ORIGINAL

IN

THE SUPREME COURT OF OHIO

Disciplinary Counsel,	:	
Relator,	:	**CASE NO. 2012-1698**
v.	:	
Donald Harris, Esq.,	:	
Respondent.	:	

RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS TO THE BOARD OF COMMISSIONERS' FINDINGS OF FACTS AND CONCLUSIONS OF LAW AND BRIEF IN SUPPORT

Jonathan E. Coughlan (0026424)
Disciplinary Counsel
Relator

Philip A. King (0071895)
Assistant Disciplinary Counsel
Counsel of Record for Relator
Office of Disciplinary Counsel of
The Supreme Court of Ohio
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411
(614) 461-0256
P.King@sc.ohio.gov

Donald Harris, Esq.
Respondent

Geoffrey L. Oglesby (0023949)
Counsel of Record for Respondent
Oglesby & Oglesby, Ltd.
618 W. Washington Street
P. O. Box 2137
Sandusky, OH 44871-213
(419) 625-9500
OglesbyLaw@aol.com

FILED
DEC 14 2012
CLERK OF COURT
SUPREME COURT OF OHIO

TABLE OF CONTENTS

DESCRIPTION	PAGE NUMBER
Table of Authorities	ii
Introduction	1
Statement of Facts	2
Relator's Answer to Respondent's Objections	10
Answer No. 1 This Court, pursuant to Prof. Cond. Rule 8.5, has disciplinary authority over respondent.	10
Answer No. 2 There is clear and convincing evidence that respondent committed the ethical misconduct in the Skeel matter.	14
Answer No. 3 There is clear and convincing evidence that respondent committed the ethical misconduct in the Martincak/Roussos matters.	15
Answer No. 4 There is clear and convincing evidence that respondent engaged in deceptive advertising practices.	18
Answer No. 5 There is sufficient evidence that respondent engaged in (1) a pattern of misconduct, (2) acted with a selfish or dishonest motive, (3) showed a lack of remorse, (4) failed to acknowledge the wrongfulness of his actions, (4) harmed his client, and (5) failed to cooperate the disciplinary proceedings warrants an equitable sanction comparable to an indefinite suspension from the practice of law in Ohio.	22
Conclusion	31
Certificate of Service	31

TABLE OF AUTHORITIES

CASE LAW	PAGE NUMBER(S)
Akron Bar Assn. v. Barron, 85 Ohio St.3d 167, 1999-Ohio-458, 707 N.E.2d 850	29
Attorney Grievance Comm. of Maryland v. Harper, 356 Md. 53, 737 A.2d 557 (1999)	11
Bar Assn. of Greater Cleveland v. Kless (1985), 17 Ohio St. 3d 21, 476 N.E.2d 1035	26
Cincinnati Bar Assn. v. Moeves, 119 Ohio St. 3d 412; 2008-Ohio-4541; 894 N.E.2d 1210	27
Clermont Cty. Bar Assn. v. Meeker (1984), 14 Ohio St. 3d 21, 470 N.E.2d 891	26
Columbus Bar Assn. v. Van Sickle, 128 Ohio St.3d 376; 2011-Ohio-774; 944 N.E.2d 677	29
Columbus Bar Assn. v. Winkfield, 107 Ohio St.3d 360, 2006-Ohio-6, 839 N.E.2d 924	29
Connally v. Gen. Constr. Co., 269 U.S. 385, 391, 46 S. Ct. 126, 127, 70 L. Ed. 322, 328	17
Cuyahoga Cty. Bar Assn. v. Judge, 96 Ohio St. 3d 467, 2002-Ohio-4741	26
Dayton Bar Assn. v. Stewart, 116 Ohio St. 3d 289, 2007-Ohio-6461, 878 N.E.2d 628	16
Disciplinary Counsel v. Cantrell, 125 Ohio St. 3d 458; 2010-Ohio-2114; 928 N.E.2d 1100	29
Disciplinary Counsel v. Freeman, 126 Ohio St.3d 389; 2010-Ohio-3824; 934 N.E.2d 328	29
Disciplinary Counsel v. Glover, 116 Ohio St.3d 1202, 2007-Ohio-6031, 876 N.E2d 576	11
Disciplinary Counsel v. Higgins, 117 Ohio St.3d 473, 2008-Ohio-1509, 884 N.E.2d 1070	29

Disciplinary Counsel v. Jackson, 86 Ohio St.3d 104, 1999-Ohio-87, 712 N.E.2d 122 — 29

Disciplinary Counsel v. Koury, 77 Ohio St.3d 433, 436, 1997-Ohio-91, 674 N.E.2d 1371 — 29

Disciplinary Counsel v. Longino, 128 Ohio St. 3d 426, 2011-Ohio-1524, 945 N.E.2d 1040 — 26

Disciplinary Counsel v. McCord, 121 Ohio St. 3d 497, 2009-Ohio-1517; 905 N.E.2d 1182 — 19, 20

Disciplinary Counsel v. Squire, 130 Ohio St. 3d 368, 2011-Ohio-5578, 958 N.E.2d 914 — 25

Disciplinary Counsel v. Stafford, 128 Ohio St. 3d 446; 2011 Ohio 1484; 946 N.E.2d 193, ¶73 — 27

Disciplinary Counsel v. Summers, 131 Ohio St. 3d 467; 2012 Ohio 1144; 967 N.E.2d 183, ¶34 — 27

Disciplinary Counsel V. Trieu, 132 Ohio St. 3d 288, 2012 Ohio 2714; 971 N.E.2d 918 — 13

Grava v. Parkman Township, 73 Ohio St. 3d 379; 1995 Ohio 331; 653 N.E.2d 226 — 12

Grayned v. Rockford (1972), 408 U.S. 104, 108, 92 S.Ct. 2294, 33 L.Ed.2d 222 — 17

In re Glover, 929 A.2d 774 (2007) — 11

In re Complaint against Harper (1996), 77 Ohio St.3d 211, 221, 673 N.E.2d 1253 — 17

In re Harper, 785 A.2d 311 (2001) — 11

Iowa Supreme Court Attorney Disciplinary Bd. v. Carpenter, 781 N.W.2d 263 (2010) — 11, 28, 29

Lorain County Bar Assn. v. Kocak, 121 Ohio St. 3d 396, 2009-Ohio-1430, 904 N.E.2d 885 — 11

Norwood v. McDonald (1943), 142 Ohio St. 299, 27 O.O. 240, 52 N.E.2d 67 — 12

Parker v. Levy (1974), 417 U.S. 733, 94 S. Ct. 2547, 41 L. Ed. 2d 439	17
Thompson v. Wing, 70 Ohio St.3d 176, 183, 1994-Ohio-358, 637 N.E.2d 917	12
Toledo Bar Assn. v. Crandall, 98 Ohio St.3d 444, 2003-Ohio-1637, 786 N.E.2d 872	29

OTHER AUTHORITIES	PAGE NUMBER(S)
BCGD Proc. Reg 10(B)(1)	22
BCGD Proc. Reg 10(h)	25
Gov. Bar Rule I	1
Gov. Bar Rule II	1
Gov. Bar Rule VI	1
Gov. Bar Rule IX	1
Gov. Bar Rule X1	1
Ohio Const. Art. IV, § 2(B)(1)(g)	10
Prof. Cond. Rule 1.0	20
Prof. Cond. Rule 1.0(c)	20
Prof. Cond. Rule 1.3	5, 14
Prof. Cond. Rule 1.4(a)(4)	5,14
Prof. Cond. Rule 1.6(a)	7, 15, 18
Prof. Cond. Rule 1.16(e)	5, 14
Prof. Cond. Rule 5.5(a)	7, 15, 16, 17, 18, 27, 29
Prof. Cond. Rule 5.5(c)	16
Prof. Cond. Rule 5.5(c)(1)	16

Prof. Cond. Rule 5.5(c)(2)	16
Prof. Cond. Rule 5.5(c)(3)	16
Prof. Cond. Rule 5.5(c)(4)	16
Prof. Cond. Rule 7.1(a)	9, 16
Prof. Cond. Rule 7.5(a)	9
Prof. Cond. Rule 7.5(d)	9
Prof. Cond. Rule 8.1(a)	14
Prof. Cond. Rule 8.4(c)	6, 7, 9, 15
Prof. Cond. Rule 8.4(d)	6, 15
Prof. Cond. Rule 8.4(h)	6, 7, 9, 15
Prof. Cond. Rule 8.5	2, 11, 13, 14, 27
Prof. Cond. Rule 8.5(a)	11, 12
Prof. Cond. Rule 8.5(b)(1)	13
Prof. Cond. Rule 8.5(b)(2)	13

IN

THE SUPREME COURT OF OHIO

Disciplinary Counsel,	:	
Relator,	:	**CASE NO. 2012-1698**
v.	:	
Donald Harris, Esq.,	:	
Respondent.	:	

RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS TO THE BOARD OF COMMISSIONERS' FINDINGS OF FACTS AND CONCLUSIONS OF LAW AND BRIEF IN SUPPORT

Relator, Disciplinary Counsel, submits this answer to respondent's Objections to the Report and Recommendations ("Report") filed by the Board of Commissioners on Grievances and Discipline ("board") on October 8, 2012.

I. INTRODUCTION

Respondent, Donald Harris, is not an attorney-at-law in the State of Ohio admitted pursuant to Gov. Bar R. I, registered pursuant to Gov. Bar R. VI, or certified pursuant to Gov. Bar R. II, Gov. Bar R. IX or Gov. Bar R. XI. (Hearing Tr. at 262-63.) Respondent, however, was admitted to the practice of law in the District of Columbia on March 1, 2004, to the Federal Bar for the Northern District of Ohio on May 3, 2004, and to the Federal Bar for the Southern

District of Ohio on August 7, 2007. (Hearing Tr. at 261-62.) By virtue of the foregoing bar admissions, respondent practices federal bankruptcy law in the State of Ohio. *Id.*

On August 15, 2011, relator filed a four-count formal complaint against respondent alleging that he (1) neglected a client matter in the federal bankruptcy court, (2) failed to return an unearned portion of his attorney fee in a bankruptcy case, (3) practiced law in Ohio without an Ohio license, (4) improperly disclosed client information in the Ohio matter, (5) made false communications about his legal services, (6) used misleading letterhead, (7) falsely implied that he practices with other attorneys in a firm, (8) knowingly made false statements in connection with a disciplinary matter, and (9) engaged in dishonest conduct. Relator filed the complaint against respondent, pursuant to Prof. Cond. Rule 8.5, as an attorney disciplinary matter thereby making this a case of first impression in Ohio.

This matter was heard by a hearing panel on April 23, 2012. On October 8, 2012, the board filed its Report with this Court delineating its findings of fact, conclusions of law and recommended sanction. This matter is now before this Court on respondent's objections to the board's Report.

II. STATEMENT OF FACTS

As determined by the board, the following facts and violations are established by clear and convincing evidence regarding Counts 1, 3 and 4 of the Complaint.[1]

---

[1] Count 2 was related to respondent's representation of Ronald Sharp. The hearing panel dismissed this count and relator had no objection.

Count 1 – Skeel Matter

Respondent, Donald Harris, represented Aimee Skeel in two petitions for bankruptcy filed in the U.S. Bankruptcy Court for the Northern District of Ohio. Report at ¶22. The petition first was filed on February 17, 2009 ("2009 bankruptcy"). *Id.,* citing Relator's Ex. 2. Among the items filed was a "Disclosure of Compensation of Attorney for Debtor," that certified that within a year of its filing, respondent had received $1,500 in fees from Skeel for the 2009 bankruptcy. *Id.,* citing Relator's Ex. 3. Skeel testified at the hearing that $1,500 was the amount paid to respondent for the 2009 bankruptcy. *Id.,* citing Hearing Tr. at 150. Skeel was not able to make payments according to her Chapter 13 plan and the 2009 bankruptcy was dismissed. *Id.,* citing Hearing Tr. at 151.

On May 10, 2010, respondent filed a second bankruptcy petition on behalf of Skeel in 2010 ("2010 bankruptcy"). Report at ¶23, citing Relator's Ex. 5. Respondent did not file an "Official Form 1" document as required by the bankruptcy court in the initial filing. *Id.,* citing Relator's Ex. 7. On May 11, 2010, the bankruptcy court issued a show cause order asking why the matter should not be dismissed for respondent's failure to follow the procedural rules. *Id.,* citing Relator's Ex. 7. Both the "Official Form 1" and the response to the show cause order were to be filed by May 14, 2010. *Id.,* citing Relator's Ex. 7. Respondent filed the "Official Form 1" but did not file the required response ordered by the bankruptcy court. *Id.* The hearing panel found that respondent's answers to questioning about the show cause order were extremely evasive, and that he never acknowledged the need to file a separate response. *Id.,* citing Hearing Tr. at 291-298.

After the initial Chapter 13 filing for Skeel's 2010 bankruptcy, respondent was to file six documents within 14 days: (1) schedules and a summary of schedules; (2) a statement of

financial affairs; (3) a Chapter 13 plan; (4) an attorney fee disclosure statement; (5) copies of all payment advices or other evidence of payment received by Skeel from any employer; and (6) a statement of current income and calculation of commitment period and disposable income. Report at ¶24, citing U.S. Bankruptcy Rules 1007 and 3015. Respondent did not file any of these documents within the 14-day period. *Id.,* citing Relator's Ex. 8. On May 26, 2010, the bankruptcy court issued a show cause order asking why the 2010 bankruptcy should not be dismissed for again failing to follow the procedural rules. *Id.* The bankruptcy court ordered respondent to file the six documents by June 9, 2010, and set a hearing for July 6, 2010, to determine whether the 2010 bankruptcy should be dismissed and whether appropriate sanction and/or disgorgement of attorney fees should be imposed by the court. *Id.,* citing Relator's Ex. 9.

On June 15, 2010, six days after the court requested the documents, respondent filed some of the documents. He did not file the copies of all payment advices or other evidence of payment received by Skeel from any employer. *Id.,* citing Hearing Tr. at 301-302. Included in the documents filed was the "Disclosure of Compensation of Attorney for Debtor," in which respondent certified that he had received $1,500 for filing the 2010 bankruptcy. *Id.,* citing Relator's Ex. 6. On June 18, 2010, Skeel sent a letter to the bankruptcy court judge complaining that respondent had failed to keep her updated on the 2010 bankruptcy and that she had provided him with all the necessary information. *Id.* at ¶27, citing Relator's Ex. 12.

The bankruptcy court requires petitioners to upload the information regarding the creditors listed on the Creditor Matrix that is filed with the original petition into the court's electronic case filing (ECF) system. Report at ¶25. Respondent did not upload the required information. *Id.* On June 18, 2010, the bankruptcy court issued an order commanding

respondent to upload the required information by June 21, 2010. *Id.,* citing Relator's Ex. 10. The bankruptcy court's order also stated it would dismiss the 2010 bankruptcy without a hearing if respondent did not upload the required information by June 21, 2010. *Id.,* citing Relator's Ex. 10.

Respondent did not upload the required information and Skeel's 2010 bankruptcy was dismissed on June 23, 2010. *Id.,* citing Relator's Ex. 11. Skeel attempted to contact Respondent numerous times during this period, but respondent did not call or text message her back. *Id.,* citing Hearing Tr. at 155-156.

On June 25, 2010, Skeel filed a grievance with relator against respondent. Report at ¶26, citing Relator's Ex. 13. In his August 23, 2010 response to relator's letter of inquiry, respondent admitted that he did not complete his representation in Skeel's 2010 bankruptcy. *Id.,* citing Relator's Ex. 15. Respondent claimed that he received only $800 for attorney fees for the 2009 bankruptcy, contradicting the 2009 disclosure of compensation filed February 17, 2009. *Id.,* citing Relator's Ex. 15. Respondent also indicated that he did not receive any attorney fees from Skeel for the 2010 bankruptcy, contradicting the 2010 disclosure of compensation of attorney for debtor filed June 15, 2010. *Id.,* citing Relator's Ex. 15.

In a follow-up letter to relator, respondent claimed that the 2010 disclosure of compensation represented the $1,500 previously paid by Skeel for the 2009 bankruptcy, contradicting the August 23, 2010 letter that respondent sent to relator. *Id.,* citing Relator's Ex. 16. In response to respondent's claims regarding his fees, Skeel testified that she made two $1,500 payments to respondent, one for the 2009 bankruptcy, and the other for the 2010 bankruptcy. *Id.,* citing Hearing Tr. at 150-152.

Based on the foregoing facts, the board found that respondent violated Prof. Cond. Rule 1.3 [diligence]; Prof. Cond. Rule 1.4(a)(4) [failure to comply as soon as practicable with reasonable requests for information from the client]; Prof. Cond. Rule 1.16(e) [failure to promptly refund any unearned attorney's fee upon termination of representation]; Prof. Cond. Rule 8.1(a) [a lawyer shall not knowingly make a false statement of material fact in connection with a disciplinary matter]; Prof. Cond. Rule 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation]; Prof. Cond. Rule 8.4(d) [conduct that is prejudicial to the administration of justice]; and Prof Cond. Rule 8.4(h) [conduct adversely reflecting on the lawyer's fitness to practice law]. Report at ¶¶34-41.

Count 3 – Martincak/Roussos Matter

In late 2006, Darlene Martincak verbally entered into an agreement to transfer five properties owned by her company, Mr. Max Properties, to Alexander Roussos. Report at ¶50, citing Hearing Tr. at 87. The management of these properties became overwhelming and Martincak wanted to sell them. *Id.*

In 2010, Martincak hired respondent to file a bankruptcy petition on her behalf. Report at ¶51. Before filing the bankruptcy, respondent met with Martincak and Roussos to discuss the completion of the property transfers. *Id.*, citing Hearing Tr. at 348. Respondent agreed to assist Martincak and Roussos in the property transfers. *Id.* Respondent would create an LLC for Roussos and handle all of the document transfers from Mr. Max to the newly created LLC. *Id.* Independent of Martincak's bankruptcy, Roussos hired respondent to create an Ohio LLC under the name Roussos Contracting, LLC and respondent agreed to prepare and file the documents needed to transfer the properties from Mr. Max to Roussos's newly created LLC. *Id.* Roussos paid respondent $1,500 and Martincak paid respondent $250 for the LLC formation and property

transfers. *Id.* Respondent did not inform Martincak or Roussos that respondent was not licensed to practice law in Ohio. *Id.,* citing Hearing Tr. at 355-357.

In June 2009, Respondent hired Marian Mills, an independent contractor, to assist in the representation of both Roussos and Martincak. *Id.,* citing Hearing Tr. at 347. Mills is not an attorney. *Id.*

On September 17, 2010, at respondent's request, Mills prepared the documentation for the property transfers from Mr. Max to the future LLC. *Id.,* citing Hearing Tr. at 349. Respondent reviewed the documentation Mills prepared. *Id.* Loretta Riddle, an Ohio licensed attorney with whom respondent shares office space, also briefly reviewed the documentation. *Id.,* citing Hearing Tr. 351-352. Shortly thereafter, both Martincak and Roussos signed the prepared documents. *Id.*

Respondent met with Martincak to discuss the formation of the LLC for Roussos. Report at ¶53, citing Hearing Tr. at 348-349. Respondent drafted documentation for an LLC formation. *Id.* Again, respondent had Attorney Riddle review the LLC documentation. *Id.,* citing Hearing Tr. at 351-352.

Respondent then gave the documentation to Martincak to obtain the necessary signatures from Roussos. *Id.* Martincak met with Roussos, obtained the necessary signatures, and returned the LLC documentation to respondent. *Id.* Respondent again had attorney Riddle briefly review the LLC documentation in order to finalize them. *Id.* Attorney Riddle received a small amount of compensation invoiced to Roussos as an expense for reviewing the documents, but Attorney Riddle did not actively participate, nor share any responsibility in the representation of Martincak or Roussos. *Id.,* citing Hearing Tr. at 352-355 and 379-380.

Based on the foregoing facts, the board found that respondent violated Prof. Cond. Rule 1.6(a) [revealing information relating to the representation of a client, unless the client gives informed consent]; Prof. Cond. Rule 5.5(a); Prof. Cond. Rule 8.4(c); and Prof Cond. Rule 8.4(h).

Count 4 – Information about Legal Services Violations

In 2004, respondent began practicing law as the Donald Harris Law Firm. Report at ¶65, citing Hearing Tr. 263. Respondent employed a number of individuals at various times from 2004 to 2009. *Id.,* citing Hearing Tr. at 403-405. Respondent became a sole practitioner in 2009, and since then, has been the only member of the "Donald Harris Law Firm, Attorneys at Law".

Respondent maintained a website, www.donaldharrislawfirm.com, from 2009 to the date of the disciplinary hearing on April 23, 2012. *Id.,* citing Hearing Tr. at 405. A printout of respondent's website on July 19, 2011, stated that members of the law firm are "Members of the Ohio Bar, Michigan Bar, [and] Tennessee Bar…." *Id.,* citing Relator's Ex. 36. Another portion of the same website page falsely stated, "The lawyers in the Donald Harris Law Firm are licensed in Ohio, Michigan, [and] Tennessee…." *Id.* A printout of respondent's website on April 5, 2012, stated that, "Lawyers in the firm are members of the Ohio Bar, Michigan Bar, [and] Tennessee Bar…." *Id.* The only lawyer listed on the website is respondent. *Id.* Despite the representations on his website, respondent is not a member of the Ohio bar, Michigan bar, or Tennessee bar. Report at ¶¶10-11; Hearing Tr. 288-89.

The phrase "Attorneys at Law" is also misleading. In 2009, respondent listed Attorney Riddle on his letterhead and testified that he considered her the "other lawyer" in the law firm so as to enable him to use the terms "Attorneys at Law" in the name of his firm. *Id.* at ¶67, citing Hearing Tr. at 385. Conveniently, however, for tax purposes, respondent lists himself as a sole

practitioner. *Id.,* citing Hearing Tr. at 264. Respondent and Attorney Riddle never executed a written agreement confirming their business relationship. *Id.,* citing Hearing Tr. at 282.

There is no law firm organization comprised of respondent and Attorney Riddle. In mid-2008, Attorney Riddle stopped receiving a salary from the Donald Harris Law Firm. *Id.* at ¶68, citing Hearing Tr. at 372. Attorney Riddle stopped receiving W-2's from Harris in 2007. *Id.,* citing Hearing Tr. at 378.

Moreover, Attorney Riddle does not share her legal fees with the Donald Harris Law Firm. *Id.,* citing Hearing Tr. at 373. Attorney Riddle maintains her own fee agreements. *Id.,* citing Hearing Tr. at 388. Attorney Riddle uses her own letterhead, "Loretta Riddle, Attorney at Law," for her cases. *Id.,* citing Hearing Tr. at 393. Attorney Riddle maintains her own professional liability insurance. *Id.,* citing Hearing Tr. at 388. Attorney Riddle has her own books for gross receipts and payments of bills and expenses, and her own business account for deposits and expenses. *Id.,* citing Hearing Tr. at 394. All-in-all, Attorney Riddle merely shares office space with respondent and splits some of the office expenses. *Id.,* citing Hearing Tr. at 389.

Based on the foregoing facts, the board found that respondent violated Prof. Cond. Rule 7.1(a) [making or using a false, misleading, or nonverifiable communication about the lawyer or the lawyer's services]; Prof. Cond. Rule 7.5(a) [using letterhead that is misleading as to the identity of the lawyers practicing under the firm name]; Prof. Cond. Rule 7.5(d) [implying that a lawyer practices with other lawyers in a firm when this is false]; Prof. Cond. Rule 8.4(c); and Prof. Cond. Rule 8.4(h).

III. RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS

This disciplinary case involving rule violations by an out-of-state attorney practicing law in Ohio is a matter of first impression for this Court. Respondent divides his objections into seven sections. Respondent essentially raises the following five issues:

1) whether this Court has disciplinary authority over respondent, an out-of-state attorney practicing law within Ohio's borders;
2) whether respondent neglected the Skeel matter and failed to return unearned fees;
3) whether respondent engaged in the unauthorized practice of Ohio law in the Martincak/Roussos matter and collected illegal fees;
4) whether respondent engaged in deceptive advertising practices; and
5) whether there is evidence that respondent engaged in (1) a pattern of misconduct, (2) acted with a selfish or dishonest motive, (3) showed a lack of remorse, (4) failed to acknowledge the wrongfulness of his actions, (4) harmed his client, and (5) failed to cooperate the disciplinary proceedings justifying an equitable sanction similar to an indefinite suspension from the practice of law in Ohio.

Relator will respond to respondent's objections by addressing each of these five points in the order presented above.

Answer No. 1

This Court, pursuant to Prof. Cond. Rule 8.5, has disciplinary authority over respondent.

Respondent argues that the "Ohio Constitution does not give [this Court] authority to discipline an attorney who is not licensed in Ohio or Ohio courts." Respondent's Objections at 20. Respondent's assumption is contradicted by the fact that Ohio Constitution, Article IV, Section 2(B)(1)(g) confers on this Court original jurisdiction over all matters relating to the

practice of law in Ohio. *See Lorain Cty. Bar Assn. v. Kocak*, 121 Ohio St. 3d 396, 2009-Ohio-1430, 904 N.E.2d 885, ¶16. This logically includes the regulation of out-of-state attorneys practicing law in Ohio.

In line with that constitutional authority, on February 1, 2007, this Court adopted Prof. Cond. Rule 8.5 making out-of-state attorneys who engage in the practice of law in Ohio subject to Ohio's disciplinary authority. According to the rule, "[a] lawyer not admitted in Ohio is also subject to the disciplinary authority of Ohio if the lawyer provides or offers to provide any legal services in Ohio." Prof. Cond. Rule 8.5(a).

Without any support, respondent claims that an out-of-state attorney must provide legal services to an Ohio citizen for Prof. Cond. Rule 8.5 to apply. Respondent's Objections at 12-13. However, nothing in the rule makes citizenship a requirement. It only matters if the legal services were offered or provided in Ohio. Prof. Cond. Rule 8.5(a). Therefore, an out-of-state attorney offering or providing legal services of any kind within the state's borders is subject to Ohio's disciplinary authority. Other states with a rule identical to Ohio's Prof. Cond. Rule 8.5 have applied it to extend their jurisdiction over out-of-state attorneys engaging in the unauthorized practice of law in their jurisdictions. *See, e.g., Iowa Supreme Court Attorney Disciplinary Bd. v. Carpenter,* 781 N.W.2d 263 (2010); *see also, Attorney Grievance Comm. of Maryland v. Harper,* 356 Md. 53, 737 A.2d 557 (1999) (reciprocal discipline imposed in *In re Harper,* 785 A.2d 311 (2001)); *In re Glover,* 929 A.2d 774 (2007) (reciprocal discipline imposed in *Disciplinary Counsel v. Glover,* 116 Ohio St.3d 1202, 2007-Ohio-6031, 876 N.E2d 576).

Under Prof. Cond. Rule 8.5, respondent is clearly subject to Ohio's disciplinary authority. Respondent is an out-of-state attorney but maintains his law office in Sandusky, Ohio. There, he regularly provides legal services to debtors in the federal bankruptcy court located in northern

Ohio. Moreover, as the board has determined, respondent performed legal services on state law matters in his Ohio office despite not having an Ohio law license. Report at ¶¶50-63.

Respondent also objects to this Court's disciplinary authority over him. He claims that the United States District Court for the Northern District of Ohio has authority over him and that this proceeding is barred by res judicata. It is accurate that attorneys who practice in the federal bankruptcy courts are subject the bankruptcy court's disciplinary authority; however, they are also subject to Ohio's disciplinary authority. Specifically, Prof. Cond. Rule 8.5(a) states, "[a] lawyer may be subject to the disciplinary authority of <u>both Ohio and another jurisdiction</u> for the same conduct." Underline added.

In contrast to respondent's arguments, the doctrine of res judicata does not apply in this case, i.e., the absence of sanctions from the bankruptcy court does not bar this Court from finding misconduct. "The doctrine of res judicata involves both claim preclusion, historically called estoppel by judgment in Ohio, and issue preclusion, traditionally known as collateral estoppels." *Grava v. Parkman Township*, 73 Ohio St. 3d 379, 1995-Ohio-331, 653 N.E.2d 226. Claim preclusion applies as "a complete bar to any subsequent action on the same claim or cause of action between the parties or those in privity with them" when there is "[a] final judgment or decree rendered upon the merits, without fraud or collusion, by a court of competent jurisdiction." *Norwood v. McDonald* (1943), 142 Ohio St. 299, 27 O.O. 240, 52 N.E.2d 67, paragraph one of the syllabus. "Collateral estoppel applies when the fact or issue (1) was actually and directly litigated in the prior action, (2) was passed upon and determined by a court of competent jurisdiction, and (3) when the party against whom collateral estoppel is asserted was a party in privity with a party to the prior action." *Thompson v. Wing*, 70 Ohio St.3d 176, 183, 1994-Ohio-358, 637 N.E.2d 917. Thus, for either form of res judicata to apply, a party must

demonstrate the parties to the former and current actions are the same or in privity with a party in the first action. In this case, relator was not a party or in privity to the parties in any disciplinary proceedings before the federal bankruptcy court and is not barred by respondent judicata from prosecuting respondent's misconduct before this Court.

Furthermore, as the board aptly points out, the ethical rules from the jurisdictions in which respondent is admitted require him to abide by Ohio's rules. Report at ¶¶ 14-15. Therefore, respondent should have known of his potential liability in Ohio. Based on the above principles of law and contrary to respondent's objections, respondent is subject to the disciplinary authority of Ohio.

Moreover, every indication points to Ohio as the controlling jurisdiction for the choice of law in this matter. In exercising its disciplinary authority over non-Ohio licensed attorneys, Ohio shall apply the disciplinary rules as follows. If the conduct involves a pending case, Ohio shall apply the disciplinary rules of the jurisdiction where the tribunal sits. Prof. Cond. Rule 8.5(b)(1). For any other conduct, Ohio shall apply the disciplinary rules of the jurisdiction where the conduct occurred or had its predominant effect. Prof. Cond. Rule 8.5(b)(2). *See Disciplinary Counsel v. Trieu*, 132 Ohio St. 3d 288, 2012-Ohio-2714, 971 N.E.2d 918 (this Court applied Texas' disciplinary rules to an Ohio licensed attorney because the misconduct occurred in Texas). The reason for this is to avoid potential conflicts of law. As Comment 3 of the rule points out,

> [a]ccordingly, it takes the approach of (i) providing that any particular conduct of a lawyer shall be subject to only one set of rules of professional conduct, (ii) making the determination of which set of rules applies to particular conduct as straightforward as possible, consistent with recognition of appropriate regulatory interests of relevant jurisdictions, and (iii) providing protection from discipline for lawyers who act reasonably in the face of uncertainty.

Prof. Cond. Rule 8.5 at Comment [3].

In this case, respondent's misconduct involves (1) his representation of Aimee Skeel in the Northern Ohio Bankruptcy Court, and (2) his representation of clients on state matters that occurred in Ohio. Therefore, this Court should apply Ohio's Rules of Professional Conduct and order the appropriate sanction for the specific rule violations involved.

Answer No. 2

There is clear and convincing evidence that respondent committed the ethical misconduct in the Skeel matter.

In his objection to the board's findings of facts and conclusions of law regarding the Skeel matter, respondent argues only that this Court lacks disciplinary authority to adjudicate this matter – a proposition that relator has already addressed. Moreover, the board obviously concluded that Ohio had jurisdiction over respondent. Report at ¶¶ 8-19. The board also found, by clear and convincing evidence, that respondent committed misconduct in connection with his representation of Skeel and during relator's investigation of Skeel's disciplinary grievance.

Specifically, the board found that the facts evidenced respondent committed each of the following rule violations.

- Respondent violated Prof. Cond. Rule 1.3 by continuously failing to file the appropriate documents required by the bankruptcy court and allowing Skeel's 2010 bankruptcy case to be dismissed.
- Respondent violated Prof. Cond. Rule 1.4(a)(4) by not adequately communicating with Skeel and if necessary obtaining the appropriate information to file the bankruptcy.
- Respondent violated Prof. Cond. Rule 1.16(e) by failing to refund the fee respondent and his office received from Skeel but did not earn.

- Respondent violated Prof. Cond. Rule 8.1(a) by knowingly making false statements to relator about the amount of fees respondent received in Skeel's bankruptcy cases.
- Respondent violated Prof. Cond. Rule 8.4(c) by failing to refund fees for Skeel's 2010 bankruptcy case, falsely claiming that he did not receive such fees.
- Respondent violated Prof. Cond. Rule 8.4(d) by neglecting Skeel's 2010 bankruptcy case causing it to be dismissed.
- Respondent violated Prof. Cond. Rule 8.4(h), by the totality of the circumstances.

Report at ¶¶ 34-41.

Notably, respondent does not challenge the sufficiency of the evidence relied upon by the board to establish the ethical violations in the Skeel matter. In light of this and the scantiness of respondent's jurisdictional argument, relator urges this Court to accept the board's findings of fact and conclusions of law regarding the Skeel matter.

Answer No. 3

There is clear and convincing evidence that respondent committed the ethical misconduct in the Martincak/Roussos matters.

In his brief, respondent makes two objections to the board's conclusions of law regarding his representation of Darlene Martincak and Alexander Roussos. Respondent objects to the board's conclusions of law that (1) he violated Prof. Cond. Rule 5.5(a) by providing business entity formation services to Alexander Roussos without having an Ohio law license, and (2) he violated Prof. Cond. Rule 1.6(a) (disclosing client information without informed consent) by allowing Attorney Riddle to review the documents for the LLC formation and the property transfers at different intervals during the Martincak/Roussos representations. As set forth herein,

the clear and convincing evidence presented at the hearing established the respondent committed these rule violations.

A. Respondent violated Prof. Cond. Rule 5.5(a) by providing business formation services to Alexander Roussos.

The board found clear and convincing evidence that respondent entered into an agreement with Roussos to form an LLC for him under Ohio law. At the hearing, respondent did not dispute that he practiced law by forming an LLC for Roussos. Report at ¶58. Respondent has changed his position and now argues that the formation of a LLC requires no specialized legal training. Respondent's Objection at 22. This Court has already rejected this argument in *Dayton Bar Assn. v. Stewart*, 116 Ohio St. 3d 289, 2007-Ohio-6461, 878 N.E.2d 628, ¶¶5-8. In *Stewart*, this Court held that the preparation and filing of business filings with the Ohio Secretary of State for someone else is indeed the practice of law in Ohio.

Respondent seems to acknowledge as much, but nonetheless argues that he is exempt from liability under Prof. Cond. Rule 5.5(a) because (1) the LLC formation representation was "incidental" to Martincak's bankruptcy case, and (2) the LLC documents were reviewed by Attorney Riddle who is licensed in Ohio. Respondent's Objection at 22. Neither argument exempts respondent from Prof. Cond. Rule 5.5(a) liability.

The Prof. Cond. Rule 5.5(a) exemptions to which respondent alludes are found at Prof. Cond. Rule 5.5(c). Specifically, Prof. Cond. Rule 5.5(c)(1), allows an out-of-state attorney to provide legal service on Ohio matters in association with an Ohio lawyer who actively participates in the representation. Prof. Cond. Rule 5.5(c)(2), (3) and (4), allow an out-of-state attorney to provide legal service in Ohio if the representation is reasonably related to a matter in which he was or would be authorized to practice law. None of these exceptions apply to respondent.

Attorney Riddle, the only Ohio attorney who was involved in the Martincak/Roussos matter, testified that she did not actively participate in the representation. Hearing Tr. at 379. In addition, the formation of a LLC under Ohio law on behalf of his client Roussos cannot be considered to be reasonably related to a bankruptcy case filed on behalf of another client. Respondent is not exempt from Prof. Cond. Rule 5.5(a) and violated the rule by providing business formation services to Roussos.

Nonetheless, respondent claims that the application of Prof. Cond. Rule 5.5(a) towards him is void for vagueness in violation of his due process rights. Respondent's Objections at 21. In reality, there is no violation of respondent's right to due process.

"It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined." *In re Complaint Against Harper* (1996), 77 Ohio St.3d 211, 221, 673 N.E.2d 1253, quoting *Grayned v. Rockford* (1972), 408 U.S. 104, 108, 92 S.Ct. 2294, 33 L.Ed.2d 222. "[T]he litigant asserting the vagueness defense must demonstrate that the statute in question is vague as applied to the litigant's conduct without regard to its potentially vague application to others." *Harper*, 77 Ohio St. 3d 211, 221-222, 673 N.E.2d 1253, quoting *Parker v. Levy* (1974), 417 U.S. 733, 94 S. Ct. 2547, 41 L. Ed. 2d 439. "As a matter of due process, a law is void on its face if it is so vague that persons 'of common intelligence must necessarily guess at its meaning and differ as to its application.'" *Harper*, 77 Ohio St. 3d 211, 221-222, 673 N.E.2d 1253, quoting *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391, 46 S. Ct. 126, 127, 70 L. Ed. 322, 328.

In this case, Prof. Cond. Rule 5.5(a) states that "[a] lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction...." Because Prof. Cond. Rule 5.5(a) clearly delineates that engaging in the unauthorized practicing law in this

jurisdiction is prohibited, the rule cannot be considered so vague that persons must have to guess at its meaning and would differ as to its application. Therefore, respondent cannot show a denial of his due process rights in the application of Prof. Cond. Rule 5.5(a) in this case.

B. Respondent violated Prof. Cond. Rule 1.6(a) by allowing Attorney Loretta Riddle to review the documents for the LLC formation and the property transfers at different intervals during the Martincak/Roussos representations.

Testimony at the hearing established that Attorney Riddle was not a member of respondent's firm and that neither Martincak nor Roussos gave respondent consent to allow Attorney Riddle to review the materials related to their legal representations. Report at ¶53, citing Hearing Tr. at 355. Despite this evidence, respondent argues that he had implied consent to disclose information about the representation to others who had participated in his conversations with Martincak and Roussos. Even if respondent is correct, Attorney Riddle was never privy to any conversation between respondent, Martincak and Roussos. Attorney Riddle, Martincak and Roussos testified to this at the hearing. Hearing Tr. at 79, 107 and 379-80. As such, respondent's "implied consent" argument fails, and he cannot refute the board's conclusion that he violated Prof. Cond. Rule 1.6(a) by disclosing client information to Attorney Riddle.

Accordingly, relator urges this Court to accept the board findings of fact and conclusions of law regarding the Martincak/Roussos matter.

Answer No. 4

There is clear and convincing evidence that respondent engaged in deceptive advertising practices.

Respondent makes three objections to the board's findings of fact regarding his deceptive advertising practices. Respondent objects to the board's findings that (1) he and Attorney Riddle were not members of the same law firm, (2) he falsely listed Attorney Riddle as the other lawyer on his letterhead so as to justify the use of the term "Attorneys at Law," and (3) he maintained a

website that falsely indicated that he was admitted to the Ohio bar, the Michigan bar and the Tennessee bar, when he was not a member of these bars. Notwithstanding respondent's assertions, the clear and convincing evidence presented at the hearing established each of these facts.

A. Respondent and Attorney Riddle were not members of the same law firm.

Based on Attorney Riddle's testimony, the board found clear and convincing evidence that Attorney Riddle (1) did not receive a salary or a W-2 from respondent, (2) did not share her legal fees with respondent, (3) used her own fee agreements and letterhead for her cases, (4) maintained her own professional liability insurance and business checking account, and (5) contributed to the office expenses. Report at ¶68, citing Hearing Tr. at 371 and 386-89. In addition, respondent testified that there was no written agreement between he and Attorney Riddle confirming a business relationship and admitted that he filed his tax forms as a sole proprietor. *Id.* at 67 citing Hearing Tr. at 264 and 282.

The facts here are very similar to those in *Disciplinary Counsel v. McCord,* 121 Ohio St. 3d 497; 2009-Ohio-1517; 905 N.E.2d 1182. In *McCord,* this Court held that it was improper for a lawyer to represent that he was in the same firm with another lawyer when they had separate clients, separate IOLTA accounts, separate fee income, and separate law-related business expenses, and had no agreement to share profits and losses. *McCord,* 121 Ohio St. 3d 497; 2009 Ohio 1517; 905 N.E.2d 1182, ¶28.

Respondent is not disputing the above facts, which clearly establish that he and Attorney Riddle were operating <u>separate</u> law practices under an office-sharing arrangement. Respondent apparently believes that the manner in which a law office operates is immaterial. His contention that he and Attorney Riddle were a "law firm" is based entirely on two factors: (1) they believed

that they were a firm, and (2) they told others in the community that they were a firm. Respondent claims support for this contention to a comment to Indiana's Prof. Cond. Rule 1.0, which states that attorneys who represent themselves as a firm or conduct themselves as a firm are considered a firm for the purposes of Indiana's disciplinary rules. However, the Indiana rule is not controlling; the Ohio rules govern this case.

The controlling authority can be found at Ohio's Prof. Cond. Rule 1.0(c) that sates in pertinent part,

> "[f]irm" or "law firm" denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship, or other association authorized to practice law....

Comment 2 of the rule draws a distinction between the relationship of lawyers sharing office space and lawyers in a firm stating,

> [o]n the other hand, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm ....

Ohio's Prof. Cond. Rule 1.0 at Comment [2]. As the board pointed out, nothing in the comment to the Ohio rule "would allow for courts to consider two practitioners that present themselves as a law firm to the public to be considered a law firm for the purposes of the [Ohio] Rules of Professional Conduct." Report at ¶74. This is consistent with *McCord.* As such, respondent's argument that he and Attorney Riddle were a law firm because they said they were must be rejected and respondent's objection overruled.

B. Respondent falsely identified Attorney Riddle on his letterhead to justify the use of the term "Attorneys at Law."

In addition to concluding that Attorney Riddle was <u>not</u> a member of respondent's firm, the board found clear and convincing evidence that since 2009, respondent had improperly listed Attorney Riddle on his letterhead and considered her the "other lawyer in his law firm." Based

on the fact that Attorney Riddle should not have been listed on respondent's letterhead, respondent was unable to utilize the terms "Attorneys at Law" in the name of his firm. Report at ¶67, citing Hearing Tr. at 385. The board concluded that respondent's letterhead was deceptive and in violation of the disciplinary rules. *Id.* at ¶78-81.

Respondent argues that his letterhead was not deceptive because it truthfully indicated that he was not licensed in Ohio. Respondent's objection at 24. Respondent fails to account for the fact that by listing Attorney Riddle on his letterhead, respondent gave the false impression that a member of respondent's nonexistent "law firm" was licensed to practice law in Ohio. Overall, respondent has not shown a reason for this court to reject the board's conclusion that he falsely identified Attorney Riddle on his letterhead solely to justify the use of the term "Attorneys at Law" his firm name.

C. Respondent maintained a website that falsely indicated that he was admitted to the Ohio state bar, the Michigan state bar and the Tennessee state bar.

Based on respondent's testimony and the exhibits admitted at the hearing, the board found clear and convincing evidence that respondent maintained a website that indicated that lawyers in his "firm" were members of the Ohio bar, Michigan bar, and Tennessee bar. Report at ¶66. At the time, respondent was the only attorney at his "firm" and he was not a member of any of these state's bars. *Id.* at ¶¶4 and 77. Respondent does not dispute this evidence.

Respondent, however, he argues that his website is not deceptive because the majority of the information on the website is accurate. Respondent's candidness about his bankruptcy experience does not excuse his dishonesty about his bar memberships. In addition, despite the fact that the website did not identify any other attorneys, respondent argues that his website claim about state bar admissions actually referred to three other attorneys who were admitted to

those state bars. Respondent's Objections at 24. This argument is baseless because none of these attorneys were affiliated with respondent during the relevant period. Hearing Tr. at 288. Therefore, respondent has not shown a reason for this court to reject the board's conclusion that he maintained a website that falsely indicated that he was admitted to the Ohio bar, the Michigan bar and the Tennessee bar.

Accordingly, relator urges this Court to accept the board findings of fact and conclusions of law regarding respondent's advertising violations.

Answer No. 5

There is sufficient evidence that respondent engaged in (1) a pattern of misconduct, (2) acted with a selfish or dishonest motive, (3) showed a lack of remorse, (4) failed to acknowledge the wrongfulness of his actions, (4) harmed his client, and (5) failed to cooperate the disciplinary proceedings warrants an equitable sanction comparable to an indefinite suspension from the practice of law in Ohio.

Respondent objects to the board's conclusion that the following aggravating factors, pursuant to BCGD Proc. Reg. 10(B)(1), exist in this case:

- a pattern of misconduct;
- selfish or dishonest motive;
- lack of remorse;
- failure to acknowledge the wrongfulness of his actions;
- harm to clients; and
- failure to cooperate with disciplinary proceeding by failing to respond to Interrogatories until the day of the hearing.

The evidence presented at the hearing established each of these aggravating factors by a preponderance of the evidence.

A. A pattern of misconduct

In determining that respondent engaged in a pattern of misconduct, the board found that "respondent pushed the limits of his licensure to practice in other jurisdictions in numerous situations." Report at ¶83. Respondent takes exception to the board's reference to "other jurisdictions" claiming he is ignorant of the jurisdictions to which the board is referring. Respondent, however, concedes that the number of counts involved in this case is sufficient to establish a pattern of misconduct.

Respondent feigned confusion is unjustified in light of the fact that he engaged in the practice of law in Ohio and falsely represented on his website that he was or that he was associated with lawyers who were licensed to practice law in Ohio, Michigan and Tennessee. Moreover, respondent ignores the fact that, as established in Count 4, he engaged in deceptive advertising practices continually and for years.

Overall, there is plenty of evidence in the record to establish that respondent engaged in a pattern of misconduct and this Court should overrule respondent's objection in this regard.

B. Selfish and Dishonest Motive

In determining that respondent had selfish and dishonest motives, the board concluded that respondent committed misconduct for his own pecuniary gain. Report at ¶ 83. Respondent objects to this conclusion but does not articulate what his objection is.

The evidentiary record clearly demonstrates that respondent's misconduct involved a selfish and dishonest motive. Respondent, in his responses to relator's inquires, lied about his fees to avoid refunding Skeel the unearned portion of his fee after he failed to complete her 2010

bankruptcy case. *Id.* at ¶26. Respondent represented Roussos and Martincak in state matters and demanded a fee, despite the lack of an Ohio license. *Id.* at ¶51. Accordingly, this Court should overrule respondent's objection to the board's conclusion that he acted with selfish and dishonest motives.

C. Lack of remorse and Failure to acknowledge the wrongfulness of his actions

The board based its conclusions that respondent lacked remorse and failed to acknowledge the wrongfulness of his action on the fact that respondent does not believe that he did anything wrong. Report at ¶ 83. Throughout the hearing, respondent (1) denied that he owed Skeel a refund, (2) insisted that he could represent Roussos in the Ohio LLC formation, despite not having an Ohio license, and (3) insisted that Attorney Riddle was a member of his firm. Report at ¶26 and 54-56; Hearing Tr. at 263-73, 319-20, 340-54. Despite this evidence, respondent claims that he broke down "in tears" during the hearing as some indication of remorse. Respondent cannot have it both ways. His assertion of remorse at the beginning of his brief is contradicted by his concluding statements that he did nothing wrong. Moreover, he admits that his lament was more a reaction to the disciplinary process and not true remorse for misconduct. Accordingly, this Court should overrule respondent's objection to the board's conclusion that he lacked remorse and failed to acknowledge the wrongfulness of his actions.

D. Harm to client

After considering the harm respondent's misconduct caused by the dismissal of Skeel's bankruptcy case and the harm that respondent caused by his deceptive advertisement practices, the board concluded that respondent harmed clients. Report at ¶83. Respondent's brief does not address the harm he caused Skeel; however, respondent attacks the board's consideration that other potential clients were harmed by his false advertisements. Respondent's Objections at 3-4.

Respondent's false advertisements were available on the World Wide Web over a span of many years. The advertisements were available for everyone to view. Respondent does not know the true extent of the harm caused by his misrepresentations. Respondent is correct when he acknowledges that it can never really be known.

The board could not ignore the total harm caused by respondent's false advertising. The board is permitted to deduce harm to other potential clients based on the evidentiary record. This Court's decision in *Disciplinary Counsel v. Squire,* 130 Ohio St. 3d 368, 2011-Ohio-5578, 958 N.E.2d 914, belies respondent's argument. In *Squire,* the fact that the attorney received no complaints from his clients and the fact that his failure to maintain adequate records concealed any actual harm to his clients, did not stop this Court from finding the vulnerability of and potential harm to Squire's clients. *Squire,* 130 Ohio St. 3d 368; 2011 Ohio 5578; 958 N.E.2d 914, ¶61; *see also,* BCGD Proc. Reg. 10(B)(1)(h). Accordingly, this Court should overrule respondent's objection to the board's conclusion that his actions harmed clients.

E. Failure to Cooperate with Disciplinary Proceeding

The board concluded that respondent failed to cooperate with the disciplinary proceedings based on evidence that respondent was needlessly difficult during the discovery stage of the proceeding as well as at the hearing. Report at ¶83. In his brief, respondent suggests that to characterize him as "difficult" is unfair given his participation in a three-hour deposition.

Respondent's argument that he was not "difficult" is contradicted by the fact that respondent failed to respond to relator's February 2012 discovery requests, despite repeated requests, until the day of the April 2012 hearing. Hearing Tr. at 363-68. Granted, relator deposed respondent; however, respondent did not respond to relator's requests for interrogatories

until the last moment giving relator no opportunity to review the information before the hearing. *Id.*

Respondent's conduct is similar to the attorney's failure to cooperate in *Disciplinary Counsel v. Longino*, 128 Ohio St. 3d 426, 2011-Ohio-1524, 945 N.E.2d 1040. In *Longino,* the attorney offered some cooperation in the early stages of the disciplinary investigation, but failed to respond to letters and discovery requests after the complaint was filed. *Id.* at ¶¶31 and 34. This Court found that despite some participation by Longino in the disciplinary process, her subsequent inaction demonstrated a failure to cooperate with the disciplinary proceedings. *Id.* at ¶31. Accordingly, the Court should overrule respondent's objection to the board's conclusion that he failed to cooperate with these disciplinary proceedings.

F. An indefinite injunction from the practice of law in Ohio is an appropriate sanction for respondent in light of the aggravating factors involved here.

In this matter, the board recommended an indefinite suspension from the practice of law given the totality of respondent's misconduct, his cavalier attitude towards the proceedings, and his clear attempt to broaden his potential client base by deceptive advertising practices. Report at ¶90. Respondent's argument against an indefinite suspension is that prior case law requires the board to consider only the attorney's actions before the hearing and that his actions before the hearing were not cavalier. Respondent's Objections at 6. Respondent ignores his failure to respond to relator's discovery requests until the day of hearing.

To support his argument, respondent cites *Cuyahoga Cty. Bar Assn. v. Judge,* 96 Ohio St. 3d 467, 2002-Ohio-4741, 776 N.E.2d 21; *Clermont Cty. Bar Assn. v. Meeker* (1984), 14 Ohio St. 3d 21, 470 N.E.2d 891; and *Bar Assn. of Greater Cleveland v. Kless* (1985), 17 Ohio St. 3d 21, 476 N.E.2d 1035. Collectively, all of the cases respondent cites are distinguishable from this case. None of those cases involved an actual hearing because the attorneys in *Judge, Meeker* and

Kless all failed to appear for a hearing. None of the cases cited by respondent stand for the proposition advocated by respondent.

Moreover, this Court has found in other cases that an attorney's evasive and uncooperative behavior at the hearing can be considered an aggravating factor. *See e.g., Disciplinary Counsel v. Summers,* 131 Ohio St. 3d 467; 2012 Ohio 1144; 967 N.E.2d 183, ¶34, (an attorney's evasiveness and false testimony at the panel hearing constituted a failure to cooperate in the disciplinary proceedings); *Disciplinary Counsel v. Stafford,* 128 Ohio St. 3d 446; 2011 Ohio 1484; 946 N.E.2d 193, ¶73 (this Court found, as an aggravating factor, that the attorney periodically displayed disrespect for the assistant disciplinary counsel prosecuting the matter).

In this disciplinary case, the hearing panel found that respondent's answers to questioning about the show cause order were extremely evasive, and that he never acknowledged the need to file a separate response. *Id.,* citing Hearing Tr. at 291-298. Respondent's conduct is analogous to the conduct in the *Summers* and *Stafford* cases discussed above. Therefore, the board could properly find the respondent had a cavalier attitude based on the attitude towards his misconduct that he clearly demonstrated at the hearing.

The board noted that Ohio's existing case law did not offer much guidance on fashioning a sanction because this is the first time that Ohio is applying Prof. Cond. Rule 5.5(a) to an out-of-state attorney. Before the adoption of Prof. Cond. Rule 8.5, there was no disciplinary rule in Ohio that expressly conveyed disciplinary authority over out-of-state attorneys. Without Prof. Cond. Rule 8.5, when out-of state attorneys committed misconduct , they could be enjoined temporarily or permanently from the practicing law in Ohio, pro hac vice or in any other respect. *See Cincinnati Bar Assn. v. Moeves*, 119 Ohio St. 3d 412; 2008-Ohio-4541; 894 N.E.2d 1210,

¶45. Therefore, without Ohio precedent, the board turned to a case recently decided by the Supreme Court of Iowa when it was asked to determine the appropriate sanction for a non-Iowa attorney who engaged in misconduct while practicing federal law in Iowa. *Iowa Supreme Court Attorney Disciplinary Bd. v. Carpenter,* 781 N.W.2d 263 (2010). Relator agrees with the board that *Carpenter* is most instructive and urges this Court to apply its equitable powers to fashion an appropriate sanction in this case.

In *Carpenter,* the attorney was licensed to practice in Minnesota. *Id.* at 265. Carpenter was admitted to the federal immigration bar by virtue of his Minnesota license and practiced immigration law in the federal court in Iowa. *Id.* The Supreme Court of Iowa determined that Carpenter neglected client matters in the federal court, failed to properly account for his fees, failed to cooperate with the disciplinary proceedings, and engaged in criminal misconduct that adversely reflected on his fitness to practice law. *Id.* at 268-69. In fashioning a sanction, the *Carpenter* court first recognized that Carpenter did not have an Iowa law license to suspend or revoke. *Id.* at 269-70. Nevertheless, the court concluded that its "authority to discipline non-Iowa licensed attorneys include[d] the ability to fashion practice limitations through [its] injunctive and equitable powers that [were] equivalent to license suspension, disbarment, or other sanctions related to an attorney's license." *Id.* The *Carpenter* court then stated that "[i]n applying [its] equitable powers, it first had to examine the precedent involving similar violations committed by state-licensed lawyers as "a basis for translating the appropriate sanction into equivalent injunctive relief." *Id.* at 270. The *Carpenter* Court determined that Carpenter would have received a two-year suspension for his misconduct in light of the mitigating factors if he were a licensed Iowa attorney. *Id.* at 271. Translating that sanction to equitable relief, the court

ordered "Carpenter to cease and desist from all legal practice in Iowa indefinitely with no possibility that the order will be lifted for a period of not less than two years. *Id.* at 271-72.

Similar to Carpenter, respondent was practicing federal law in Ohio by virtue of an out-of-state license. Respondent also committed similar misconduct by neglecting a client matter in the federal court in Ohio, failing to account for his attorney fees, failing to cooperate with these disciplinary proceedings, and engaging in conduct that adversely reflected on his fitness to practice law. In addition, respondent practiced law in an Ohio matter without an Ohio license.

In apply its equitable power, this Court should first examine the precedent involving similar violations committed by state-licensed lawyers as a basis for translating the appropriate sanction for respondent. Respondent's practice of law in an Ohio matter without an Ohio license is most similar to an Ohio attorney practicing while under suspension, and in such cases, the presumptive sanction is disbarment. *See e.g., Disciplinary Counsel v. Koury,* 77 Ohio St.3d 433, 436, 1997-Ohio-91, 674 N.E.2d 1371. Notwithstanding *Koury*, this Court has imposed indefinite suspensions in certain similar situations.[2]

This Court's most recent decisions involving the unauthorized practice of law by an attorney under Prof. Cond. Rule 5.5(a) reinforce that an indefinite suspension is the usual and appropriate sanction. *See Disciplinary Counsel v. Cantrell*, 125 Ohio St. 3d 458; 2010-Ohio-2114; 928 N.E.2d 1100 (indefinite suspension imposed on an attorney who engaged in a pattern of misconduct involving the improper use of her client trust account, the misappropriation of client funds, and the intentional practice of law while her license was inactive); *Disciplinary*

---

[2] *See, e.g., Disciplinary Counsel v. Higgins,* 117 Ohio St.3d 473, 2008-Ohio-1509, 884 N.E.2d 1070; *Toledo Bar Assn. v. Crandall,* 98 Ohio St.3d 444, 2003-Ohio-1637, 786 N.E.2d 872; *Akron Bar Assn. v. Barron,* 85 Ohio St.3d 167, 1999-Ohio-458, 707 N.E.2d 850; *Columbus Bar Assn. v. Winkfield,* 107 Ohio St.3d 360, 2006-Ohio-6, 839 N.E.2d 924; and *Disciplinary Counsel v. Jackson,* 86 Ohio St.3d 104, 1999-Ohio-87, 712 N.E.2d 122.

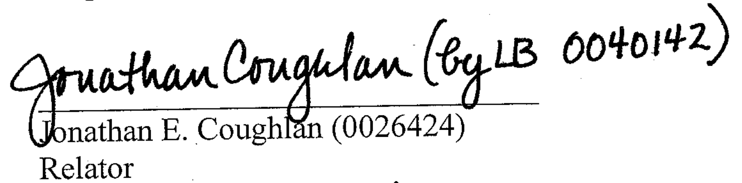
Counsel v. Freeman, 126 Ohio St.3d 389; 2010-Ohio-3824; 934 N.E.2d 328 (indefinite suspension imposed on an attorney who continued to represent two clients during his suspension and failed to notify opposing counsel or the court of his suspension); and *Columbus Bar Assn. v. Van Sickle,* 128 Ohio St.3d 376; 2011-Ohio-774; 944 N.E.2d 677 (indefinite suspension imposed on an attorney who practiced law while under suspension for his failure to register, neglected client matters, and failed to cooperate with the resulting disciplinary investigations). In these three cases, this Court found that the existence of the following aggravating factors warranted an indefinite suspension: a pattern of misconduct, multiple offenses, and a failure to acknowledge fully the wrongfulness of misconduct by claiming that the attorney's actions did not constitute the practice of law.

Likewise, respondent engaged in a pattern of misconduct, lacked remorse, and failed to acknowledge the wrongfulness of his misconduct. Moreover, respondent demonstrated selfish and dishonest motives, harmed a client, and failed to cooperate with the disciplinary proceedings. Therefore, in line with the board's reasoning and the above cases, this Court should use its equitable power to enjoin respondent from all legal practice in Ohio indefinitely with no possibility of reinstatement for at least two years.

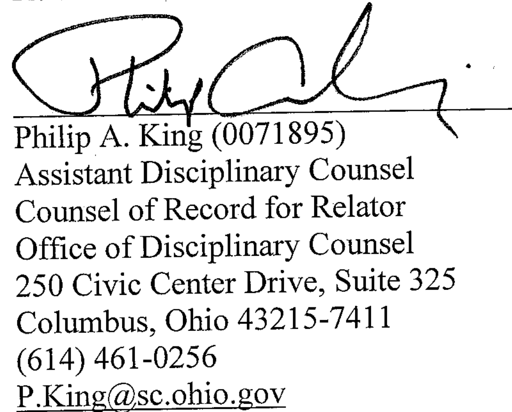
CONCLUSION

For the foregoing reasons, this honorable Court should overrule respondent's objections to the board's Report. The Court should adopt the findings of fact and conclusions of law in the board's Report and order respondent to cease and desist from all legal practice in Ohio indefinitely with no possibility that the order will be lifted for a period of not less than two years with lifting of the order subject to the conditions set forth in paragraph 91of the Report.

Respectfully submitted,



Jonathan E. Coughlan (0026424)
Relator



Philip A. King (0071895)
Assistant Disciplinary Counsel
Counsel of Record for Relator
Office of Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411
(614) 461-0256
P.King@sc.ohio.gov

CERTIFICATE OF SERVICE

I hereby certify that accurate copy of the foregoing ***Answer Brief*** was served via U.S. Mail, postage prepaid, upon respondent's counsel, Geoffrey Lynn Oglesby, Esq. at Oglesby & Oglesby, Ltd., 618 W. Washington Street, P. O. Box 2137, Sandusky, OH 44871-2137, and upon Richard A. Dove, Secretary, Board of Commissioners on Grievances and Discipline, 65 S. Front Street, 5th Floor, Columbus, Ohio 43215, on December 14, 2012.

Philip A. King
Counsel for Relator