

IN THE SUPREME COURT OF OHIO

In re:

Complaint against

No. 2014-014

Robert H. Hoskins (0068550)

Respondent

Cincinnati Bar Association

Relator

RESPONDENT ROBERT HOSKINS'S OBJECTIONS TO FINDING OF FACT,
CONCLUSIONS OF LAW AND RECOMMENDATIONS TO THE BOARD OF
COMMISSIONERS ON GRIEVANCES AND DISCIPLINE AND TO THE ENTRY OF A
DISCIPLINARY ORDER

Relators

Respondent

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1. INTRODUCTION

This matter was heard by the panel on July 15 and 16, 2014 with a supplemental hearing on February 18, 2015. While Respondent does not object to every Finding of Fact and recommendation of the Panel, he has set forth his objections by subject matter herein.

Respondent admits that he has made mistakes and that he needs to be more vigilant in several areas of his practice; Respondent cannot, however, accept findings of fact that are contrary to the evidence introduced in this matter.

2. OBJECTIONS

I. JASON KRAUS

Mr. Kraus paid the respondent to file a Chapter 11 bankruptcy and respondent filed Chapter 11 and Chapter 13 Bankruptcy petitions for Mr. Kraus. Mr. Kraus's bankruptcy was dismissed because of his failure to produce the certificate for the credit counseling class he claims to have taken before the filing of his Chapter 11. The Board found that "Respondent failed to make his bankruptcy client, Kraus, aware of the need to complete credit counseling before filing the bankruptcy," Findings of Fact, at ¶23. Yet, Mr. Kraus clearly testified that he was aware of both the pre-filing credit counseling course and had completed the course; Mr. Kraus specifically testified that he had "received[d] instruction from Mr. Hoskins...prior to filing...to actually register and...complete the course." Kraus Tr. P. 20, L. 25 – P. 21. L.21. *See also, Id.*, at P.23 L1-4 (Mr. Kraus testifying that Respondent had asked him whether he had completed the credit counseling class before the Chapter 11 was filed).¹

Like all debtors who file Chapter 13, Mr. Kraus was sent explicit instructions from the

¹¹ Realtor's expert witness further testified that it was common practice to rely upon the client's representation that they had completed a credit counseling class or tax returns and to file them subsequent to the filing of the bankruptcy petition.

Court relative to where and when to timely make his plan payments. Respondent does not agree that Mr. Kraus's failure to timely make those payments can be attributed to respondent. *Accord* Findings of Fact ¶18.

Respondent further disagrees with the Board's opinion that he violated Prof. Cond. R. 1.4(a) as it pertained to the dismissal of Mr. Kraus's petition to reopen his Chapter 13. In the days before the scheduled hearing on that motion, Respondent advised Mr. Kraus that "We have tried to look for a solution to keep your Chapter 13 going... we need to dismiss our objection and file an [Chapter] 11." *See* Exhibit 39 (Jan. 22, 2013 email to Mr. Kraus).

Mr. Kraus did not advise respondent that he did not want to dismiss his Chapter 13. Rather, Mr. Kraus asked Respondent via e-mail if filing a Chapter 11 would again effect a stay against the foreclosure of his properties. *See* Exhibit 39, P.3. Later that same day, Mr. Kraus asked for the lists of debts to be included in his Chapter 11 so he could update and correct it prior to filing. *Id.* at P.3. At no time did Mr. Kraus advise Respondent that he wanted to try to save his fatally flawed Chapter 13.

Mr. Kraus's written responses to the suggestion that he again file a Chapter 11 to reorganize his debts stands in stark contrast this his representation to the Judge the next day that he had no intention of foregoing his attempt to reopen his dismissed Chapter 13 petition. *See* Exhibit 41 (Kraus Jan. 23, 2013 Seeking to Have His Prior Motion to Reopen his Chapter 13 Granted). While Respondent understands the Judge's concern at this issue and his need to have the client formally sign future dismissal notices, Respondent honestly and reasonably believed that Mr. Kraus consented to his course of action based on the January 22, 2013 emails that he received from Mr. Kraus and the clear fact that the dismissal of his Chapter 13 was inevitable.

Mr. Kraus's initial Chapter 11 filing was dismissed because he failed to produce the Credit Counseling Certificate that he claimed to have taken before that petition was filed. . Kraus Depo, P.30 L.23 – P.33 L.19. That dismissal coincidentally took place just a few days after Mr. Kraus and Respondent met with someone from the Trustees office about the difficulties of Mr. Kraus maintaining a Chapter 11 bankruptcy. *Id.* At that meeting, Mr. Kraus indicated that he agreed with the Trustee's recommendation that he simply let his properties go to convert his Chapter 11 to a Chapter 7 liquidation of his properties. *Id.* Mr. Kraus later decided to try to save all of his properties and desperately sought a stay on the foreclosure of several of those properties. *Id.*, at P.34 L.4-11.

Respondent had represented Mr. Kraus *pro bono* or for a token fee for several years prior to the bankruptcy filings in civil debt collection and landlord / tenant matters. *Id.*, at P.10 L.6 – P. 11 L. 20. Respondent admits that it was imprudent of him to agree to file a Chapter 11 for Mr. Kraus given his inexperience with Chapter 11 cases. Respondent further erred in allowing a frantic client to sway him to file a Chapter 13 before he was able to confirm that the client complied with the debt threshold of same.

II. GRETCHEN AMER

Respondent was hired to represent Ms. Amer in her dissolution of marriage. After her dissolution of marriage, Respondent then represented Ms Amer in obtaining a temporary and later a permanent restraining order against her ex-husband (for which Respondent charged her \$50). *See Amer Depo*, P. 14 L22-25. During this same time frame, Respondent was sued for malpractice in Hamilton County relative to a QDRO issue involving a former *pro bono* client.

Respondent advised Ms. Amer to contact Pension Evaluators to complete her QDRO in a more timely and less costly matter based on a business decision made regarding QDRO's

after being sued relative to same. After Ms. Amer approached the Cincinnati Bar Association to seek an attorney referral to draft her QDRO, a complaint regarding this issue arose.

While Respondent should have recorded his position as to QDRO's to Ms. Amer and should have formally withdrawn from her legal matter, he was never paid to complete the QDRO. Respondent admits that his failure to file a formal withdrawal from representing Ms. Amer after her dissolution was filing is a violation of Prof.R 1.3.

III. SCOTT GAMES

After being located by his Wife, I was hired by Scott Games to draft documents for a dissolution of marriage in Kentucky where I have also practiced family law for many years. After meeting with the client and updating the pleadings, Respondent advised the client on August 15, 2013 that they should meet to finalize a parenting schedule and list of assets to include with the pleadings and to otherwise finalize them. *See Games Exhibit, at P. 87.* On August 16, 2013 Mr. Games asked me to meet him at his office building the following Tuesday morning. *Id.*, at P. 115. Due to traffic and parking issues, Respondent arrived at our meeting 15 minutes late at which time Mr. Games had already left the lobby area to return to his office; Mr. Games then refused to meet to finalize the pleadings and sought other counsel. *Id.*, at P. 117.

Moreover, there was no evidence admitted at the hearing indicating that the pleadings the Respondent for Mr. Games would not have effectively dissolved his marriage other than the need to clarify the parenting schedule and create the list of debts and assets to attach to the draft pleadings that Respondent addressed with Mr. Games in the email scheduling their meeting. *See Findings of Fact, ¶26.*

Respondent asked Mr. Games to attend fee mediation with the Northern Kentucky Bar

Association although Mr. Games later denied same. Respondent refunded Mr. Games his entire fee and retainer at the hearing, although Respondent formerly believed that he was entitled to some compensation for the work that he was asked to perform by Mr. Games.

Respondent further objects to the suggestion that the fact that Mr. Games was re-paid by Respondent at a break in the hearing via a US Bank check as reflecting anything other than the fact that the closest bank that Respondent to locate at which he had funds was a US Bank. *See* Findings of Fact, ¶25.

IV. CITIZENS DISABILITY

As stated by the Board, “Citizen’s Disability, LLC” is not an attorney. *Id.*, at P. 28. Rather, Citizen’s Disability is a social security disability advocate group owned by an attorney who retains attorneys to help collect and present client’s medical records and disability claims to each Administrative Law Judge. Under each fee agreement for Ohio clients, both Respondent and an attorney from Citizen’s Disability are listed while each Notice of Representation form filed in each case lists Respondent as local counsel for another named attorney who provides the address of Citizen’s Disability on that form.

Ohio Rule of Professional Responsibility 5.4(c) dictates that “A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer’s professional judgment in rendering such legal services.” Accordingly, while Citizens Disability may assist in the efforts to gather the often massive numbers of medical records in each case, there is never an instance in which a non-lawyer directed Respondent’s representation of a client. Respondent’s association with Citizen’s Disability further comports with Ohio Rule of Professional Responsibility 5.4(d) in that Respondent understands that the company is run by an attorney and Respondent’s sole contacts

at the firm are other attorneys so nonlawyers are in a position to control Respondent's the professional judgment.

An American Bar Association ethics opinion addressed a similar matter and held that, "[w]here there is a single billing to a client in such situations... a lawyer subject to the Model Rules may divide a legal fee with a lawyer or law firm in the other jurisdiction, even if the other lawyer or law firm might eventually distribute some portion of the fee to a nonlawyer, provided that there is no interference with the lawyer's independent professional judgment." ABA Formal Ethics Opinion, 464. According to that ABA's opinion, a contrary conclusion would "unreasonably impair the ability of lawyers to work alongside lawyers in firms that may be best suited to serve a particular client or resolve a particular matter."

According to the Social Security Administration ("SSA"), an attorney admitted in any state may represent clients making a claim for social security disability. C.F.R., Title 20, Chapter III, § 404.1705. The SSA further allows that non-attorney representatives may also be appointed to represent disability claimants. *Id.* A request for a fee can only be tendered in cases where the client is granted disability benefits and each fee request must be approved by the ALJ. *Id.*, at §§404.1720-25.

Since the first hearing on this issue, Respondent has changed his arrangement with Citizen's Disability such that they later paid Respondent a flat \$350 for meeting with each client and attending their hearing with an administrative law judge.

a. Alleged Misrepresentation

Respondent further objects to the Boards contention that he made a misrepresentation to the Cincinnati Bar Association by implying that an attorney from my office met with a Mr, Loury prior to a hearing that she was covering for Respondent in Adams County, Ohio. *See*

Findings of Fact, at ¶38. Respondent advised the Bar in his letter self-reporting that the Adams County Judge suggested that Respondent may have violated his responsibilities by having an experienced, but ill-prepared attorney cover a hearing that Respondent could not attend due to a scheduling conflict. In my first letter to the Cincinnati Bar Association, I stated that Ms. Drinnon confirmed with Mr. Loury that the credit card charges were not his relative to the 60(b) motion hearing for Mr. Loury. Respondent did not address whether that brief conversation took place before or after Ms. Drinnon spoke with the Judge. Respondent in no way implied that this conversation took place before the hearing. Respondent was not trying to mislead the Cincinnati Bar Association and, when prompted by the Bar to clarify that issue, he timely did so.

Respondent has made it clear on multiple occasions that he sought assistance for Mr. Loury when his hearing was rescheduled for a date upon which Respondent was previously scheduled to appear both in a social security disability hearing in Indiana in the morning and in a Settlement Conference with Judge Dlott in federal court in Cincinnati at 1 p.m. that same day. Also note that, as Judge Spencer testified in this matter, he had advised Respondent and the rest of the Adams County, Ohio Bar that he would no longer grant continuances for scheduling conflicts prior to that hearing.

Respondent drove to Indiana on the morning of Mr. Loury's hearing only to learn that the SSD hearing was cancelled. Respondent did appear before Judge Dlott in Cincinnati that afternoon and would not have been able to timely do so if he had also attended the Loury hearing in Adams County, Ohio. If this Court deems that Respondent violated Prof. Cond. 8.4(c) was violated by Respondent's failure to later contact Judge Spencer to indicate that the Indiana hearing that Respondent drove to that morning was postponed while his 1 pm hearing

before Judge Dlott was not cancelled, Respondent accepts responsibility for that finding and his failure to clarify that issue.

V. ANGELA LONG

Respondent was asked to work with Angela Long's insurer relative to damage to her vehicle after Ms. Long and that insurer were not able to agree on the value of same. Ms. Long demanded \$1500 for the vehicle and the insurer would not pay that amount. Respondent admits that he failed to keep this client advised as to the continuing status of the impasse on this issue. Respondent should have responded to each inquiry from Ms. Long to advise her that negotiations with the insurer were still at an impasse. *See Findings of Fact*, at ¶22.

Respondent further admits that, once Ms. Long returned her signed contingency fee agreement to Respondent, he did not return a copy of that same agreement to Ms. Long which also contained his signature, *id.*, at ¶24, and that he failed to ensure that Ms. Long's file was timely returned to her upon her request. *Id.*, at ¶27.

VI. BAR REGISTRATION

Respondent admits that, at some point in time, he failed to properly update his Bar Registration data to reflect his former partnership with another Ohio attorney. *See, Findings of Facts*, ¶35. Both Respondent's website and business cards indicated that he was a solo-practitioner; the only place in which that partnership was listed was on the Ohio Bar registration. Respondent does not deny that this clerical error may violate Prof. Cond. R. 7.5(d).

V. DISCOVERY ISSUES

When the Cincinnati Bar Association sought telephone records relative to the Angela Long matter, I forwarded my cell phone records for November 2013 thru March 2014 which is the time period at issue in this matter. *See Exhibit A* (attached hereto) (Emails between

Respondent and Rosemary Welsh from January and February 2015), at p. 1. Ms. Welsh emailed me on January 27, 2015 also seeking my cell phone records for September and October 2013, *id.*, and I sent her those records. *See, Id.* at p.4-6 (also indicating that I sent her copies of my malpractice insurance declaration page as requested).

On several occasions I advised both the Cincinnati Bar Association and the panel that the IOLTA data that they sought for a certain time frame was not in my control. Rather, during that time frame I worked with the Law Offices of Danny R. Bupp who closed his practice after he was elected as the Probate/Juvenile Judge in Brown County, Ohio. *Id.* Respondent served a subpoena seeking the IOLTA data from Judge Bupp's former office manager, but Respondent never received that data. *Id.* Curiously, despite being timely and repeatedly advised that Respondent was having difficulty getting the requested IOLTA data, the Cincinnati Bar Association served subpoenas seeking data such as Respondent's phone bills, bank records and other data, but made no effort to harvest the IOLTA data that was out of Respondent's reach.

Respondent does not deny that he belatedly produced his previous working agreement with Citizen's Disability. *See Findings of Fact*, at ¶29.

3. MITIGATION

As stated by the Board of Professional Conduct, Respondent has not been subject to any prior disciplinary actions prior to the issues addressed herein since becoming an Ohio attorney in November 1998.

The incident involving Mr. Games was also filed with the Kentucky bar which imposed a 60 suspension relative to the same issues presented here. Respondent has since been reinstated to practice in Kentucky, but his Ohio license has remained suspended since April 23, 2015. While Respondent long maintained that he was due something for from this client for his time

and efforts, he now obviously wishes that he would have written a check to Mr. Games from the beginning to resolve that matter. Regardless, Mr. Games has been repaid in full and Respondent has already had his license suspended in two different states over that issue. There is no outstanding restitution owed by Respondent to any parties to the complaints addressed in this matter. Respondent has further already paid a \$500 sanction relative to a hearing he missed in Mr. Kraus's matter to the bankruptcy court.

Where Respondent's conduct has been substandard, Respondent believes that he has taken responsibility for those actions. Respondent does not believe that he purposefully misled the Bar Association nor Judge Spencer, but will obviously accept the ruling of this Court as to same.

Respondent does not believe that he acted with a dishonest or selfish motive in this matters. Respondent represented Gretchen Amer thru a very contentious post-decree restraining order against her ex-husband for a very minimal fee out of compassion for this client. Respondent's business decision to refer QDRO's out after being sued relative to QDRO issues should have been formalized in a letter and entry of withdrawal in that matter, but it was not done with a selfish or dishonest motive.

Respondent filed both a Chapter 11 and a Chapter 13 bankruptcy for Mr. Kraus because Mr. Kraus pleaded with Respondent to do so. Respondent did not seek this work from Mr. Kraus nor did he misrepresent his lack of prior experience with filing a Chapter 11. Respondent has readily admitted that it was imprudent for him to try to handle a difficult Chapter 11 filing on his own.

The email correspondence between Respondent and Mr. Kraus similarly shows that Respondent was actively trying to help Mr. Kraus (who he had help for years either *pro bono* or

for a token fee) protect his properties from foreclosure at the time his Chapter 13 was being dismissed. Respondent correctly advised his client that he could not save his Chapter 13 and reasonably began revising a second Chapter 11 for filing in a manner timely enough for the client to avoid the foreclosure of certain properties.

The Citizen's Disability issue addressed herein was not part of a complaint filed by any client. Rather, Respondent openly discussed this relationship at his deposition from the Bar Association and it is that voluntary disclosure that led to the bar complaint over that issue. Respondent has met with every client where Citizen's Disability was involved before each hearing and had ample time to review the medical records and work history data that Citizen's Disability gathered in each case. Respondent's only interaction with Citizen's Disability has been with other attorneys and his success rate for disability claims is more than twice the national average.

As noted by the Board, the "sanctions for sharing legal fees with nonlawyers have ranged from public reprimands to stay suspensions depending on the attorney's legal experience and the existence of other [m]itigating or aggravating factor." In matters where no nonattorneys determined the client's objectives and the party with whom fees were shared actually did substantial work to earn the fee other than just referring clients, public reprimands or stayed suspensions appear to be the norm. See, e.g., *Disciplinary Counsel v. Williard*, 123 Ohio St.3d 15, 2009-Ohio3629 and *Cincinnati Bar Assn v. Rinderknecht*, 79 Ohio St.3d 30, 1997-Ohio-309.

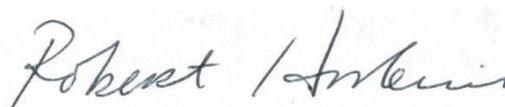
Stayed suspensions have often been given in matters similar to the claims in this matter. In *Disciplinary Counsel v. Darenell*, the Respondent was suspended for one year, with the entire suspension stayed for failing to properly prepare and maintain records of his client trust account and for failing to cooperate in the ensuing investigation. 140 Ohio St.3d 67, 2014-Ohio-3161. In

Disciplinary Counsel v. Simpson, Respondent received a one year stayed suspension for engaging in professional misconduct by failing to respond to a client's requests for information, failing to deliver funds to a client, and failing to cooperate in the disciplinary process. 138 Ohio St.3d 94, 2014-Ohio-54.

In *Disciplinary Counsel v. Turner*, the Respondent be suspended for two years all stayed on the condition that Respondent engage in no further misconduct after Respondent deposited personal funds into his client trust account, used that account for his personal and business expenses, and failed to cooperate in the ensuing investigation. 140 Ohio St.3d 109, 2014-Ohio-3158.

Respondent recognizes that has made mistakes. Respondent maintains that the issues addressed herein are not indicative of the service that he generally applies to clients. Respondent maintains that either a 12 month suspension with 12 months stayed is appropriate or, in the alternative, that Respondent be placed on a probationary period such that he must make monthly reports to an Ohio judge or attorney as to his work with each client.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that I mailed a copy of the foregoing to the relators his 14th day of July 2, 15 via US Mail.

Robert Hoskins

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