Supreme Court of Ohio Clerk of Court - Filed February 18, 2015 - Case No. 2015-0293

BEFORE THE BOARD OF PROFESSIONAL CONDUCT
OF THE SUPREME COURT OF OHIO

In Re:	:	**Case No. 2014-043**
Complaint against	:	
Orland Joseph Williams **Attorney Reg. No. 0033558**	:	**Findings of Fact, Conclusions of Law, and Recommendation of the Board of Professional Conduct of the Supreme Court of Ohio**
Respondent	:	
Disciplinary Counsel	:	
Relator		

OVERVIEW

{¶1} This matter was heard on November 21, 2014, in Columbus before a panel consisting of Patrick L. Sink, Judge John Wise, and Keith A. Sommer, 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 review the complaint pursuant to Gov. Bar R. V, Section 6(D)(1).[1]

{¶2} George D. Jonson appeared on behalf of Respondent. Joseph M. Caligiuri appeared on behalf of Relator.

{¶3} On June 9, 2014, Relator filed a three-count complaint against Respondent alleging the violations of the Ohio Rules of Professional Conduct, the Rules for the Government of the Bar of Ohio, and the Code of Judicial Conduct. The parties entered into stipulated facts, rule violations, aggravation and mitigation, and exhibits. A summary of the stipulations is set forth herein.

{¶4} The stipulations were signed by Respondent and the parties stipulated to certain rule violations in Counts One, Two, and Three. Stipulations 24, 38, 64.

[1] Effective January 1, 2015, the Supreme Court amended Gov. Bar R. V and the Board's Procedural Regulations. This report distinguishes between the former and current versions of Gov. Bar R. V and the Procedural Regulations, as appropriate.

{¶5} This case involves Respondent entering into a sexual relationship with a defendant (A.B.) in an eviction action while serving as the magistrate hearing the action; purchasing a motor vehicle and falsifying a loan application; falsely asserting his employment with a law firm from which his employment had been terminated; asserting he was earning a gross monthly salary substantially more than his salary; allowing A.B. to create a fictitious pay stub from his former law firm; providing the fraudulent pay stub to the third-party lender to finance the purchase of the vehicle; and misappropriating funds from a wrongful death settlement which he deposited into his IOLTA which was to be used for the purchase of an annuity for three minor children in the total amount of $10,798.50 on two different occasions.

{¶6} The panel recommends a two-year suspension.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶7} Respondent was admitted to the practice of law in the state of Ohio on April 28, 1986 and is subject to the Ohio Rules of Professional Conduct, Rules for the Government of the Bar of Ohio, and the Code of Judicial Conduct.

{¶8} Respondent's misconduct is set forth in the stipulations and admissions of disciplinary violations that the panel accepts and incorporates into its findings of fact.

Count One--Gruich v. Boykin Matter

{¶9} Respondent was appointed to a vacant seat on the Akron Municipal Court, effective March 3, 2009. In the November 2009 general election, Respondent lost his bid to retain the seat and was then hired as a magistrate in the Akron Municipal Court where he handled eviction actions. While serving as a magistrate, Respondent was assigned to hear an eviction case brought by Stevan Gruich, the landlord, in which he sought to evict the tenant, A.B. After deciding the first cause of action involving possession of the property, Respondent entered

into a sexual relationship with A.B. Respondent failed to recuse himself from the pending litigation. Stipulations 2-4, 14-17.

{¶10} A.B. was pulled over for operating a vehicle under the influence and asked the officer to call Respondent whom she referred to as her "boyfriend." Respondent was approached by the city prosecutor who told him that A.B. had been stopped for OVI and referred to Respondent as her "boyfriend." Stipulations 18, 19.

{¶11} After a meeting with four judges in the Akron Municipal Court, Respondent admitted seeing A.B. After the meeting, Respondent signed a recusal entry which was recorded June 27, 2012 and resigned from his position as magistrate. Stipulations 20-22.

{¶12} As to Count One, the parties agreed and the panel unanimously finds by clear and convincing evidence, that as a result of the foregoing facts, Respondent violated the following: Jud. Cond. R. 1.2 [a judge shall act at all times in a manner that promotes public confidence in the integrity, impartiality, and independence of the judiciary and shall avoid impropriety and the appearance of impropriety] and Jud. Cond. R. 2.11(A) [a judge shall disqualify himself from any proceeding in which the judge's impartiality might reasonably be questioned including where the judge has a personal bias concerning a party or personal knowledge of the facts that are in dispute in the proceeding].

{¶13} Relator and Respondent stipulated to the dismissal of Jud. Cond. R. 2.9 [a judge shall not initiate, receive, permit, or consider *ex parte* communications] and Prof. Cond. R. 8.4(d) [conduct that is prejudicial to the administration of justice]. The panel accepts the stipulated dismissal and dismisses the alleged violation of Jud. Cond. R. 2.9 and Prof. Cond. R. 8.4(d).

Count Two--Summit Toyota Matter

{¶14} In March 2013, Respondent was working as an associate attorney at Byron Potts Co., LPA and was terminated May 3, 2013. On May 8, 2013, Respondent and A.B. appeared at Summit Toyota of Akron and purchased a used vehicle. Respondent completed a credit application listing a residential address where his lease had ended April 30, 2012 and falsely asserted that he was employed at Byron Potts Co., LPA. Respondent falsely asserted he was earning $7,500 per month at the law firm when he had earned a gross monthly salary of $2,930.40. Respondent signed the application certifying the information was true. Stipulations 26-32.

{¶15} Respondent's last paycheck from Byron Potts Co., LPA reflected a gross monthly salary of $2,930.40. With Respondent's knowledge, A.B. created a fictitious pay stub from Byron Potts Co., LPA, which translated to a gross monthly wage of $7,200, and adjusted his social security, Medicare, federal, state, and city taxes. With Respondent's knowledge, A.B. copied and submitted the fraudulent pay stub to Summit Toyota which provided the information to a third-party lender which financed Respondent's purchase of the vehicle. Respondent defaulted on the loan, and the vehicle was repossessed. Stipulations 33-37.

{¶16} As to Count Two, the parties agreed and the panel unanimously finds by clear and convincing evidence, that as a result of the foregoing facts, Respondent violated the following: Prof. Cond. R. 8.4(c) [conduct that involves fraud, dishonesty, deceit, or misrepresentation].

{¶17} Relator and Respondent hereby agree and stipulate to the dismissal of Prof Cond. R. 8.4(h) [conduct that adversely reflects on the lawyer's fitness to practice law. The panel accepts the stipulated dismissal and dismisses the alleged violation of Prof. Cond. R. 8.4(h).

Count Three--The Criss Estate

{¶18} In November 2009, while working as an attorney, Respondent filed an application to administer the Criss estate in the Summit County Probate Court. The court approved a $25,000 wrongful-death settlement which Respondent deposited into his IOLTA. Respondent was required to make specified distributions, including the purchase of an annuity for three minor children in the total amount of $10,798.50 and to file proof of the purchase of the annuity within 30 days. Respondent was unable to purchase the annuity since the annuity company required the funds to come directly from the insured. Respondent misappropriated the funds in 2012. When Respondent assumed the vacant seat on the Akron Municipal Court on March 3, 2009, he neglected to complete the Criss estate. Stipulations 41-48.

{¶19} On April 14, 2011, the probate court magistrate sent a letter to Respondent's former law office advising the estate was still open and Respondent needed to sign a statement in lieu of account. Respondent did not receive the letter and did not respond to the letter. On June 27, 2011, the magistrate sent another letter to the fiduciary requesting that Respondent advise the magistrate of the status of the case within 30 days and sent a copy of the letter to Respondent. On August 4, 2011, the probate judge entered a judgment ordering Respondent and the fiduciary to appear and show cause why proof of purchase of annuity had not been filed. Respondent appeared before the magistrate and advised that the funds were still in his IOLTA and that he would purchase a money market for the children's benefit. Respondent failed to purchase the money market or report back to the court. Stipulations 49-54.

{¶20} As of November 1, 2012, Respondent had a balance of $11,496.31 in his IOLTA. During November and December 2012, Respondent issued checks payable to himself of all of the funds belonging to the minor heirs as evidenced by a balance of $321.31 in his IOLTA. Stipulated Ex. 20; Stipulations 55-60.

{¶21} On May 1, 2013, Respondent liquidated his retirement account and deposited $10,000 into his IOLTA to repay a majority of the funds that he misappropriated, bringing the balance to $10,321.31. Respondent again misappropriated the funds by withdrawing or issuing checks payable to himself during May 2013, leaving a balance of $6.31 in his IOLTA. Stipulated Ex. 21; Stipulations 61-62.

{¶22} In October 2013, Respondent deposited $10,810 of his personal funds into his IOLTA to repay the funds he misappropriated and failed to contact the probate court or the fiduciary regarding his previous misappropriations. Stipulated Ex. 22; Stipulation 63.

{¶23} As to Count Three, the parties agreed and the panel unanimously finds by clear and convincing evidence that, as a result of the foregoing facts, Respondent violated the following: Prof. Cond. R. 1.3 [diligence]; Prof. Cond. R. 8.4(c); and Prof Cond. R. 8.4(d).

Respondent's Hearing Testimony

{¶24} Respondent testified that he had gone through a divorce proceeding and entered into the relationship with A.B. Hearing Tr. 38-40. Respondent stated that the relationship became abusive and caused him to suffer post-traumatic stress syndrome. Hearing Tr. 49-51. Respondent stated that he had never committed any ethical violations in the past (Hearing Tr. 39) and this relationship influenced him to commit the violations (Hearing Tr. 60) that were stipulated. Respondent admitted to the stipulated facts and stipulated violations. Hearing Tr. 11-12.

{¶25} Respondent stated that he was not going to continue acting as the magistrate in the case involving A.B. and simply would not hear the second part of the case. He also testified that he did not know the procedure for recusing himself. Hearing Tr. 67.

{¶26} The OLAP records and Respondent's medical records did not mention post-traumatic stress syndrome. Respondent stated that he received an email from Scott Mote stating

that post-traumatic stress syndrome was diagnosed, but there was no indication concerning causation. Relator acknowledged the receipt of the email. Hearing Tr. 69-70.

{¶27} Twenty-seven exhibits were stipulated and added to the agreed stipulations. Exhibit 27 included two character letters. Exhibit 28 which was offered and agreed to at the hearing is a copy of a check written the day before the hearing from Respondent's IOLTA to the law firm of Montgomery, Rennie, and Jonson Trust Account for $10,800 to be used for the purchase of an annuity for the minor heirs. It also includes the deposit slip to that account and a receipt showing the deposit was made on November 20, 2014. Hearing Tr. 47. Restitution requires the purchase of an annuity for the three minor children, plus payment of lost interest. The exhibits confirmed the stipulated facts. Full restitution has not been accomplished resulting in interest lost due to the delay in purchasing an annuity or comparable investment for the minors.

AGGRAVATION, MITIGATION, AND SANCTIONS

{¶28} The parties agreed and stipulated to the following mitigating factors under former BCGD Proc. Reg. 10(B)(2): absence of a prior disciplinary record; timely and good faith effort to make restitution; full and free disclosure to the disciplinary board; and positive character evidence.

{¶29} The panel accepts the mitigating factors, but the panel does not agree with the stipulation that Respondent made a timely and good-faith effort to make restitution. Respondent misappropriated the funds of the three minor children in 2012. In 2013, Respondent liquidated his retirement account and deposited $10,000 into his IOLTA to repay a majority of the funds that he misappropriated, bringing the balance to $10,321.31. Respondent again misappropriated the funds by drawing checks payable to himself during May 2013, leaving a balance of $6.31 in his IOLTA. In October 2013, he deposited $10,810 of his personal funds into his IOLTA. The

day before the hearing, Respondent issued a check payable to his lawyer's law firm for $10,800 to be used for the purchase of an annuity for the minor heirs. Restitution has not been completed as ordered by the probate magistrate, and interest that would have accrued on the principal has been lost.

{¶30} The parties hereby agree and stipulate to the following aggravating factors under former BCGD Proc. Reg. 10(B)(1): dishonest or selfish motive and multiple offenses. The panel accepts the aggravating factors.

{¶31} Among the factors considered by the panel in making its recommended sanction are the ethical duties violated, injuries caused by the misconduct, mental state of Respondent at the time of the misconduct, aggravating and mitigating factors, necessity to protect the public, and the sanctions imposed by the Supreme Court in similar cases.

{¶32} Respondent and Relator jointly recommended a two-year suspension, with one year stayed on condition that Respondent commit no further misconduct and maintain compliance with his OLAP contract. Several cases were cited in support of the joint recommendation of a two-year suspension, with one year stayed with conditions.

{¶33} In *Disciplinary Counsel v. Oldfield*, 140 Ohio St.3d 123, 2014-Ohio-2963, the respondent allowed the public defender who was assigned and was arrested for physical control of a vehicle while under the influence to stay in her home for three nights and drove her to and from work. The respondent failed to recuse herself from 53 of the public defender's cases after the arrest. The Supreme Court imposed a public reprimand for the judge's violation of Jud. Cond. R. 1.2 and Jud. Cond. R. 2.11, along with Prof. Cond. R. 8.4(d). The violation of the respondent in *Oldfield* does not compare with the violation of Count One against Respondent in that Respondent engaged in the additional misconduct set forth in Counts Two and Three that are discussed above.

{¶34} In *Ohio State Bar Assn. v. Vukelic,* 102 Ohio St.3d 421, 2004-Ohio-3651, the respondent, a part-time magistrate was presiding on the bench when a client from his private practice appeared before him on misdemeanor criminal charges. Respondent did not preside over the case, but did not immediately transfer it to another jurisdiction and allowed the case to be discussed in his presence. The Court imposed a public reprimand, finding that the respondent violated former Canon 3(E)(1). The violation of the respondent in *Vukelic* is minor compared to the violation of Count One against Respondent.

{¶35} In *Disciplinary Counsel v. Freedman*, 110 Ohio St.3d 284, 2006-Ohio-4480, the respondent obtained a loan which was secured by a second mortgage on property the respondent owned with his wife. The respondent had a lawyer in his office notarize his signature, but then forged his wife's signature so that it appeared that the lawyer had notarized both signatures. The Court imposed a six-month fully stayed suspension. The violation of the respondent in *Freedman* does not compare with the violation of Count Two against Respondent.

{¶36} In *Disciplinary Counsel v. Wallace*, 138 Ohio St.3d 350, 2014-Ohio-1128, the Court imposed a two-year suspension, with one year stayed after finding that the respondent who had been previously suspended forged his client's signature on an insurance settlement check, then misappropriated all of the funds while his client was incarcerated. Respondent Wallace made false representations concerning the funds and his fees to his client's fiancé and reimbursed his client's funds from his personal funds operating account. The conduct of the respondent in *Wallace* is not as egregious as Respondent as stipulated in Counts Two and Three. The recommended sanction of Respondent is the same as imposed on Wallace.

{¶37} In *Disciplinary Counsel v. Burchinal*, 133 Ohio St.3d 38, 2012-Ohio-3882, the respondent misappropriated funds in three clients' cases, neglected another client's case by missing the statute of limitations, and for two years led the client to believe that the case was still

pending. The Court imposed a two-year suspension, with 18 months stayed. Respondent Burchinal had several mitigating factors, including a diagnosed mental impairment that contributed to the misconduct. The violations of the respondent in *Burchinal* only compare with the violations of Respondent as to Count Three.

{¶38} In *Disciplinary Counsel v. Simon-Seymour*, 131 Ohio St.3d 161, 2012-Ohio-114, the Court imposed a two-year suspension, with six months stayed after finding the lawyer misappropriated over $17,000 from an estate, filed false documents with the probate court indicating he paid estate debts, and despite repeated requests, refused to provide his client with proof that the debts had been paid.

{¶39} The panel finds that the two-year suspension, with six months stayed in the *Simon-Seymour* case is most closely aligned with Respondent's facts as to Count Three. Respondent's violations in Count Three involved misappropriating funds from an estate on two occasions, failing to file documents with the probate court, proving the purchase of an annuity for minor children as ordered by the court. Respondent also entered into a sexual relationship with a defendant while serving as magistrate in her case and failed to file a recusal entry, submitted a false credit application misrepresenting his income, his residential address, and knowingly had A.B. submit fraudulent pay stubs to the car dealer, and misappropriated funds in the amount of $10,798.50 from a wrongful death settlement which were to be used to purchase an annuity for three minors. Only immediately before the hearing did Respondent deliver $10,800 to his counsel to be utilized for the purchase of the annuity for the minors. This is not full restitution and does not include lost income that would have accrued on the annuity. Respondent's violations are more egregious than the violations of *Simon-Seymour*. The panel therefore considers the joint sanction recommended by the parties as inappropriate and concludes the more severe sanction of a two-year suspension, with no stay, is appropriate. The panel

agrees with the conditions on reinstatement that Respondent commit no further misconduct, maintain compliance with his OLAP contract, and complete full restitution in the amount of $10,798.50, including interest from the date of the probate court order, to the minor heirs.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct of the Supreme Court of Ohio considered this matter on February 13, 2015. The Board adopted the findings of fact and conclusions of law of the panel. After discussion, the Board amended the sanction recommended by the panel and recommends that Respondent, Orlando Joseph Williams, be indefinitely suspended from the practice of law in Ohio with reinstatement conditioned on compliance with the conditions set forth in ¶39 of this report and the additional requirements that Respondent be ordered to make the required restitution within six months of the entry of the disciplinary order by the Supreme Court and be ordered to pay the costs of these proceedings.

Pursuant to the order of the Board of Professional Conduct of the Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendation as those of the Board.

RICHARD A. DOVE, Director