

IN THE SUPREME COURT OF OHIO

TRUMBULL COUNTY BAR ASSN.)	CASE NO. 2018-0250
)	
Relator)	Disciplinary Case/On Report of
)	Board of Professional Conduct of the
vs.)	Supreme Court of Ohio
)	
JOHN HAROLD LARGE)	
)	
Respondent)	

**RESPONDENT JOHN HAROLD LARGE'S
OBJECTIONS TO THE REPORT
AND RECOMMENDATION OF
THE BOARD OF PROFESSIONAL CONDUCT
OF THE OHIO SUPREME COURT**

COMSTOCK, SPRINGER & WILSON CO., LPA
THOMAS J. WILSON (#0009125)
Trial Counsel
100 Federal Plaza East, Suite 926
Youngstown, Ohio 44503-1811
Telephone: (330) 746-5643
Email: tjw@csandw.com
ATTORNEYS FOR RESPONDENT
JOHN HAROLD LARGE

RANDIL J. RUDLOFF
151 East Market St.
P.O. Box 4270
Warren, Ohio 44482
COUNSEL FOR RELATOR
TRUMBULL COUNTY BAR ASSN.

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I. Introduction

Pursuant to Gov. Bar R. V(17)(B), respondent John Large objects to the Board of Professional Conduct's recommendation of permanent disbarment. The case arises from John Large's neglect in his handling of two separate cases for separate clients. In one case, John Large never received a fee and, the facts will demonstrate, the clients were left in no worse position than if John Large had not been retained. In the second case, John Large received a \$2,500 retainer and, based on conflicting versions of events, filed a lawsuit that in all likelihood was destined to fail. In both of these cases, there are no allegations that John mishandled client funds, committed an illegal act, or had a selfish or dishonest motive.

Relator, The Trumbull County Bar Association Certified Grievance Committee filed this complaint without seeking an interim remedial supervision of respondent. The panel considered this disciplinary matter, heard the testimony of the complainants and the respondent John Large, and recommended an indefinite suspension. The Board of Professional Conduct modified the panel's recommendation to recommend permanent disbarment. As these objections will demonstrate, the extreme sanction of permanent disbarment is unjustified based on the facts of the case, which lack any allegations of unlawful or criminal behavior, misuse of client funds, or intentionally deceptive conduct. In this case, a sanction of permanent disbarment is extreme and does not align with the allegations against John Large. Thus, a less severe sanction than permanent disbarment should be imposed.

II. Statement of the case and facts

A. John Large's representation of the Sargeants

On December 11, 2015, John Large received a phone call from Nancy Sargeant. (Tr. at

22). Mrs. Sargeant previously represented herself in two small claims cases in Warren Municipal Court against the Cooks and obtained judgments in those case. (Tr. at 22). In addition, she filed a third case with similar allegations pending against the Cooks in the same court. (Tr. at 22). She wanted to retain Large to collect the two judgments and assume the handling of the third case. The third case was scheduled for trial on December 16, 2015. (Tr. at 234-235). The Sargeants signed a fee agreement and disclosure of no professional liability insurance. (Tr. at 26).

With the knowledge of Mrs. Sargeant, Large filed a notice of appearance and a motion to continue the trial date. (Tr. at 26). Trial was rescheduled for March 2, 2016. However, Large had a previously scheduled criminal hearing in another county that same date. Large requested and was granted a continuance of the Sargeant hearing until March 23, 2016. (Tr. at 108). He confirmed the new hearing date with Mrs. Sargeant. (Tr. at 108).

Large operates his law office without administrative staff and, for reasons he cannot explain, miscalendared the March 23 hearing date. (Tr. at 109). On March 23, the Sargeants traveled from their home in Morgantown, WV for the hearing in Warren, OH. (Tr. at 29). When the case was called, Large was not in attendance. (Tr. at 30). Neither the Sargeants nor the court attempted to contact Large. (Tr. at 110, 115). The Sargeants voluntarily went forward with their case without Mr. Large and represented themselves as they had in their two earlier small claims cases against the Cooks. (Tr. at 231). The court granted them another \$225.00 against the Cooks, which represented a portion of the damages they sought. (Tr. at 231).

After the hearing, the Sargeants asked Large to withdraw as their counsel. (Tr. at 31). He filed a notice of withdrawal on March 24, 2016. (Tr. at 31). After Large explained to the

Sergeants their right to file objections to the small claims court's decision, the Sergeants asked Large to file objections on their behalf. (Tr. at 33). Large did so. The objections were overruled. (Tr. at 35, 238). The court affirmed its decision to award the Sergeants a portion of the amount they sought from their long-time defendants, the Cooks. (Tr. at 35, 113).

Next, the Sergeants filed a small claims complaint against Large for legal malpractice and inappropriate handling of their claim. (Tr. at 233). The case was transferred to the Warren Municipal Court docket. In a bench trial the court found in favor of Large and entered judgment in his favor. (Tr. at 233). The Sergeants did not appeal that decision. (Tr. at 233).

B. John Large's representation of John Baryak

Large's professional relationship with Baryak began in 2014, when he successfully represented Baryak in two Board of Elections cases. (Tr. at 35-36). In 2014, the City of Newton Falls repealed a tax credit given to residents who paid taxes to a municipality in which they were employed. (Tr. at 35-36). Bruce Moore and Werner Lang, residents of Newton Falls, circulated a referendum petition to get the repeal on the ballot in the November election. (Tr. at 35-36). Large acted on Baryak's behalf by filing a written protest with the Board of Elections alleging the referendum petition was defective. (Tr. at 35-36). The Board of Elections accepted Mr. Baryak's protest and removed the referendum from the ballot. (Tr. at 35-36). Moore and Lang then filed a protest with the Board of Elections claiming Baryak was not a resident of Newton Falls. (Tr. at 35-36). Large represented Baryak before the Board of Elections, which found in favor of Mr. Baryak and dismissed the protest. (Tr. at 35-36).

Based on the actions of Moore and Lang in the Board of Elections matters, Baryak consulted Large about seeking legal recourse for their actions against him. (Tr. at 37). After

reviewing the available evidence and at the direction of Baryak, Large filed a complaint on Baryak's behalf against Moore and Lang in the Trumbull County Common Pleas Court on December 23, 2014. (Tr. at 38). Baryak signed an hourly fee agreement and acknowledgement that Large did not maintain professional liability insurance. (Tr. at 37). Baryak paid Large a retainer fee of \$2,500. (Tr. at 37). Baryak told Large that he did not need to provide him regular contact about the case. (Tr. at 78).

Large admits after filing the case, Moore propounded discovery upon Baryak, including requests for admissions, to which Large did not respond. (Tr. at 45). He also admits he did not conduct any of his own discovery in the case. (Tr. at 43). Finally, Moore filed a motion for summary judgment. (Tr. at 45). Large consulted with Baryak about filing a Civ. R. 41(A) dismissal without prejudice and Baryak approved. (Tr. at 80-81). He filed the voluntary dismissal on November 16, 2015. (Tr. at 49).

Large refiled Baryak's lawsuit on March 15, 2016. (Tr. at 52). Moore, through counsel, issued discovery to Baryak in the second case, including requests for admissions. (Tr. at 55). When Large did not file timely responses, Moore filed a motion to have the requests for admissions deemed admitted. (Tr. at 57). In response, Large filed a motion for extension of time to respond to discovery. (Tr. at 57). The court held a hearing on the motion and ordered that some of the admissions were deemed admitted. (Tr. at 63). Moore then filed a motion for summary judgment. (Tr. at 63). Large discussed the case with Baryak and explained that while the lawsuit had merit, Baryak would not be able to prove damages, an essential element of his claims. (Tr. at 85-86). Baryak agreed that Large could dismiss the case for a second time on October 4, 2016. (Tr. at 87).

On November 16, 2016, Moore filed a motion for sanctions. (Tr. at 66). Large intended to file a response prior to the hearing date, but never received notice that a hearing on the motion was set. (Tr. at 68). The court conducted a hearing and Large did not attend. He subsequently learned the court conducted the hearing when the court issued a judgment entry granting the motion and setting a hearing to determine the amount of the sanctions. (Tr. at 69). Large filed a motion to vacate the court's decision awarding sanctions. (Tr. at 92-93). On February 14, 2017, Large attended the hearing on his motion to vacate and to determine sanctions. (Tr. at 93). Even though Moore did not move for sanctions in the original case, the court imposed sanctions against Baryak in the amount of \$10,306 for the original case, jointly and severally against Baryak and Large for legal fees in the amount of \$13,610 for the refiled case, and expenses for the entire case of \$1,543.92. (Tr. at 94). At Baryak's request, Large appealed the trial court's decision to grant sanctions. The Eleventh District Court of Appeals affirmed the trial court's grant of sanctions. *Baryak v. Lange* 2017-Ohio-9348.

C. Prior disciplinary actions against Large

John Large was the subject of two prior disciplinary matters. The first, in 2009, arose from Large's failure to file personal income tax returns and report income of his employees to the IRS. He received a twelve-month suspension. (Tr. at 20). Large was thereafter reinstated to the practice of law. The second disciplinary matter occurred in 2012. It involved allegations related to three separate clients for failing to use reasonable diligence and failing to keep clients informed. John received an eighteen-month suspension with six months stayed. Tr. at 21. He was reinstated to the practice law on June 14, 2014. Report and Recommendation, ¶ 11.

D. The panel hearing and report and recommendation

On August 21, 2017, a panel consisting of Lisa A. Eliason, Hon. William A. Klatt, and Tim L. Collins heard Relator’s disciplinary complaint. John Large, Nancy Seargeant, and John Baryak testified. The panel considered the testimony of Large, Seargeant, and Baryak and reviewed Large’s prior disciplinary matters. It considered the Relator’s recommendation to suspend Large for two years with no time stayed.

The panel, however, concluded a more “secure” sanction was warranted because “prior discipline . . . has not changed the professional behavior for which he has been sanctioned as the conduct herein is similar, if not identical to, the prior disciplinary matter he has been involved.” Report and Recommendation, ¶ 49. The panel unanimously recommended a sanction of an indefinite suspension, that Large be ordered to make restitution to Baryak of the \$2,500 retainer, and reimburse Baryak for any amounts Baryak is ordered to pay in sanctions in Baryak’s case. *Id.* ¶ 54.¹ In addition, the panel recommended that if Large is reinstated, he will be required to work with a mentoring attorney to ensure his compliance with Ohio Rules of Professional Conduct and to monitor Large’s law practice. *Id.* ¶ 55.

E. The Board of Professional Conduct imposes the most severe sanction

On February 9, 2018, the Board of Professional Conduct considered the matter, the panel’s report and recommendation. The board disregarded the recommendations of both the Relator and the panel that heard the evidence and testimony and instead recommended the most severe punishment: John Large’s permanent disbarment. In support of its recommendation, the

¹ At the time sanctions were ordered John Baryak had a policy of liability insurance coverage with the same carrier (Erie Insurance) as did the defendant Moore whose counsel sought sanctions from the trial court. As a result John Baryak was not required to pay any sanctions as ordered by the trial court. John Large will satisfy the order of sanctions against him with an agreed payment of \$5,000.00.

board relied on *Toledo Bar Ass'n v. Harvey*, 150 Ohio St.3d 74, 2017-Ohio-4022, 78 N.E.3d 875. Because of the misconduct in this case and Large's prior discipline, the board concluded Large had a "clear and continuing disregard for his professional obligations" and "conduct from which the public must be protected." Report and Recommendation, p. 18.

III. John Large objects to the board's recommendation of permanent disbarment because his conduct does not constitute the most egregious misconduct for which permanent disbarment should be reserved

While the board states its decision furthers the goal of sanctions to protect the public, the courts, and the legal profession, permanently disbarring John Large in this case is unwarranted and excessive. While John Large's conduct demonstrates less than stellar office practice, there is a complete lack any evidence of intentional deception, unlawful or criminal conduct, misuse of client funds, or mental health or addiction issues. Permanent disbarment should be reserved for only the most egregious conduct. In this case, a less severe sanction than permanent disbarment will achieve the Ohio Supreme Court's goals and will permit Attorney Large to someday resume his professional career.

In modifying the panel's recommendation of indefinite suspension, the Board of Professional Conduct stated it was relying on *Toledo Bar Ass'n v. Harvey*, 150 Ohio St. 3d 74, 2017-Ohio-4022, 78 N.E.3d 875. It apparently did so because Harvey was permanently disbarred after two prior suspensions arising from similar conduct. Although *Harvey* has some factual similarities to this case, in that Attorney Harvey was permanently disbarred for his third disciplinary matter, the case is mostly distinguishable. Attorney Harvey's conduct and the circumstances of his case were much more egregious than that of John Large and the case should not stand as precedent for permanent disbarment based solely on the existence of prior discipline

for similar misconduct, particularly when that misconduct does not consist of unlawful conduct.

Attorney Harvey demonstrated an egregious pattern of disregard for the legal profession and the interests of his clients. In his first disciplinary matter, Harvey was charged with neglect in handling twelve separate bankruptcy matters for clients. *Id.* ¶ 2. He was suspended for one year, but his suspension was stayed. *Id.* Less than two years later, in his second disciplinary matter, he was charged with misconduct in handling four separate client matters. *Id.* ¶ 3. His misconduct included mishandling client trust accounts and refusing to pay an arbitration award arising from one client's fee dispute with Harvey. *Id.* He was suspended for two years with six months stayed on conditions. *Id.* Harvey failed to comply with this suspension order, which remained in effect. *Id.* ¶ 4. When the Toledo Bar Association filed an amended complaint against Harvey, he failed to cooperate in the third disciplinary matter. *Id.* ¶ 5. In imposing Harvey's sanction, this court concluded:

Here, Harvey failed to return unearned fees, which . . . is tantamount to theft of client funds. He has a history of misconduct, including a pattern of not simply neglecting clients but abandoning them. And as the board found, he "has a history of not complying with orders of the Supreme Court of Ohio and ignoring the requirements associated with the disciplinary process." Considering this grievous misconduct, our precedent, the profusion of aggravating factors, and the absence of any mitigating factors, we hold that he is not fit to practice law in Ohio and that disbarment is therefore the only appropriate sanction.

Id. ¶ 23.

John Large's case is distinguishable from *Harvey*. There are no allegations that John Large failed or refused to return unearned fees. If, as part of Large's sanction he is ordered to return the \$2,500 retainer he received from Baryak, he will do so. John Baryak hired Large after Large successfully represented Baryak before the Trumbull County Board of Elections. Baryak

then wanted legal recourse against Moore and Lang for the actions before the Board of Elections. Large testified he discussed the first voluntary dismissal with Baryak and Baryak approved. In the refiled case, he met with Baryak to go over discovery, albeit after opposing counsel filed a motion to deem requests for admissions admitted. When faced with a motion for summary judgment, Large discussed with Baryak the fact that while the case had merit, Baryak would be unable to prove damages. Thus, Baryak approved of the dismissal of the refiled case. Large maintains that he did not receive notice of the hearing on Moore's motion for sanctions. When he discovered the court held a hearing on the motion in his absence, Large filed a motion to vacate the decision. He also attended the hearing to determine the amount of sanctions. He did not abandon Baryak but took action to rectify the situation. Indeed, at Baryak's request, Large represented Baryak in the appeal to the Eleventh District Court of Appeals on the trial court's grant of sanctions.

With respect to the Sargeants, they did not pay any fees to John Large. There was no evidence that Large's actions in the Sargeant's case had a negative impact. The Sargeants retained Large to collect on two judgments against the Cooks they had already obtained acting *pro se* and to assume the handling of a third case against the Cooks in which were acting *pro se*. The only remaining task in that third case was a small claims court hearing, which, admittedly, Large missed because he miscalendared the date. The result was that the Sargeants proceeded with a case they had already been handling on their own, and obtained an additional judgment against the Cooks. Large filed objections on their behalf following the missed hearing. Moreover, when the Sargeants sued Large for legal malpractice and inappropriate handling of their claim, the court found in favor of Large. While Large demonstrated neglectful conduct in

the Baryak and Seargeant matters, he did not abandon his clients.

Finally, John Large has no history of failing to comply with orders of the Ohio Supreme Court. He fully complied with the terms of his previous suspensions and was reinstated to practice. Unlike the attorney in *Harvey*, John Large has not engaged in conduct “tantamount to theft of client funds.” He has not abandoned his clients. He has not thumbed his nose at this court with respect to his previous disciplinary matters. While he has engaged in neglectful conduct deserving of a sanction, his conduct is not so egregious that permanent disbarment is the only option.

Historically, permanent disbarment has been imposed only for the most deplorable professional misconduct. For example, this court has held: “We reserve the ultimate sanction of permanent disbarment for the most egregious misconduct.” *Disciplinary Counsel v. Hoskins*, 119 Ohio St.3d 17, 2008-Ohio-3194, 891 N.E.2d 324, ¶ 92. Hoskins was an attorney who also served as a common pleas court judge. *Id.* ¶1. He was accused of numerous improper acts “including attempting to conceal a possible conflict of interest and to benefit secretly from the illegally acquired funds of a known felon.” *Id.* ¶ 2. The Board of Professional Conduct found, and this court agreed, that Hoskins acts “were conscious and deliberate and committed with the intent of deceiving his clients, the probate court, and successor counsel.” *Id.* ¶ 68. The court concluded that only the “full measure of our disciplinary authority” could meet Hoskins’ malfeasance. *Id.* ¶ 96.

John Large recognizes that this is his third disciplinary matter and a sanction is warranted. He objects to the board’s recommendation that he deserves the “ultimate sanction” reserved for the most egregious conduct. Permanent disbarment should not be imposed solely

because a respondent appears in his third disciplinary matter. In *Disciplinary Counsel v. Cicero*, 143 Ohio St.3d 6, 2014-Ohio-4639, 34 N.E.3d 60, Attorney Cicero was indefinitely suspended as a result of his third disciplinary matter. In his first disciplinary matter, Cicero was suspended for one year for insinuating that he was having sex with a judge he practiced before. *Id.* at 7. In the second disciplinary matter, he was suspended for a year for disclosing a potential client's confidential communications. *Id.* at 7. In the third matter, Cicero got a speeding ticket and then obtained a blank, signed judgment entry from the arraignment court judge and used it to reduce his speeding charge. He also falsely represented to the court and prosecutor's office that a prosecutor approved the reduced charge.

The court noted numerous aggravating factors, no mitigating factors, and Cicero's multiple instances of misconduct. *Id.* at 12. The board recommended permanent disbarment. This court, however, noted that Cicero's disciplinary history was not based on dishonesty, misrepresentation, or fraud. *Id.* "To be sure, Cicero's repeated disciplinary violations are troubling. But the mere fact that this is Cicero's third disciplinary sanction does not necessarily mean that his misconduct merits permanent disbarment." *Id.* at 13. Instead, the court indefinitely suspended Cicero. *Id.*

Similarly, in *Columbus Bar Ass'n v. Boggs*, 129 Ohio St.2d 190, 2011-Ohio-2637, 951 N.E.2d 65, Attorney Boggs was being disciplined for the third time. The allegations included failure to notify clients that he lacked professional liability insurance and failure to provide adequate representation in five separate matters. *Id.* ¶ 4-9. Although the current matter involved similar conduct as his prior disciplinary matters, the court indefinitely suspended Boggs, with reinstatement conditioned on completion of continuing education in law office management. *Id.*

¶ 32.

In *Harvey*, the board noted Attorney Harvey showed “very little respect” for the disciplinary process and refused to comply with a prior suspension order. Indeed, Harvey failed to file objections to the recommended sanction. The Board distinguished Harvey from the attorney in *Boggs*, where the attorney misused his client trust account and failed to return unearned funds, but “exhibited a cooperative attitude” toward the disciplinary process. *Id.* ¶ 9. In this case, the allegations against John Large are less egregious than in *Harvey*, as Large was never accused of misusing client funds or his trust account, fully complied with the conditions of his prior suspensions, and cooperated with the disciplinary process.

The court’s permanent disbarment sanction in *Harvey* was intended to protect the public from the repeated deceptive transgressions of an attorney who did not appear amenable to rehabilitation. John Large does not fit the description of an attorney who has engaged in repeated unlawful, deceptive, or fraudulent act or intentionally misleading professional conduct. Compare the board’s recommended sentence for John Large to that of former Ohio Attorney General Marc Dann. *Disciplinary Counsel v. Dann*, 134 Ohio St.3d 69, 2012-Ohio-5337, 979 N.E.2d 1263. While serving as Ohio Attorney General, Dann engaged in conduct which resulted in first-degree misdemeanor counts of soliciting improper compensation and filing false financial disclosures. *Id.* ¶ 3. He was found guilty of both counts. *Id.* Despite being convicted of crimes committed while serving public office and prior discipline, Dann was sanctioned with his license being suspended for six months. *Id.* ¶ 32.

John Large recognizes that every case has its own set of facts, including aggravating and mitigating factors. But in this case, the relator Trumbull County Bar Association recommended a

two-year suspension with no time stayed. The panel, which heard the testimony of Baryak, Seargeant, and Large, recommended the more secure sentence of indefinite suspension. John Large believes that following a suspension with the necessary continuing legal education, he can return to the practice of law with a mentor or monitor in place. Ohio disciplinary law does provide that “multiple disciplinary cases involving similar misconduct” may warrant more severe sanctions, but in John Large’s case, neither his prior discipline nor the present case warrant permanent disbarment.

IV. Conclusion

This court should not adopt the board’s recommended sanction of permanent disbarment and should instead reserve permanent disbarment as the ultimate sanction for the most egregious conduct. John Large’s conduct is deserving of a sanction, but one imposing an appropriate suspension with conditions for reinstatement that require him to address and correct his past mistakes. Accordingly, respondent John Harold Large objects to the board’s recommendation of permanent disbarment and respectfully requests this court order a less severe sanction.

Respectfully submitted,

/s/Thomas J. Wilson

COMSTOCK, SPRINGER & WILSON CO., LPA
THOMAS J. WILSON
Trial Counsel
Registration No. 0009125
100 Federal Plaza East, Suite 926
Youngstown, Ohio 44503-1811
Telephone: (330) 746-5643
ATTORNEYS FOR RESPONDENT

CERTIFICATION

A copy of the foregoing Objections has been forwarded by regular U.S. Mail this 26th day of March 2018 to:

Trumbull County Bar Association
Randil J. Rudloff, Esq.
151 East Market Street
P.O. Box 4270
Warren, Ohio 44482

Kevin P. Murphy, Esq.
Chairman
108 Main Avenue S.W.
Suite 500
Warren, Ohio 44481

/s/Thomas J. Wilson

COMSTOCK, SPRINGER & WILSON CO., LPA
THOMAS J. WILSON
Trial Counsel