

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

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| In re: | : | |
| | : | Case No. 2014-050 |
| Complaint against | : | |
| Joseph Dues Reed | : | Findings of Fact, |
| Attorney Reg. No. 0025938 | : | Conclusions of Law, and |
| | : | Recommendation of the |
| Respondent | : | Board of Professional Conduct of |
| | : | the Supreme Court of Ohio |
| Columbus Bar Association | : | |
| | : | |
| Relator | : | |

OVERVIEW

{¶1} This matter was heard on March 4, 2015, in Columbus before a panel consisting of Patrick L. Sink, Lisa A. Eliason, and William J. Novak, chair. None of the panel members resides in the district from which the complaint arose or served as a member of the probable cause panel that reviewed the complaint pursuant to former Gov. Bar R. V, Section 6.¹

{¶2} Respondent appeared *pro se*. Bruce A. Campbell, A. Alysha Clous, Jeffrey C. Rogers, and James P. Tyack appeared on behalf of Relator.

{¶3} This case involved Respondent's continued failure to act with reasonable diligence in representing his clients, failing to keep his clients informed, failure to respond to demands from disciplinary authority, and engaging in conduct which adversely reflects on his fitness to practice law. The conduct covers the representation of three clients.

{¶4} Based upon the parties' stipulations, evidence presented at the hearing in the way of testimony from Respondent, and exhibits which have been received and admitted, the panel finds by clear and convincing evidence that Respondent engaged in professional misconduct, as outlined below. Upon consideration of the applicable aggravating factors and case precedents,

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.

the panel recommends that Respondent be sanctioned in the form of a two-year suspension, with six months stayed including full contractual cooperation with OLAP during the time period of his suspension plus full restitution.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶5} Respondent was admitted to the practice of law in the state of Ohio on May 9, 1983 and is subject to the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

{¶6} Respondent has been previously disciplined in 2000 and given a six-month suspension for conduct adversely reflecting upon his fitness to practice, failing to seek the lawful objectives of a client, and failing to carry out a contract of employment. The suspension was fully stayed; however, three members of the Court joined in a written dissent and would have imposed the six-month suspension without a stay. *Columbus Bar Assn. v. Reed*, 88 Ohio St.3d 48, 2000-Ohio-270.

{¶7} Respondent was once again sanctioned by the Supreme Court and was suspended for noncompliance with continuing legal education requirements on July 11, 2006 and reinstated on August 1, 2006. *In re Reed*, 110 Ohio St.3d 1432, 2006-Ohio-3902.

{¶8} Respondent is an active member of AA; however, he encountered a problem with pain medications that ceased sometime in October 2012. While admitting his transgression regarding these clients, Respondent had an opportunity to bring evidence into the hearing regarding his recent encounter with OLAP. However, Respondent failed to do so.

Count I—Gravely Matter

{¶9} On April 12, 2012, Toni Gravely met with Respondent seeking assistance in a divorce matter. Gravely paid Respondent a filing fee of \$150 and an additional \$375 (half the quoted fee of \$750) for a retainer.

{¶10} Gravely had lived in Ohio for the last 31 years without her husband and wished to seek a divorce in Ohio.

{¶11} Respondent accepted the payment on that date and assured Gravely everything should be wrapped up by June 2012.

{¶12} The parties stipulated that if called to testify, Gravely would state that she called Respondent's office several times a week from late April till November 2012, and left numerous messages.

{¶13} The parties stipulated that if called to testify, Gravely would state that when she visited his office she was unable to make contact.

{¶14} Gravely received no updates from Respondent on the status of her divorce case that she believed was pending.

{¶15} In fact, Respondent did not file a divorce case or take any action on his client's behalf.

{¶16} Respondent had no further contact with his client and did not refund any portion of the \$525 the client had paid to him.

{¶17} The parties stipulated that if called to testify, Gravely would state that her husband filed for divorce in West Virginia, forcing her to litigate the case out of state which was exactly what she had been trying to avoid.

{¶18} Respondent still owes Gravely \$375.

{¶19} The panel finds by clear and convincing evidence that Respondent violated the following disciplinary rules in connection with the Gravely matter: Prof. Cond. R. 1.1 [competence]; Prof. Cond. R. 1.3 [diligence]; Prof. Cond. R. 1.4(a)(3) [failing to keep a client reasonably informed]; and Prof. Cond. R. 1.4(a)(4) [failing to comply with a client's reasonable requests for information].

{¶20} At the conclusion of the hearing and by entry dated March 4, 2015, the panel dismissed violations of Prof. Cond. R. 1.5(a), Prof. Cond. R. 1.15(d), and Prof. Cond. R. 8.4(h).

Count II—Failure to Comply with Subpoena

{¶21} The parties stipulated that if called to testify, Gravely would state that in November 2012, Gravely contacted the Office of Disciplinary Counsel the Supreme Court of Ohio to file a grievance against Respondent.

{¶22} On November 13, 2012, Disciplinary Counsel sent a letter of inquiry to Respondent by certified mail.

{¶23} The return receipt indicated that Respondent received the letter.

{¶24} Respondent failed to respond to the Disciplinary Counsel’s request for information.

{¶25} On November 29, 2013, Disciplinary Counsel sent Respondent a second letter requesting an immediate response. Again Respondent failed to reply.

{¶26} Disciplinary Counsel then served a subpoena on Respondent to appear before the Disciplinary Counsel on January 16, 2013 to testify regarding the Gravely matter.

{¶27} Respondent called Disciplinary Counsel to reschedule the appearance saying he was unavailable on January 16. Disciplinary Counsel gave him an extension to January 29, 2013 to reply to the original inquiry.

{¶28} Disciplinary Counsel did not receive any further communication from Respondent, so a new subpoena was issued to and served upon Respondent for an appearance on March 13, 2013.

{¶29} Respondent failed to appear or contact Disciplinary Counsel on March 13, 2013.

{¶30} On March 22, 2013, Disciplinary Counsel transferred the Gravely grievance to Relator because Relator had received other grievances against Respondent.

{¶31} The panel finds by clear and convincing evidence that Respondent violated the following disciplinary rules: Prof. Cond. R. 8.1(b) [knowingly fail to respond to a demand from a disciplinary authority] and Prof. Cond. R. 8.4(h) [conduct adversely reflecting on the lawyer's fitness].

Count III—Pierce Fee Arbitration

{¶32} On January 18, 2013, Relator's Fee Arbitration Committee – an ADR procedure in which Respondent was obligated to participate under the provisions of former Gov. Bar R. V, Section 4(G) – held a fee arbitration between Respondent and his client, R. Thomas Pierce.

{¶33} The arbitration concluded with the finding that Respondent had not earned the entire \$5,000 paid by Pierce and ordered that Pierce was due a refund of \$1,125.

{¶34} Included in the fee arbitration agreement, signed by Respondent, is a provision in which the parties mutually agree that any arbitration award must be fully paid within ten days after receipt of the award notice. This requirement is reiterated in the award notice.

{¶35} Respondent had actual knowledge of that fee arbitration award of \$1,125.

{¶36} Eight months later, having received none of the fees owed him, Pierce obtained counsel to attempt to secure the money owed by Respondent.

{¶37} As a result of those efforts, Respondent still owes Pierce \$114.85.

{¶38} The panel finds by clear and convincing evidence that Respondent violated the following rules: former Gov. Bar R. V, Section 4(G) [not cooperating with an alternative dispute resolution procedure] and Prof. Cond. R. 8.4(h) [adversely reflecting on the lawyer's fitness].

{¶39} At the conclusion of the hearing and by entry dated March 4, 2015, the panel dismissed the alleged violation of Prof. Cond. R. 1.15(d).

Count IV—Smith/Witt Grievance

{¶40} On January 22, 2013, Brittany Barker, the girlfriend of Joshua Smith, a prisoner at London Correctional Institute, paid Respondent \$1,000 to retain him to file a judicial release motion and to represent Smith at a hearing. Respondent agreed to the representation.

{¶41} Smith's father, Fred Witt, attempted to make contact with Respondent starting in June 2013. On July 1, 2013, Witt went to Respondent's office and hand-delivered a request for a response regarding the status of his son's case. Respondent's receptionist placed Witt's message directly on Respondent's desk; however, Respondent still made no response.

{¶42} In July or August 2013, Witt left a message for Respondent requesting, on behalf of his son, a return of the \$1,000 retainer since, in approximately seven months, Respondent had neither contacted Witt's son at the prison nor done any work on his son's case. Witt also filed a grievance with Relator on behalf of Smith.

{¶43} At that point, Witt, on behalf of Respondent's client Smith, demanded that the retainer be returned so that Smith could hire a new attorney.

{¶44} Respondent's lack of action on Smith's judicial release motion significantly delayed the process of seeking a judicial release.

{¶45} In October 2013, Witt hired a new attorney to represent his son. The new attorney confirmed that Respondent had never filed a judicial release motion on behalf of Smith.

{¶46} Respondent to date had not returned any portion of the \$1,000 retainer he accepted but did not earn, and he has never provided a response to the grievance filed by Witt despite two letters of inquiry from Relator.

{¶47} Witt filed a claim with the Client Security Fund² in the sum of \$1,000. Respondent represented to this panel that this issue would be taken care of no later than March 25, 2015, it was not.

{¶48} This panel finds by clear and convincing evidence that Respondent has violated the following rules: Prof. Cond. R. 1.1; Prof. Cond. R. 1.3; Prof. Cond. R. 1.4(a)(3); Prof. Cond. R. 1.4(a)(4); Prof. Cond. R. 8.1(b); and Prof. Cond. R. 8.4(h).

{¶49} At the conclusion of the hearing and by entry dated March 4, 2015, the panel dismissed the violation of Prof. Cond. R. 1.5(a) and Prof. Cond. R. 1.15(d).

Count V—Failure to Cooperate—Smith Fee Arbitration

{¶50} On October 28, 2013, Joshua Smith filed with Relator a request for fee arbitration.

{¶51} Relator submitted the request to Relator's Fee Arbitration Committee, an ADR procedure in which Respondent was obligated to participate under the provisions of former Gov. Bar R. V, Section 4(G).

{¶52} On October 31, 2013 and November 19, 2013, Relator sent letters by certified mail to Respondent regarding the request for arbitration.

{¶53} The return receipts indicated that Respondent received both letters.

{¶54} Respondent failed to reply.

{¶55} Due to Respondent's failure to respond to the fee arbitration request, the matter was referred to Relator's Professional Ethics Committee.

{¶56} This panel finds by clear and convincing evidence that Respondent violated the following rules: former Gov. Bar R. V, Section 4(G); Prof. Cond. R. 8.1(b); and Prof. Cond. R. 8.4(h).

² Now known as the Lawyers' Fund for Client Protection.

{¶57} This panel has determined that the violations of Prof. Cond. R. 8.4(h) in Counts II-V are justified based upon the egregious conduct of Respondent in ignoring both the fee dispute process and disciplinary process. Such flagrant conduct cannot be tolerated.

AGGRAVATION, MITIGATION, AND SANCTION

{¶58} Based upon the stipulations, exhibits, and testimony adduced at hearing, the panel finds the following aggravating factors: prior disciplinary offenses; dishonest or selfish motives; pattern of misconduct; multiple offenses; lack of cooperation in disciplinary process; failure to make restitution; and vulnerability of and resulting harm to victims of his misconduct.

{¶59} Based upon the stipulations, exhibits, and testimony adduced at hearing, the panel finds no mitigating factors.

{¶60} Respondent has a history of failing to provide clients with competent representation and fulfilling the necessary contractual obligations inherent in the attorney-client relationship. This occurred in 2000 and it has occurred once again. Respondent did not learn his lesson and he continues to harm the public. The question for the panel and the Board to determine is the appropriate sanction for a lawyer who committed misconduct in 2000 and committed similar acts once again.

{¶61} In determining whether or not a sanction is appropriate for Respondent's misconduct, all relevant factors must be considered including the duties of Respondent, the violations incurred, and the sanctions imposed in similar cases. *Stark Cty. Bar Assn. v. Buttacavoli*, 96 Ohio St.3d 424, 2002-Ohio-4743.

{¶62} Attention is directed to *Trumbull Cty. Bar Assn. v. Large*, 134 Ohio St.3d 172, 2012-Ohio-5482 where the Supreme Court of Ohio suspended Large for two years, with the final six months stayed for neglecting client matters, mishandling client funds, and failing to give notice of his prior suspension. In that case, there were no less than seven aggravating factors,

with no mitigating circumstances. In this case, Respondent committed similar acts and this panel also found seven aggravating factors with no mitigating factors.

{¶63} In *Toledo Bar Assn. v. Harvey*, 141 Ohio St.3d 346, 2014-Ohio-3675, Harvey committed misconduct similar to the conduct of Respondent. Respondent Harvey also had a prior suspension much like Respondent. Harvey received a two-year suspension, with six months stayed plus restitution.

{¶64} Based upon the foregoing, the panel recommends that Respondent be suspended from the practice of law for two years, with the final six months stayed on the condition that he complete his contract with OLAP and that full and final restitution be made to all clients and the Lawyers' Fund for Client Protection.

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 April 10, 2015. The Board adopted the findings of fact, conclusions of law, and recommendation of the panel and recommends that Respondent, Joseph Dues Reed, be suspended from the practice of law for two years, with six month stayed on conditions contained in ¶64 and 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