

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

In re:

Case No. 2014-037

Complaint against

**Mark Robert Pryatel
Attorney Reg. No. 0019678**

**Findings of Fact,
Conclusions of Law, and
Recommendation of the
Board of Professional Conduct
of the Supreme Court of Ohio**

Respondent

Cleveland Metropolitan Bar Association

Relator

OVERVIEW

{¶1} This matter was heard on December 5, 2014 in Cleveland and on February 5, 2015 in Columbus before a panel consisting of Hon. John Wise, McKenzie Davis, and Robert L. Gresham, chair. None of the panel members resides in the appellate district from which the complaint arose or served as a member of the probable cause panel that reviewed the complaint pursuant to Gov. Bar R. V, Section 11.

{¶2} Respondent was present at the December 5, 2014 hearing represented by Keith L. Pryatel and Steven E. Pryatel. Respondent was not present at the February 5, 2015 hearing in Columbus. Joseph Dunson, William Norman, and Heather Zirke appeared on behalf of Relator.

{¶3} On April 8, 2014, Relator filed its original complaint against Respondent alleging violation of the following disciplinary rules in connection with his representation of Richard Brazell in the Rocky River Municipal Court:

- 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. 8.1(a) [knowingly making a false statement of material fact in connection with a disciplinary matter];

- Prof. Cond. R. 8.4(c) [engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation]; and
- Prof. Cond. R. 8.4(d) [engaging in conduct that is prejudicial to the administration of justice].

{¶4} On June 16, 2014, Respondent filed his answer to the complaint. On November 5, 2014, Relator filed an amended complaint, alleging additional violations of Prof. Cond. R. 5.5(a) and Prof. Cond. R. 8.4(d) related to Respondent's representation of Brazell in the Cleveland Municipal Court. Respondent filed his answer to the amended complaint on November 25, 2014.

{¶5} Evidence was presented by way of testimony; Relator's Exhibits 1-6, 9-12, and 13; Respondent's Exhibits A, B, C, E, F, G, H, I, J, K, M, N, O, Q, R, and S; testimony of James Melton, Sonya Spurlock, Rhonda Melton, Richard Brazell, Michael O'Shea, Magistrate Kelly Serrat, Christine Seedhouse, Judge Brian Hagan, Michael Bracken, Respondent, and Grace Evangelo.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶6} Respondent was admitted to the practice of law in the state of Ohio on November 1, 1983 and is subject to the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

{¶7} On April 24, 2013, the Supreme Court of Ohio suspended Respondent indefinitely from the practice of law. *Cleveland Metro. Bar Assn. v. Pryatel*, 135 Ohio St.3d 410, 2013-Ohio-1537.

Count One: Representation of Richard Brazell in the Cleveland Municipal Court¹

{¶8} In May 2013, Richard Brazell was charged with a probation violation in Cleveland Municipal Court. As a result, Brazell turned himself in.

{¶9} In May 2013, Respondent met with James Melton, Rhonda Melton, and Sonya Spurlock, Brazell's step-father, mother, and girlfriend, respectively.

{¶10} Respondent had previously represented Brazell on other matters as recent as 2011 and they were discussing retaining Respondent for a new traffic offense.

{¶11} At no point during the meeting did Respondent mention his license suspension.

{¶12} During the meeting, Respondent was paid \$450, \$300 for a retainer on Brazell's current cases and \$150 for amounts owed on previous matters.

{¶13} On June 3, 2013, Respondent appeared in the Cleveland Municipal Court to represent Brazell in a traffic related offense in Cleveland Municipal Court, Case No. 2008 TRD 026794.

Count Two: Representation of Richard Brazell in the Rocky River Municipal Court on June 5, 2013

{¶14} Prior to June 5, 2013, Mr. Brazell was charged with driving under a suspended license in Rocky River Municipal Court.

{¶15} On June 5, 2013, Respondent met with Brazell in the Rocky River Municipal Court for arraignment on a driving under suspension charge.

{¶16} Brazell paid Respondent \$50 to appear in court that day.

{¶17} Respondent appeared with Brazell again before Magistrate Serrat and entered a plea of not guilty on behalf of Brazell, referenced his representation of Brazell on June 3, 2013 in Cleveland Municipal Court, and waived Brazell's right to a trial by jury.

¹ The counts identified in this report correspond to the allegations set forth in Relator's amended complaint.

{¶18} Respondent represented to Magistrate Serrat that he “would probably enter an appearance” but Brazell was pro se for the time being.

Count Three: Violations of the Ohio Rules of Professional Conduct related to representation of Richard Brazell in the Rocky River Municipal Court on July 9, 2013

{¶19} On July 9, 2013, Richard Brazell appeared in Rocky River Municipal Court for a pretrial on a driving under suspension charge.

{¶20} Brazell testified that Respondent had been his attorney throughout the matter.

{¶21} Upon arriving at Rocky River Municipal Court, Brazell waited for Respondent.

{¶22} Eventually, Respondent appeared with Brazell before Judge Brian Hagan in open court and assisted Brazell in entering a plea of no contest to an amended charge of failure to display. Other charges were nolle consistent with Respondent’s prearranged agreement with Prosecutor Michael O’Shea.

{¶23} Respondent never informed either Brazell, Judge Hagan, or O’Shea that his license was suspended.

{¶24} Immediately after accepting Brazell’s plea, Judge Hagan recalled that Respondent’s last name sounded familiar because he had just read the Supreme Court’s published disciplinary decisions. As a result, he asked his bailiff to check Respondent’s license. After checking, his bailiff confirmed Respondent’s license was in fact suspended. Accordingly, Judge Hagan left the bench and asked O’Shea if Respondent had negotiated a plea which O’Shea and he confirmed. Judge Hagan expressed that he believed Respondent’s license was under suspension and he “[thought] he [had] to report this.”

{¶25} Subsequently, after leaving the bench, Judge Hagan called Disciplinary Counsel to advise of the situation.

{¶26} In his written response to a letter of inquiry from Relator, Respondent denied representing Brazell after his indefinite suspension commenced.

{¶27} Respondent accepted payment from Brazell's family for post-suspension legal work he performed for Brazell, and provided Brazell's stepfather with a receipt for his payment.

{¶28} Respondent has been involved with OLAP since before his suspension. As of December 2014, he was attending meetings once a month.

{¶29} The panel finds by clear and convincing evidence, through exhibits and testimony, that Respondent violated the following in relation to his multiple representations of Brazell: Prof. Cond. R. 5.5(a), Prof. Cond. R. 8.1(a), Prof. Cond. R. 8.4(c), and Prof. Cond. R. 8.4(d).

AGGRAVATION, MITIGATION, AND SANCTION

{¶30} Based upon the exhibits and testimony adduced at the hearing, the panel finds the following aggravating factors: prior disciplinary offenses; a dishonest or selfish motive; a pattern of misconduct; multiple offenses; lack of cooperation in the disciplinary process; submission of false evidence, false statements, or other deceptive practices during the disciplinary process; and refusal to acknowledge the wrongful nature of conduct.

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

{¶32} Relator is requesting permanent disbarment. Respondent has not offered a specific sanction, but rather loosely argued that the panel should consider "other interim rehabilitation" or "other penalties or sanctions" besides disbarment. At best, the panel can determine, Respondent is seeking to maintain the status quo of indefinite suspension or imposing an additional indefinite suspension to run consecutively. Respondent clearly engaged in the

practice of law following imposition of an indefinite suspension which based on prior decisions by the Board and the Court call for permanent disbarment. The aggravating factors identified above only reinforce that conclusion.

{¶33} In determining whether or not this sanction is appropriate for Respondent's misconduct, all relevant factors must be considered including duties of Respondent, the violations incurred and the sanctions imposed in similar cases. *Stark Cty. Bar Assn. v. Buttacavoli*, 96 Ohio St.3d 424, 2012-Ohio-4743. Additionally, in making a final determination, evidence of aggravating and mitigating factors are considered. *Disciplinary Counsel v. Broeren*, 115 Ohio St.3d 473, 2007-Ohio-5251. We therefore direct our attention to a few relevant cases.

{¶34} In *Disciplinary Counsel v. Sabroff*, 123 Ohio St.3d 182, 2009-Ohio-4205, the Supreme Court of Ohio disbarred an attorney who continued to practice law during his interim felony suspension. *Id.* at ¶14. The Court found that less than one month after the commencement of his interim suspension, the respondent sent a letter on his son's behalf to the Cleveland Heights Municipal Court regarding a traffic infraction. *Id.* at ¶20. The respondent sent the letter on his letterhead, identified himself as "Attorney and Counselor at law," entered a not guilty plea on his son's behalf, waived all statutory time requirements, and sought the scheduling of a pre-trial. *Id.* Sabroff was disbarred for his efforts to practice law under suspension.

{¶35} In *Disciplinary Counsel v. Caywood*, 74 Ohio St.3d 596, 1996-Ohio-294, the respondent was indefinitely suspended for violating various provisions of the former Code of Professional Responsibility. One month after the commencement of his indefinite suspension, Caywood made a pre-trial appearance before a referee in Willoughby Municipal Court. *Id.* at 597. The parties in *Caywood* stipulated that the respondent cooperated with disciplinary

authorities during the case, and only engaged in the practice of law one time after the commencement of his indefinite suspension. *Id.* at 598. The Board recommended that Caywood's reinstatement eligibility date be extended eighteen months as a sanction. *Id.* Despite the stipulations, and the Board's recommendation, the Court disbarred Caywood.

{¶36} Here, Respondent's actions defy logic and reason and go beyond either actor in *Sabroff* or *Caywood*. Moreover even at the hearing, Respondent constantly contradicted himself, as well as, stood by his contention that negotiating a plea deal, speaking for a defendant in open court, and accepting a retainer did not rise to the level of practicing law.

{¶37} For the foregoing reasons and taking into account the aggravating and mitigating factors, the panel agrees with Relator's recommendation of a permanent disbarment from the practice of law.

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 June 12, 2015. The Board adopted the findings of fact, conclusions of law, and recommendation of the panel and recommends that Respondent, Mark Robert Pryatel, be permanently disbarred from the practice of law in Ohio 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