to the initial letter of inquiry. The letter further asks Respondent to explain why he recently attempted to apply for *pro hac vice* registration when he is already licensed in Ohio, albeit under suspension. Relator's Ex. 44.

{¶70} On February 12, 2013, Respondent was served with a second subpoena to appear at a deposition in this matter. The subpoena was served by taping a copy to the door of the new home address that was previously emailed to Relator. Relator's Ex. 45. Respondent failed to appear for the deposition and denies having received service of the subpoena.

{¶71} On May 17 and 23, 2013, Relator attempted to serve Respondent with a copy of the draft complaint by certified mail, hand-delivery, and email. Relator's Ex. 47 and 48.

{¶72} On May 27, 2013, Respondent finally responded to the draft complaint and all of the letters of inquiry. Respondent, however, never responded to the specific inquiry related to the judgment obtained against him by Greg Tompkins. In his response, he claims to have responded to Relator's inquiry on January 11, 2013 – although Relator never received the

response letter. He also claims to have responded to the initial inquiry letter of Relator on June 4, 2012. Relator's Ex. 49.

{¶73} Whether Respondent was uncooperative turns on the facts. In his closing argument brief, Respondent argues that he "responded to the communications he did receive and did not respond to communications he did not receive." Respondent's Closing Argument at 16. Respondent's defense is premised upon his representation that he responded in a timely manner to all inquiries sent to his post office box – although Relator did not receive those responses (his responses were subsequently attached to his response to the draft complaint). Respondent also denies receiving two subpoenas even though they were served by taping them to the front door of his home. Respondent's many denials regarding service are plausible.

{¶74} What is not deniable is his failure to send his response to Relator's initial inquiry after two confirmed email requests to do so. Relator emailed Respondent on November 5, 2012 and asked him to send his response to the initial inquiry. Respondent replied to the email but failed to send a copy of his response because he had just moved and his file was packed. Relator emailed Respondent on November 15, 2012 again asking for his response to the initial inquiry. Respondent replied to the email on November 19, 2012 again claiming that he had not completed unpacking. Respondent did not deliver a copy of his response to Relator's initial inquiry until May 27, 2013, more than six months after the email exchange, and more than one year after the initial inquiry.

{¶75} What is also not deniable is that Respondent never addressed Relator's inquiry about his "conduct that resulted in Greg Tompkins obtaining judgment against [him]." Respondent ignored this part of the inquiry in his response letter and admitted at the hearing of this matter that he refused to address that part of the inquiry.

{¶76} For the foregoing reasons, the panel finds clear and convincing evidence that Respondent violated Gov. Bar R. V, Section 4(G) and Prof. Cond. R. 8.1(b).

AGGRAVATION, MITIGATION, AND SANCTION

{¶77} The panel finds the following aggravating factors: (1) a dishonest or selfish motive; (2) a pattern of misconduct; (3) multiple offenses; (4) lack of cooperation in the disciplinary process; (5) refusal to acknowledge wrongful nature of conduct; and (6) vulnerability of and resulting harm to victims of misconduct.

{¶78} Although clearly outweighed by the aggravating factors, the panel also finds in mitigation the absence of a prior disciplinary record and positive evidence of character or reputation in the form of two reference letters submitted by Respondent.

{¶79} Relator recommends a sanction of an indefinite suspension. The panel reviews Relator's recommendation on a sanction in light of the findings of fact, conclusions of law, factors in aggravation and mitigation, and precedent established by the Supreme Court of Ohio.

{¶80} It is well recognized by the Supreme Court that neglect of an entrusted legal matter coupled with a failure to cooperate in the ensuing disciplinary investigation warrants an indefinite suspension. *Disciplinary Counsel v. Mathewson*, 113 Ohio St.3d 365, 2007-Ohio-2076. See also *Disciplinary Counsel v. Meade*, 127 Ohio St.3d 393, 2010-Ohio-6209 (indefinite suspension imposed where attorney failed to cooperate, failed to act with reasonable diligence and promptness, failed to deliver client's file to her new counsel); and *Disciplinary Counsel v. Bogdanski*, 135 Ohio St.3d 235, 2013-Ohio-398 (indefinite suspension imposed where attorney did not simply neglect client matters but abandoned them, engaged in acts of dishonesty, failed to acknowledge the wrongful nature of her conduct, and failed to cooperate with the relator).

{¶81} Respondent's conduct is consistent with the factors considered in *Meade* and *Bogdanski*. Like in *Meade*, Respondent failed to cooperate with the relator, failed to act with

reasonable diligence and promptness, and failed to return the client's file. And strikingly similar to *Bogdanski*, Respondent abandoned his client, failed to acknowledge the wrongful nature of his conduct, engaged in dishonesty, and failed to fully cooperate with disciplinary counsel.

{¶82} The most dishonest and troubling aspect of Respondent's behavior is that he knowingly abandoned his client at a time when the client had good reason to believe and genuinely believed she was being represented. No steps were taken by Respondent to clarify his role in the proceeding pending before the Kentucky Board. And when he presumably decided that there was nothing he could do for his client, he just walked away – he did not tell her that a default judgment was entered and failed to turn over the client's files to new counsel.

{¶83} Furthermore during the hearing of this matter, Respondent failed to acknowledge the wrongful nature of his conduct. Even if Respondent genuinely believed he was cloaked with some form of immunity, abandoning a client in the middle of a case is never acceptable behavior. All attorneys licensed to practice in the state of Ohio are subject to the Rules of Professional Conduct. Gov. Bar R. IV, Section 1. The fact that Respondent somehow thought these rules did not apply to him underscores why a sanction of an indefinite suspension is appropriate.

{¶84} Having considered the findings of fact and conclusions of law, concluded that the aggravating factors far outweigh those offered in mitigation, and reviewed Supreme Court of Ohio precedent, we respectfully recommend a sanction of an indefinite suspension.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 6, the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on October 3, 2014. The Board adopted the findings of fact and conclusions of law of the panel. The Board (1) modified the aggravating factors found by the panel in ¶77 of this report to find the additional aggravating

factor of prior discipline in the form of the attorney registration suspensions referenced in ¶13 of the report, and (2) deleted the panel's finding in ¶78 of an absence of prior discipline. The Board then adopted the sanction recommended by the panel and recommends that Respondent, Raymond Thomas Lee III, be indefinitely suspended from the practice of law in Ohio. The Board further recommends that the costs of these proceedings be taxed to Respondent in any disciplinary order entered, so that execution may issue.

Pursuant to the order of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendation as those of the Board.

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

RICHARD A. DOVE, Secretary