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STATEMENT OF FACTS

Relator filed a five-count disciplinary Complaint against respondent in April 2015. Counts One, Three, and Four are based on grievances filed by clients of respondent. Count Two involved respondent's failure to respond to two deposition subpoenas served upon him by the Office of Disciplinary Counsel ("ODC"). Count Five derives from respondent's failure to participate in a fee arbitration requested by a client. Each of the five counts involves a set of rule infractions that follow similar leitmotifs.

Count One (Gravely):

In April 2012, Toni Gravely consulted respondent regarding the initiation of a divorce from her long-estranged husband, who resided in West Virginia. Respondent agreed to file a divorce action for Ms. Gravely in Ohio, where Ms. Gravely had lived for over thirty years. She paid respondent an initial \$525 for the filing fee and partial retainer. From April to November 2012, however, she was unable to contact respondent, despite many attempts. During that time, Ms. Gravely received no information about her case.

In November 2012, Ms. Gravely learned that respondent had taken no action on her behalf. Her husband had filed a complaint for divorce in West Virginia, and Ms. Gravely was forced to litigate the case out of state. Respondent did not refund the fees and costs she paid him. She filed a grievance with the Office of Disciplinary Counsel ("ODC"), which was subsequently transferred to relator, and included in relator's Complaint.

Respondent filed an Answer to the Complaint in July 2014 and subsequently agreed to pre-trial Stipulations in February 2015. With respect the Gravely matter, in both his Answer and Stipulations, respondent specifically acknowledged that he had *failed to provide competent representation* [Prof. Cond. R. 1.1]; *did not act with reasonable diligence* [Prof. Cond. R. 1.3]; *did*

not keep his client reasonably informed [Prof.Cond.R. 1.4(a)(3)]; and failed to comply with his client's reasonable requests for information (Prof.Cond.R. 1.4(a)(4); and had *engaged in conduct adversely reflecting on fitness to practice law* [Prof.Cond.R. 8.4(h)].

In the Stipulations, but not the Answer, respondent also agreed that he *collected a clearly excessive fee* [Prof.Cond.R. 1.5(a)]; and *failed to deliver to a client funds and property to which the client is entitled* [Prof.Cond.R. 1.15(d)].

At the conclusion of the March 4, 2015 hearing, the panel dismissed the violation of Prof.Cond.R. 1.5(a) and Prof.Cond.R. 1.15(d).

Count Two (ODC Subpoena):

While ODC was investigating the Gravely grievance, it served a subpoena on respondent for a deposition, having received no response to its letters of inquiry. Once served with the subpoena, respondent called ODC, asked for, and was granted, a continuance to respond to the original letters of inquiry by a date-certain. Respondent did not honor the new deadline for response. ODC then served a second subpoena for deposition. Respondent did not appear for the deposition or contact ODC to explain his absence. Because relator had other matters pending regarding respondent, ODC transferred the Gravely matter to it for further action.

As to the charged violations in this Count of the Complaint respondent admitted in his Answer and in the Stipulations that he *knowingly failed to respond to a demand from a disciplinary authority* [Prof.Cond.R. 8.1(b)] and that he *engaged in conduct adversely reflecting on fitness to practice law* [Prof.Cond.R. 8.4(h)].

Count Three (Pierce):

R. Thomas Pierce paid respondent a retainer of \$5,000 to handle a domestic matter at the rate of \$250/hour. At the end of the representation, Mr. Pierce felt that respondent had not

earned the fees in the amount he had paid. When Respondent failed repeatedly to answer his calls and messages regarding the fee, Mr. Pierce submitted a request for fee arbitration to the Columbus Bar Association's Fee Arbitration Program. Respondent received notice of Mr. Pierce's arbitration request and signed an Agreement to Arbitrate Fees. Included in the Agreement signed by respondent is a provision in which the parties mutually agree that any arbitration award must be paid in full within ten days after receipt of the award.

An arbitration hearing was held on January 18, 2013. The arbitrators determined that respondent owed Mr. Pierce \$1,125. Respondent was served with notice of the award but did not pay the sum owed. After eight months elapsed with no payments, Mr. Pierce hired counsel to collect the award from respondent. Only after an additional six months passed did respondent pay the award. With deduction of the expenses he incurred for the collection attorney, Mr. Pierce received less than the awarded amount and no interest for the time respondent had withheld payment.

Respondent agreed in his Answer that he violated the terms of Gov.Bar R. V(4)(G) by not fully cooperating with an alternative dispute resolution procedure. In the Stipulations, he also agreed that he had failed *to deliver to a client funds to which he is entitled* [Prof.Cond.R. 1.15(d)] and engaged in *conduct adversely reflecting on fitness to practice* [Prof.Cond.R. 8.4(h)]. At the conclusion of the March 4, 2015 hearing, the panel dismissed the violation of Prof.Cond.R. 1.15(d).

Count Four (Smith/Witt):

Joshua Smith, an inmate in an Ohio prison, filed a grievance with relator regarding respondent's failure to carry out representation to secure a judicial-release hearing. Through a

friend, Mr. Smith paid respondent a \$1,000 retainer to file the necessary motion and to represent him in court.

For seven months, respondent failed to take any meaningful action on Mr. Smith's case. Moreover, he refused to contact Mr. Smith, Mr. Smith's friend who had paid respondent, or Mr. Smith's father, Fred Witt – despite *many* entreaties by Mr. Smith to do so. Finally, Mr. Witt, on behalf of his son, demanded that respondent return the \$1,000 retainer so that Mr. Smith could get other counsel for his case. Respondent did not respond nor did he return any of the money. Mr. Witt had to hire other counsel for his son at additional expense. Relator's letters of inquiry about these matters went unanswered by respondent.

In his Answer, respondent agreed, with respect to this Count, he had *failed to provide competent representation* [Prof.Cond.R. 1.1]; *failed to represent a client with reasonable diligence and promptness* [Prof.Cond.R. 1.3]; *collected a clearly excessive fee* [Prof.Cond.R. 1.5(a)]; *failed to deliver to a client funds and property to which the client is entitled* [Prof.Cond.R. 1.15(d)]; and *engaged in conduct adversely reflecting on his fitness* [Prof.Cond.R. 8.4(h)].

In the Stipulations, but not in the Answer, respondent also agreed that he *failed to keep a client reasonably informed* [Prof.Cond.R. 1.4(a)(3)]; *failed to comply with a client's reasonable requests for information*[Prof.Cond.R. 1.4(a)(4)]; and, *knowingly failed to respond to a demand from a disciplinary authority* [Prof.Cond.R. 8.1(b)].

At the conclusion of the March 4, 2015 hearing, the panel dismissed the violations of Prof.Cond.R. 1.5(a) [clearly excessive fee] as to Counts One and Four; Prof.Cond.R. 1.15(d) [failing to deliver promptly funds owing to a client] as to Counts One, Three and Four; and, Prof.Cond.R.8.4(h) [conduct adversely reflecting on fitness to practice] as to Count One.

Count Five (Failure to cooperate in Fee Arbitration):

Joshua Smith filed a request for arbitration of respondent's fees with the Columbus Bar Association's Fee Arbitration Program, a recognized Alternative Dispute Resolution procedure sanctioned under Gov. Bar R V(4)(G). Respondent failed to respond to two certified letters from the Fee Arbitration Committee asking him to cooperate in the arbitration process and informing him that his participation was required.

Respondent denied in his Answer, but admitted in the Stipulations, that, with respect to this Count, he: *failed to cooperate with an alternative dispute resolution procedure* [Gov.Bar R. V(4)(G)]; *knowingly failing to respond to disciplinary authorities* [Prof.Cond.R. 8.1(b)]; and, *engaged in conduct adversely reflecting on his fitness to practice* [Prof.Cond.R. 8.4(h)].

Stipulations to Aggravating and Mitigating Factors and Exhibits

As to Aggravating factors, the parties stipulated that the following were present: prior disciplinary offenses, dishonest or selfish motive, pattern of misconduct, multiple offenses, initial lack of cooperation in the disciplinary process, and failure to make restitution.

The only Mitigating factor stipulated was full and free disclosure to the Board and cooperative attitude toward the proceedings once he was represented.¹

The parties agreed to submit to the Panel 30 exhibits attached to the Stipulations.

Hearing

The Hearing Panel received the parties' Stipulations and Exhibits and heard opening statements on March 4, 2015. Respondent, now *pro se*, took the stand and was questioned extensively by all

¹ While the formal case was pending, Respondent retained former Judge Michael L. Close to represent him; however, on February 20, 2015, Close filed a Motion asking the Commission "to relieve him of further responsibility herein" and saying the "Counsel and Respondent have determined to part ways. The attorney-client is irretrievably broken . . ."

three of the Panel members and relator's counsel No further witnesses were called, and no additional exhibits were submitted.

Relator recommended a two-year suspension with no stay. Respondent recommended a two-year suspension, fully stayed. On April 13, 2015, the Board, in accord with the Panel's recommendation, issued a two-year suspension with six-months stayed.

Respondent filed his Objections in this Court on May 7, 2015. Relator filed a Motion to Strike the Objections for respondent's failure to serve them. The Court overruled relator's Motion but extended the time for relator to file an Answer to the Objections.

ARGUMENT

General:

The benign perspective of his professional misconduct that respondent urges the Court adopt in assessing this case, would suggest that his violations are modest and rest entirely upon temporary and understandable lapses of attention to detail. Respondent asks that his failures – which he attributes to a heavy workload and health issues – be forgiven and that he be allowed to continue his practice, unabated, under a fully stayed suspension.

Relator contends, however, that the record is replete with indications of very concerning patterns of professional nonchalance regarding fundamental ethical standards. Moreover, those patterns stretch back fifteen years to this Court's first dealings with respondent in *Columbus Bar Assn. v. Reed*, 88 Ohio St.3d 48, 2000-Ohio-270, a case in which respondent took a \$5,000 fee to file a delayed appeal in a criminal case, failed to file anything on his client's behalf and then refused to return the fee until the client filed a grievance. While the Court, at that time, gave respondent a six-month stayed suspension, Justice Cook authored a strong dissent in which Chief

Justice Moyer and Justice Pfeifer concurred. *Id.* at p.3. Justice Cook noted respondent's violation of "the duty of diligence that he owed to his client" and concluded that "His was a knowing violation." She opined that ". . . the mitigating factors . . . are insufficient to warrant staying Respondent's suspension." *Ibid.*

In July 2006, the Court found it necessary to suspend respondent for a second time for not fulfilling his CLE requirements. He was reinstated a month later. *In re Reed*, CLE-05-25938.

In the present case, relator has admitted in his Answer, in pre-hearing Stipulations, and in his testimony to the Panel multiple and cumulative violations of the Rules of Professional Conduct and serious harm to a number of clients.

In his Objections, however respondent now appears to disavow many of the admissions he made in the prior stages of the case. He now wants to this Court to view the matter in an entirely different light, the record below notwithstanding. Even though relator, in presenting the case, and the Hearing Panel and Board in assessing it, depended on an agreed set of facts and conclusions from those facts, he invites this Court to rely on raw assertions not tested in the earlier parts of these proceedings.

Respondent also repeatedly falls back on the concept that, over the years, he has helped more clients than he has harmed, and, thus, he should be allowed to continue to continue taking cases without any time out-of-practice. Relator suggests that this would be an inappropriate calculus to apply to the business of redressing professional misconduct – particularly so in the case of a repeat offender previously given a stay in another matter involving similar misconduct.

Respondent's Objection One (Aggravating Factors):

Here, respondent faults the Panel and Board for applying as aggravating factors that he *acted with dishonest or selfish motive* and that he *did not cooperate in the disciplinary process*,

both of which he had stipulated were present. He claims that the “record” and “all the evidence” demonstrate that he did not deserve attribution of these aggravating factors, even though he had stipulated that they were present. When asked at the hearing by a Panel member whether he was “satisfied that those . . . stipulations are in accordance with your conduct and what you believe happened,” he responded “I am.” Hr’g Tr. 27:1-4. He seems now to brush off his own pre-hearing agreements as if they did not form a part of the “record” and the “evidence” in the case. In effect, he is asking the Court for a *de novo* review of the evidence, a remedy to which he is not entitled.

Respondent’s current disavowal of his selfish conduct is belied, not only by his stipulations, but by the conduct he has acknowledged -- taking money from clients, not doing the work for which he was paid and then refusing to voluntarily return the fees he had not earned.

He defends his actions and inactions by saying the he is a “sole practitioner who was solely responsible for all work in his office” and was “struggling to serve his clients to the best of his ability.” He contends that these facts do not support “intent” to engage in the misconduct to which he has admitted. There is, however, no requirement of intent is stated or implied in aggravating/mitigating factor rule, Gov.Bar R.V(13)².

Moreover, Respondent ignored specific rules that should have guided his practice and prevented him from placing himself in a situation in which clients “fell through the cracks.” Resp. Obj. 1. Prof. Cond. Rule 1.16(a)(2) says that “a lawyer shall not represent a client, or where representation has commenced shall withdraw from the representation of a client, if any of the following applies: . . .the lawyer’s physical or mental condition materially impairs the lawyer’ ability to represent the client” The Rule also requires a withdrawing lawyer to account for any funds or property that a client . . . is entitled to receive” and “refund promptly

² Formerly BCGD Proc. Reg. (10)

any part of a fee paid in advance that has not been earned” Also, in Prof. Cond. Rule 1.3 regarding diligence in representation, Comment [2] provides, “A lawyer must control the lawyer’s work load so that each matter can be handled competently.”

Respondent’s contention that his misconduct was the product of work load and illness issues and, thus, not culpable, simply ignores his duty to not place himself in this position in the first place or to withdraw from cases when circumstances rendered him unable to diligently represent some or all existing clients. It is also contradicted by admissions in the panel hearing that his clients probably needed protection from him. Hr’g Tr. 12:1-12; 27: 1-24; 30:1-18.

Objection Two (Mitigating Factors)

Respondent also argues that he should not have been held to account for non-cooperation with the disciplinary process in spite of his stipulation that he did not fully and timely cooperate. In fact, the stipulations on this issue were bifurcated to cover his behavior in the process before and after he engaged counsel. In the earlier stages he did not fully cooperate (e.g. ignoring subpoenas from Disciplinary Counsel, failing to respond to relator regarding the Smith/Witt grievance, not participating in a required ADR procedure). He stipulated to an “initial lack of cooperation in the disciplinary process” as an aggravating factor, and relator stipulated to mitigating credit for “full and free disclosure in the Board and [a] cooperative attitude toward the proceedings once he was represented.” The Board, however, determined that there were no mitigating circumstances.

In this Objection respondent also posits that the panel and Board should have taken into account his health issues. Respondent simply failed to produce any evidence to the panel that would support leniency for these problems. As the Board’s Findings reflect that “. . . Respondent encountered a problem with pain medications that ceased sometime in October

2012” but they also hold that “Respondent had an opportunity to bring evidence into the hearing regarding his recent encounter with OLAP. However he failed to do so. Findings {¶8}.

If respondent is seeking mitigating credit based on Gov.Bar R.V(13)(7) [existence of a disorder], he failed to satisfy any of the four requisites: (a) diagnosis by a qualified health care professional; (b) determination that the disorder contributed to cause he misconduct; (c) certification of sustained period of successful treatment; and, (d) prognosis from a qualified health care professional that the attorney will be able to return to competent, ethical professional practice. Thus, the Board was justified in not recognizing health concerns as a mitigating factor in this matter.

Objection Three (“History of Misconduct”)

The Board noted respondent’s history of misconduct, pointing to his disciplinary sanction by this Court in 2000 and his subsequent CLE suspension in 2006. Findings {¶¶6,7}.

Respondent now says the Board erred in its statement that respondent has a history of failing to provide clients with competent representation and fulfilling the necessary contractual obligation inherent in the attorney-client relationship. Findings {¶60}. He contends that his prior suspensions do not constitute a “history” of misconduct even though he agreed to stipulations – under the heading “Discipline History” – acknowledging his past suspensions. Stip. {¶¶1,2}.

To bolster this semantic argument, he says that the 2000 sanction had to do with conduct “nothing like” the misconduct charged in the current case. Given that he was found in the earlier case to have received a substantial fee to perform a legal task, completely failed to do that task, and then refused to return the client’s money, it is difficult to discern how that course of conduct was materially different than his conduct in the Gravely and Smith/Witt matter.

Sanction

Respondent characterizes the sanction recommended by the Board as “too severe and inappropriate.” He believes that, in recognition of his 32 years of serving numerous clients and his reputation, he should be allowed, instead, to “perform an unspecified number of pro bono representations.”

As to his reputation, he failed to call any character witnesses to testify on his behalf at the hearing or even to submit any letters attesting to his reputation. He apparently expects the Board and the Court to accept on faith his own estimates of his competence, his reputation, and his good deeds without further evidence. His claim that he has done more good than harm in the practice of law and, therefore, deserves a break should not be entertained. Ethical conduct is not, and should not be, likened to a baseball statistic counting balls and strikes. Harm to come clients is not counterbalanced by acceptable conduct with regard to others.

Furthermore, it should also be noted that Respondent, as of the hearing date, had not repaid the Lawyer’s Fund for Client Security the sum of \$1,000. it had paid out to regarding his actions in the Smith/Witt representation. Hr’g Tr. 22: 1-16; 49:9-19.

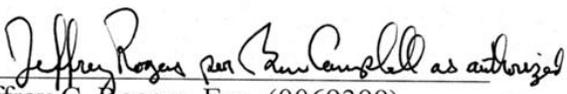
The Board recommended a two-year suspension with six months stayed. It did so in part because it found that respondent’s violations of Prof. Cond. R. 8.4(h) in Counts II through V “are justified based upon the egregious conduct of respondent in ignoring both the fee dispute process and disciplinary process.” It went on to say that “Such flagrant conduct cannot be tolerated.” Findings {¶57}.

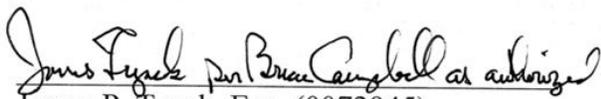
Relator agrees that the two cases cited in the Board’s findings as supportive of the sanction recommended here, *Trumble City Bar Assn. v. Large*, 134 Ohio St.3d 172, 2012-Ohio-5482 and , *Toledo Bar Assn. v. Harvey*, 141 Ohio St.3d 346, 2014-Ohio-3675, are appropriate.

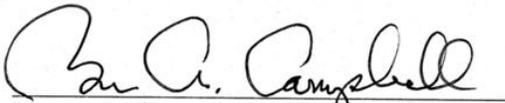
CONCLUSION

Respondent's professional conduct in the matters before the Court cannot be taken lightly. His propensity to attempt to service more clients than he can responsibly serve and to allow his personal situation to interfere with his practice without taking remedial steps when he is incapacitated constitute a danger to the members of the public he is pledged to serve competently and diligently. He should be suspended until he fully appreciates the consequences of his acts and failures to act on behalf of clients.

Respectfully submitted,


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COUNSEL FOR RELATOR

CERTIFICATE OF SERVICE

The undersigned counsel for Relator certifies that on the 10th day of July 2015, he served a true copy of this Answer to Respondent's Objections on, Joseph D. Reed, Esq. (0025938) by hand-delivery to his office address at 713 South Front Street, Columbus, OH 43206.


Bruce A. Campbell (0010802)