

IN THE SUPREME COURT OF OHIO

Disciplinary Counsel,

Relator,

v.

Jason Allan Sarver,

Respondent.

Case No. 2020-0229

On Certified Report by the
Board of Professional
Conduct

RESPONDENT'S OBJECTIONS

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STATEMENT OF FACTS

Respondent, Jason Allan Sarver (“Respondent”), Attorney Registration No. 0082073, was admitted to the practice of law in Ohio on November 5, 2007. On November 28, 2018, Sarver was sanctioned and his license suspended for a period of two year, with 18 months of the suspension stayed on condition. *Disciplinary Counsel v. Sarver*, 155 Ohio St.3d 100, 2018-Ohio-4717.¶3. (*Sarver I.*)

On June 23, 2018, Jessica Mustin (“Jessica”) was killed when her vehicle collided with another vehicle that was traveling the wrong way on a highway in Cleveland, Ohio. Jessica was pronounced dead at the scene. The driver of the other vehicle was Usman Akram (“Akram”). (Stip. Exs. 4 and 5.) Jessica was survived by her mother, Juanita Mustin (“Mustin”), a four-year old child, and Jessica’s boyfriend Anthony Hodge (“Hodge”). The father of the minor child is Jerome A. Watkins, Sr. (“Watkins”). (Stip. Ex. 6.)

On or about June 25, 2018, Jessica’s mother, Juanita Mustin (“Mustin”), retained Respondent to file a wrongful death action against Akram. Mustin had been referred to Respondent by Hodge. (Stip. Exs. 7 and 8.) On June 30, 2018, Mustin signed a contingency fee agreement with Respondent. (Stip. Exs. 6 and 9.)

On July 16, 2018, Respondent advised Akram’s insurance company, Allstate Insurance (“Allstate”), that he represented Jessica’s estate. (Stip. Ex. 10.) On August 21, 2018, Allstate offered a policy limits settlement of \$50,000. (Stip. Ex. 11, Pg. 8.)

Respondent advised Mustin of the settlement offer, but initially advised her that all proceeds from the settlement, minus his attorney fees and reimbursement for any advanced

costs, would be held in trust for Jessica's minor child (Mustin's grandchild). Respondent also advised Mustin that he would need to complete some paperwork for the probate court.

On or about August 29, 2018, Mustin and/or Watkins filed an Application for Crime Victim Compensation (CVC) with the Crime Victim Services (CVS) Section of the Ohio Attorney General's Office. (Stip. Ex. 12.) On September 5, 2018, CVS sent Mustin a letter requesting additional information in connection with her CVC application. (Stip. Ex. 13.) On September 6, 2018, Respondent accepted the \$50,000 settlement offer from Allstate on behalf of Mustin. (Stip. Ex. 11, Pgs. 7 and 8.)

In late September or early October 2018, Respondent prepared and had Mustin sign an *Application for Authority to Administer Estate*, an *Application to Approve Settlement and Distribution of Wrongful Death and Survival Claims*, an *Entry Approving Settlement and Distribution of Wrongful Death and Survival Claims*, a *Report of Distribution of Wrongful Death and Survival Claims*, and documents related to the Ohio Department of Taxation concerning Jessica's estate. (Stip. Exs. 14, 15, 16, 17 and 18.) The *Report of Distribution of Wrongful Death and Survival Claims* indicated that the \$50,000 settlement would be disbursed as follows:

- \$500 to Mustin for fiduciary fees;
- \$16,665 to Respondent for attorney fees; and
- \$32,835 to a trust for the minor child.

(Stip. Ex. 17.)

On October 15, 2018, Respondent went to the Cuyahoga County Probate Court to file the probate court paperwork that he had prepared. While there, he spoke with Magistrate Mary Haas McGraw. However, the only document that Respondent filed that

day with the probate court was the *Application for Authority to Administer Estate*. The *Application to Approve Settlement and Distribution of Wrongful Death and Survival Claims, Entry Approving Settlement and Distribution of Wrongful Death and Survival Claims, Report of Distribution of Wrongful Death and Survival Claims*, and documents for the Ohio Department of Taxation were never filed. (Stip. Exs. 14 and 19.)

On October 16, 2018, Respondent spoke with Shawn Moser (“Moser”), an Economic Loss Investigator with CVS, and verbally advised him that he represented Mustin with respect to the CVC application. Moser advised Respondent that he needed to submit a written notice of representation, but that he would send him a copy of the letter that CVS had sent Mustin on September 5, 2018. On the same day, Moser forwarded Respondent a copy of the September 5, 2018 letter that CVS had sent to Mustin. (Stip. Exs. 20 and 21.)

On November 6, 2018, the *Application for Authority to Administer Estate* was granted on condition that Mustin give bond in the amount of \$10,000. (Stip. Ex. 19.) On November 15, 2018, Respondent paid \$100 to obtain a \$10,000 bond from Western Surety Company for Mustin. (Stip. Ex. 42).

On November 15, 2018, Respondent notified Moser in writing that he represented Mustin, Watkins, and the minor child regarding their CVC application. He also provided the additional information that had been requested by the September 5, 2018 letter. (Stip. Ex. 22.)

On November 26, 2018, Mustin was appointed fiduciary of Jessica’s estate. (Stip. Exs. 19 and 23.) Two days later, on November 28, 2018, the Supreme Court of Ohio suspended Respondent from the practice of law. Respondent is currently under suspension. (Stip. Exs. 2 and 3.)

The Court's November 28, 2018 suspension order required Respondent to notify all clients and courts in which he was counsel of record of his suspension within 30 days of his suspension. These notices were to be sent via certified mail. (Stip. Ex. 3.) Respondent did not notify Mustin or the Cuyahoga County Probate Court of his suspension and subsequent disqualification to act as counsel of record for the Estate of Jessica Mustin within 30 days of the Supreme Court of Ohio's November 28, 2018 suspension order. The parties agree that Respondent notified the Cuyahoga County Probate Court of his suspension and subsequent disqualification to act as counsel of record for the Estate of Jessica Mustin on April 4, 2019. (Stip. Ex. 38.) Respondent failed to notify Moser or anyone at CVS of his suspension and subsequent disqualification to act as counsel with respect to Mustin's CVC application. Instead, on November 30, 2018, Respondent sent Moser a copy of the letter appointing Mustin as fiduciary of Jessica's estate and stated, "As additional information becomes available to our office, you will be advised. We look forward to working with you on this claim." (Stip. Ex. 25.) Respondent failed to notify Allstate of his suspension and subsequent disqualification to act as counsel for the Estate of Jessica Mustin. Instead, on November 30, 2018, he sent Allstate a copy of the letter appointing Mustin as fiduciary of Jessica's estate, stated that he would be sending the settlement release soon, and inquired into when the settlement check would be released. (Stip. Ex. 11, Pgs. 1 and 2.)

On November 30, 2018, Respondent emailed the settlement release to Allstate. On the release, Respondent signed Mustin's name and notarized his own signature. (Stip. Exs. 28 and 29.)

On December 3, 2018, Allstate notified Respondent that the settlement check had been issued. The check was jointly issued to the Estate of Jessica Mustin and Sarver Law, LLC. (Stip. Ex. 11, Pg. 1; Stip. Ex. 31.) Having not yet received the check, on December 6, 2018, Respondent emailed Allstate and inquired into the status of the settlement check. He also inquired into an “Affidavit of No Insurance” that he had provided to Allstate prior to his suspension. Respondent did not, however, notify Allstate of his suspension. (Stip. Ex. 11, Pg. 1.)

On or about December 10, 2018, Respondent received the \$50,000 settlement check from Allstate. (Stip. Ex. 30, Pgs. 5, 9, and 10.) Respondent signed the back of the check on behalf of his firm. Respondent also signed Mustin’s name on the back of the check on behalf of The Estate of Jessica Mustin. (Stip. Ex. 30.) On December 10, 2018, Respondent deposited the \$50,000 check into his IOLTA account at Chase Bank. (Stip. Ex. 30, Pgs. 5, 9, and 10.)

On or about December 12, 2018, Respondent contacted Mustin and stated that he had a partial distribution for her from the settlement. When Mustin questioned why she was receiving a partial disbursement from the estate, Respondent stated something to the effect of it was “just a little something” to get her through her first Christmas without her daughter.

On December 13, 2018, Respondent met Mustin in person for the first time. Mustin’s other daughter (Jessica’s older sister) was also present for the meeting. (*See* Stip. Ex. 8.) During the meeting, Respondent gave Mustin a check for \$4,734. The disbursement of \$4,734 was made without probate court approval. (Stip. Ex. 29, Pg. 14.) During the meeting, Respondent and Mustin discussed making a partial distribution to Hodge c/o Earth Temple, a 501(c)

corporation registered to Hodge. Mustin, after an exchange between her daughter and Respondent, consented to a \$2,000 distribution to Hodge.

Starting on December 12, 2018 and continuing until at least March 29, 2019, Respondent made periodic withdrawals or transfers from his IOLTA account for attorney fees and reimbursement of costs associated with the Jessica Mustin's estate. (Stip. Ex. 30.)

All of the checks, withdrawals, or transfers related to the Mustin settlement were made without probate court approval pursuant to Cuyahoga Probate Court Local Rule 71.1. (Stip. Exs. 32 and 43.)

On or about December 20, 2018, Respondent disbursed \$2,000 to Hodge c/o Earth Temple without probate court approval. (Stip. Exs. 30, Pgs. 6 and 16.) After making the withdrawals and transfers described above, the balance in Respondent's IOLTA account was only \$26,491.63, which remains in his IOLTA account. (Stip. Ex. 30.)

On December 26, 2018, Respondent filed an Affidavit of Compliance with the Supreme Court of Ohio regarding his November 28, 2018 suspension. In his affidavit, Respondent stated that he had notified all clients of his suspension via certified mail and that he had also notified all courts where he had pending cases. (Stip. Ex. 33.)

On December 27, 2018, CVS sent Mustin a letter requesting additional information regarding her CVS application. A copy of this letter was also sent to Respondent because Respondent had not yet notified Moser or anyone at CVS of his suspension or if Mustin was working with another attorney. (Stip. Exs. 34 and 35.) Respondent did not respond to the December 27, 2018 letter from CVS, nor did he advise Moser or anyone at CVS of his

suspension. Mustin did not respond to the December 27, 2018 letter from CVS believing that Respondent was handling the matter for her.

On February 5, 2019, Moser called Mustin regarding the December 27, 2018 letter. Mustin advised Moser that Respondent was handling the matter. In turn, Moser advised Mustin that Respondent's license had been suspended. This was the first time that Mustin learned of Respondent's suspension. (Stip. Ex. 20.) During the February 5, 2019 call with Mustin, Moser also inquired into the status of the settlement, which he believed was still pending. Mustin advised him that the settlement had been completed and that Respondent had handled it. (Stip. Ex. 20.)

After the February 5th call, Moser followed up with Allstate regarding the status of the settlement. Upon confirming that the case had, in fact, been settled, Moser sent an email to Respondent on February 21, 2019, requesting the status of the disbursement and probate court approval. (Stip. Ex. 36.)

On March 15, 2019, Respondent left a voicemail for Moser in response to his February 21, 2019 email. Respondent advised Moser that he was not practicing at the time and that he was no longer representing the estate. He stated, however, that when he was reinstated to the practice of law, he may resume representation of the estate. (Stip. Ex. 20.)

On March 27, 2019, this matter came to the attention of relator through Sean Allan ("Allan"), an attorney that Mustin reached out to after speaking to Moser on February 5, 2019.

On March 28, 2019, relator spoke with Respondent. During the March 28, 2019 conversation, Respondent advised relator that Respondent had spoken to a magistrate at the Cuyahoga County Probate Court, whom Respondent has now identified as Magistrate Mary Haas

McGraw, and that the magistrate advised Respondent that if the distribution to the minor child was less than \$25,000, it would streamline the probate court process and that he could make distributions of settlement/estate funds at the direction of the fiduciary (Mustin) prior to receiving probate court approval in order to reduce the amount of funds going to the minor. Respondent repeated this claim in letters to relator on April 16, 2019 and May 3, 2019. (Stip. Exs. 8 and 27.) Furthermore, during his deposition on October 22, 2019, Respondent testified that Magistrate McGraw told him to “Get it below 25. Send some to a cousin. Send some to, you know, talk – get her [Mustin] appointed administrator, consult with her, send some to this, here, there. They’ve all suffered losses, this family lost....”

Although it is true that additional probate court proceedings are necessary if a minor is to receive more than \$25,000, Magistrate McGraw did not advise Respondent that he could distribute settlement proceeds per the administrator’s/executor’s authority without first obtaining probate court approval, nor did she suggest, advise, or encourage Respondent to try and reduce the amount going to a minor to less than \$25,000 in order to “streamline” the probate court process. (Stip. Ex. 43.)

Of the \$26,491.63 remaining in Respondent’s IOLTA account, \$26,251 belongs to the Estate of Jessica Mustin. (Stip. Ex. 41.) Respondent acknowledges that he improperly disbursed the remaining \$23,749 in estate funds – \$16,665 to himself in attorney fees, \$350 to himself as reimbursement for filing and bond fees, \$4,734 to Mustin, and \$2,000 to Hodge/Earth Temple. (Ex. 41.) Respondent attempted to refund \$43,266 to the Estate of Jessica Mustin, which equaled the \$50,000 minus the funds distributed to Mustin and Hodge, but Mustin, through her

attorney, rejected payment and returned it to Respondent. (Respondent's Exhibit A; Hr'g Tr. at 136-139.)

Although Respondent was unable to represent Mustin after November 28, 2018 due to his suspension, he failed to return Mustin's file to her until April 1, 2019.

RESPONDENT'S OBJECTIONS

1. Respondent Did Not Violate Prof. Cond. R. 1.4(a)(1) by Failing to Notify Mustin of His Suspension.

In the Complaint, Relator alleged that Respondent violated Prof. Cond. R. 1.4(a) by failing to notify Mustin of his suspension. (Compl. at 9.) Prof. Cond. R. 1.4(a)(1) requires a lawyer to promptly inform the client of any decision or circumstance with respect to which the client's *informed consent* is required....” Prof. Cond. R. 1.0(f) explains, the term “Informed consent denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risk of and reasonably available alternatives to the proposed course of conduct.”

In the Report, the Board acknowledged that Mustin's informed consent was not necessary to terminate his suspension that was automatic by virtue of his suspension. (Report at ¶39.) Nonetheless, the Board concluded that Respondent violated Prof. Cond. R. 1.4(a)(1) by reasoning that “Mustin needed to know that Respondent had been suspended from the practice of law so that she could either obtain new counsel or plan for the delay in the” wrongful death and estate cases. (Report at ¶40.) While Mustin was left to decide how to proceed absent Respondent's representation, that decision was Mustin's to make and did not involve her

informed consent – an agreement with Respondent on a proposed course of conduct – that is needed to support a Prof. Cond. R. 1.4(a)(1) violation. *See* Prof. Cond. R. 1.0(f).

In addition to a need for new counsel and the resulting delay caused by Respondent’s suspension, the Board determined that Respondent violated Prof. Cond. R. 1.4(a)(1) “by disbursing moneys and paying moneys out without probate court approval, jeopardized Mustin by a potential breach of her fiduciary duties.” (Report at ¶40.) However, Prof. Cond. R. 1.4(a)(1) does not govern a lawyer’s failure to seek court approval. For these reasons, Respondent did not violate Prof. Cond. R. 1.4(a)(1), by failing to notify Mustin of his suspension.

2. *Respondent Did Not Violate Prof. Cond. R. 3.4(c) by Failing to Notify Mustin of His Suspension.*

In the Report, the Board, relying on the Agreed Stipulations determined that Respondent’s failure to notify Mustin of his November 28, 2018 court-ordered suspension violated Prof. Cond. R. 3.4(c). (Stip. at 12, Report at ¶¶37-38.) Respondent acknowledges that he stipulated that failing to notify Mustin of his suspension violated Prof. Cond. R. 3.4(c). However, a stipulated conclusion of law regarding an alleged offense cannot be accepted if there is no clear and convincing evidence to support it. And while Respondent admits his failure to notify Mustin as required by his November 28, 2018 suspension order, such failure to comply with his suspension order does not violate Prof. Cond. R. 3.4(c).

Let us first consider the purpose and scope of Prof. Cond. R. 3.4(c). That specific rule subsection is found under Prof. Cond. R. 3.4 that concerns the “Fairness to Opposing Party and Counsel.” And a review of subsections (a) through (e) and (g) reveals the rule’s intent to prevent attorney misconduct towards an opposing party or opposing counsel before and during trial in a matter. Arguably Prof. Cond. R. 3.4 applies to a lawyer representing a client in litigation or

participating as a party or witness. As stated in the rule’s comments, the purpose of Prof. Cond. R. 3.4 is to ensure the “fair competition in the adversarial nature of our court system.” Prof. Cond. R. 3.4 at Comment [1]. This indicates that the scope of the rule is limited to a lawyer’s conduct toward an adversary during litigation, and not beyond the final resolution by voluntarily dismissal or court order. Naturally, Prof. Cond. R. 3.4(c) specifically directs compliance with a court’s rules or orders governing litigation. *See* Prof. Cond. R. 1.4 at Comment [7].

Consistent with the purpose and scope set forth above, this Court has ruled upon multiple cases involving violations of Prof. Cond. R. 3.4(c), all of which involve misconduct by attorneys during pretrial, trial, or ongoing litigation. For instance, in *Disciplinary Counsel v. Shaw*, 126 Ohio St.3d 494, 2010-Ohio-4412, this Court found a Prof. Cond. R. 3.4(c) violation when an attorney ignored Trumbull County Probate Local Rules against the payment of attorney fees until a written application has been approved.. Shaw knowingly accepted payment from the fiduciary without court approval and concealed the payment from the court. Based upon Shaw’s failure to obtain probate-court approval for his fees before accepting payment, this Court found that he had violated Prof. Cond. R. 3.4(c). *Id* at ¶ 12.

Similarly, this Court in *Disciplinary Counsel v. Rohrer* 124 Ohio St.3d 65, 2009-Ohio-5930, found a Prof. Cond. R. 3.4(c) violation for an attorney’s failure to comply with a court order prior to trial. *Disciplinary Counsel v. Rohrer* 124 Ohio St.3d 65, 2009-Ohio-5930, ¶ 19. As a tactic to obtain discovery, Rohrer told a member of his staff to deliver a copy of his motion to compel to the local newspaper in defiance of the juvenile court’s order prohibiting communications with the media. *Id*. The case involved a ten-year old child, and due to the nature of the case, the judge sealed the court file. *Id*. at ¶ 8. At his disciplinary hearing, Rohrer made

false statements regarding his directions to staff to deliver the motion to the media. *Id* at ¶ 34. Rohrer testified at hearing that he was justified in deliberately violating the order because he, “felt that *** would get [him] discovery and it got [him] discovery.” *Id* at ¶ 52.

Both *Shaw* and *Rohrer* highlight the purpose of Prof. Cond. R. 3.4(c) – to ensure fair competition amongst adverse parties by obligating attorneys to obey court rules and order during litigation. Conversely, the purpose of Respondent’s suspension order is not to curtail attorney conduct during litigation like Prof. Cond. R. 3.4(c) does. Respondent’s suspension order governs non-litigation activities, not conduct proscribed by Prof. Cond. R. 3.4(c).

For these reasons, Respondent’s failure to notify Mustin as required by his suspension order did not violate Prof. Cond. Rule 1.4(a) or Prof. Cond. R. 3.4(c). Respondent respectfully asks the panel to dismiss the Prof. Cond. Rule 1.4(a) violation in its entirety and the Prof. Cond. Rule 3.4(c) violation only as it pertains to Respondent’s failure to follow his suspension order. Respondent admits that his receiving attorney fees without court approval contrary to Local Rule 71.1 violated Prof. Cond. R. 3.4(c).

3. *The Board Wrongfully Determined That Respondent Produced No Evidence of Mitigation.*

In its Report, the Board stated that Respondent produced no evidence of mitigation. (Report at ¶ 45.) This is incorrect. Respondent has mitigation by attempting to repay all the funds taken from the estate except the funds disbursed to Mustin and Hodge. The record below shows that Respondent’s attempted to make a restitution payment before the hearing, including the return of his attorney fees, but the payment was rejected and returned by Mustin. (Respondent’s Exhibit A; Hr’g Tr. at 136-139.) Respondent cannot compel Mustin to accept

restitution and the Court should consider his real attempt to make restitution as actual restitution in mitigation of his offenses.

4. *An Indefinite Suspension is the Just and Appropriate Sanction Given Respondent's Misconduct, Aggravating Factors, and Mitigating Factor.*

When imposing sanctions for attorney misconduct, the Supreme Court considers relevant factors including the ethical duties the lawyer violated and the sanctions imposed in similar cases. *Stark Cty. Bar Assn. v. Buttacavoli*, 96 Ohio St.3d 424, 2002-Ohio-7443, 775 N.E. 2d. 818, ¶ 16. In making a final determination, the Supreme Court weighs both aggravating and mitigating factors. Gov. Bar R. V (13). The Supreme Court has explained, “the goal of public disciplinary proceedings is not to punish the errant lawyer, but to protect the public.” *Columbus Bar Association v. Reed*, 145 Ohio St.3d 464, 2016-Ohio-834, ¶ 15 (quoting *Toledo Bar Assn. v. Hales*, 120 Ohio St.3d 340, 2008-Ohio-6201, 899 N.E.2d 130, ¶ 21). Consistency is a goal of the disciplinary process. *Id.*

Despite the independent analyses by Relator and Respondent indicating that an indefinite suspension is the appropriate sanction given the offenses and aggravating factors in this matter, the Board recommends that the Court permanently disbar Respondent from the practice of law in Ohio. (Report at 18.) In making this recommendation, the Board cites the following cases: *Disciplinary Counsel v. Frazier*, 110 Ohio St.3d 288, 2006-Ohio-8481; *Disciplinary Counsel v. Mbakpuo*, 98 Ohio St. 3d 177, 2002-Ohio-7087; *Cincinnati Bar Assn. v. Rothermel*, 112 Ohio St. 3d 443, 2007-Ohio-258; *Disciplinary Counsel v. Henderson*, 108 Ohio St. 3d 447, 2006-Ohio-1336 and *Disciplinary Counsel v. Bellew*, 152 Ohio St. 3d 430, 2017-Ohio-9203. With the exception of *Bellew*, the cases the Board relied upon are over a decade old and are less indicative of the Court's current thinking regarding the appropriate sanction in a matter such as this.

Furthermore, *Disciplinary Counsel v. Bellew*, in which the Court found disbarment to be the appropriate sanction is distinguishable from this matter. Bellew began new representation in two matters after his suspension, never returned any of the fees he received, failed to answer a total of five formal disciplinary complaints, and never responded to the notice of intent to file a formal complaint. *Id.* at ¶¶ 5-10. For his misconduct, this Court found, Bellew violated Prof. Cond. R. 1.4(a)(3), Prof. Cond. R. 1.15(d), Prof. Cond. R. 1.5(a), Prof. Cond. R. 1.16(e), Prof. Cond. R. 3.4(c), Prof. Cond. R. 5.5(a), Prof. Cond. R. 5.5(b)(2), Prof. Cond. R. 8.1(b), Prof. Cond. R. 8.4(c), Prof. Cond. R. 8.4(d), Prof. Cond. R. 8.4(h), Gov. Bar R. V(9)(G), and Gov. Bar R. VI(1)(D), a total of 13 rule violations. *Bellew*, at ¶¶ 7, 9 and 11. The Supreme Court found the following aggravating factors: prior discipline, a dishonest or selfish motive, a pattern of misconduct, multiple offenses, harm to a vulnerable victim, and no restitution. *Id.* at ¶ 13. After considering the misconduct and weighing the aggravating factors, including prior discipline, this Court disbarred Bellew. *Id.* at ¶ 16.

Comparing this matter to *Bellew*, Respondent committed less than half the rule violations Bellew did and has less than half the aggravating factors. Moreover, Respondent did not begin new representation after his suspension, he attempted to return the fees he received, and he responded to Relator's inquiries and the notice of intent to file a formal complaint. The misconduct and aggravation in *Bellew* exceed that in this matter and should not be relied upon by this Court to determine a harsher sanction than an indefinite suspension.

Instead, the Court should rely on the precedent set by *Disciplinary Counsel v. Meyer*, 142 Ohio St.3d 448, 2015-Ohio-493, 32 N.E.3d 434 to determine that an indefinite suspension is the appropriate sanction for Respondent given the misconduct, aggravation, and mitigation in this

case. In *Meyer*, the attorney violated multiple disciplinary rules including Prof. Cond. R. 1.16(a)(1), Prof. Cond. R. 3.4(c), Prof. Cond. R. 5.5(a), Prof. Cond. R. 8.1(b) and Prof. Cond. R. 8.4(d). *Id.* at ¶ 8. The Supreme Court found the following aggravating factors: prior discipline, a dishonest or selfish motive, and a lack of cooperation. *Id.* at ¶ 11. The Supreme Court found no mitigating factors in *Meyer*. After considering the misconduct and weighing the aggravating factors, including prior discipline, The Supreme Court indefinitely suspended Meyer. *Id.* at ¶ 11 and 13.

Like Meyer, Respondent violated Prof. Cond. R. 1.16, Prof. Cond. R. 3.4, Prof. Cond. R. 5.5, Prof. Cond. R. 8.1 and Prof. Cond. R. 8.4. Respondent has stipulated to the following aggravating factors: prior discipline, a dishonest or selfish motive, multiple offenses, and harm to the Estate of Jessica Mustin. (Stip. at 13.) Respondent and Meyer both have prior discipline and a dishonest or selfish motive. And while Meyer had no mitigation, Respondent has mitigation by attempting to repay all the funds taken from the estate except the funds disbursed to Mustin and Hodge. Respondent's attempted restitution payment was rejected and returned by Mustin. (Respondent's Exhibit A; Hr'g Tr. at 136-139.)

Moreover, precedent established by the Supreme Court of Ohio indicates that disbarment is too harsh a sanction for the factors involved in this case. In *Disciplinary Counsel v. Hoskins*, 150 Ohio St.3d 41, 2017-Ohio-2924, 78 N.E.3d 845, Hoskins was permanently disbarred for violating Prof. Cond. R. 1.4(a)(3), Prof. Cond. R. 1.4(a)(4), Prof. Cond. R. 3.3(a)(1), Prof. Cond. R. 3.4(c), Prof. Cond. R. 4.1(a), Prof. Cond. R. 5.5(a), Prof. Cond. R. 1.16(d), Prof. Cond. R. 1.16(e), Prof. Cond. R. 8.1(b), Prof. Cond. R. 8.4(c), Prof. Cond. R. 8.4(d), Prof. Cond. R. 8.4(h), and Gov. Bar R. V(9)(G) requiring a lawyer to cooperate with a disciplinary investigation). *Id.* at

¶ 10. In addition to his thirteen violations, Hoskins had eight aggravating factors, including prior discipline, dishonest or selfish motive, pattern of misconduct; multiple offenses, lack of cooperation, false or deceptive practices during investigation, refusal to acknowledge wrongdoing, and harm to vulnerable victims. *Id.* at ¶ 24. Hoskins did have mitigation – the imposition of another penalty. However, *Hoskins* is distinguishable from this case because *Hoskins* involves twice as many rule violations and aggravating factors.

In *Cleveland Metropolitan Bar Association v. Pryatel*, 145 Ohio St.3d 398, 2016-Ohio-865, 49 N.E.3d 1286, Pryatel was permanently disbarred for violating 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). *Id.* at ¶ 8. In addition to his four violations, Pryatel had seven aggravating factors, including prior discipline, a dishonest or selfish motive, a pattern of misconduct, multiple offenses, a lack of cooperation in the disciplinary process, the submission of false statements during the disciplinary process, and a refusal to acknowledge the wrongful nature of the conduct. *Id.* at ¶ 16. The Pryatel had no mitigation. *Pryatel* is distinguishable from this case because *Pryatel* involves three more aggravating factors and no mitigating factor.

CONCLUSION

Based on the foregoing, Respondent respectfully asks this Court to reject the specific Findings of Facts, Conclusions of Law, and Recommendation of the Board of Professional Conduct that (1) Respondent violated Prof. Cond. R. 1.4(a)(1), (2) that Respondent violated Prof. Cond. R. 3.4(c) to the extent that such violation is based on his failure to notify Mustin, (3) that Respondent produced no evidence of mitigation, and (4) that disbarment is the appropriate sanction in this matter. Respondent asks that he receive an indefinite suspension to run concurrently with his current suspension.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing *Respondent's Answer to Relator's Objections* has been served upon Karen H. Osmond (Karen.Osmond@sc.ohio.gov) and Donald Scheetz (Donald.Scheetz@sc.ohio.gov) via electronic mail on March 25, 2020. A courtesy copy was also served upon Richard A. Dove, Esq. (BOCfilings@bpc.ohio.gov), Director of the Board of Professional Conduct, via electronic mail.

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