

ORIGINAL

IN THE SUPREME COURT OF OHIO

Cincinnati Bar Association,

Relator,

v.

Robert Hansford Hoskins,

Respondent,

Case No. 2015-1003

**RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS TO THE FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION OF THE BOARD OF
PROFESSIONAL CONDUCT OF THE SUPREME COURT OF OHIO**

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STATEMENT OF FACTS

Relator, the Cincinnati Bar Association, filed its initial complaint against Respondent, Robert H. Hoskins, on February 3, 2014. A panel of the Board of Professional Conduct conducted a hearing on July 15 and 16, 2014. A second complaint was filed on October 6, 2014, which the Board consolidated with the initial complaint. The third and final hearing was completed on February 18, 2015. Before a decision was rendered, Relator moved to supplement the record with respect to the Court's imposition of reciprocal discipline on Respondent. The motion was granted on May 20, 2015. On June 15, 2015, the Board issued Findings of Fact and Conclusions of Law and its Recommendation that Respondent be indefinitely suspended from the practice of law, with reinstatement subject to conditions. The Court entered its Order to Show Cause on June 24, 2015, and Respondent filed objections on July 14, 2015. Relator notes that Respondent failed to serve Relator's Counsel of Record, failed to use the proper case number as assigned by the clerk of this Court, and failed to comply with this Court's rules regarding the form and content of a brief. *See* S. Ct. Prac. R. 16.02. Subject to the limitations imposed by Respondent's failures, Relator hereby submits its answer.

ARGUMENT

Proposition of Law I:

Because panel members saw and heard the witnesses first-hand and based their decision on substantial evidence, this Court should defer to the panel's findings.

During three days of hearings, the panel heard testimony from Respondent and eight other witnesses and received seventy-seven exhibits, plus the supplemental exhibit subsequently added to the record. Additionally, the panel considered the parties' Stipulation of Facts, which by itself provided substantial, credible evidence supporting each violation alleged in the Complaints

against Respondent. While Respondent now disputes some of the Board's findings of fact, he has made no showing that the record was insufficient to support the Board's determinations. Well-established precedent establishes that, "Unless the record weighs heavily against a hearing panel's findings, we defer to the panel's credibility determinations, inasmuch as the panel members saw and heard the witnesses firsthand." *Disciplinary Counsel v. Bunstine*, 136 Ohio St.3d 276, 2013-Ohio-3681 (quoting *Cuyahoga Cty. Bar Assn. v. Wise*, 108 Ohio St.3d 164, 2006-Ohio-550). In the case at bar, the hearing panel and the Board were well within their discretion in making the findings of fact and conclusions of law.

Proposition of Law II:

Where clear and convincing evidence establishes repeated violations of multiple Rules of Professional Conduct, an indefinite suspension is warranted.

By Respondent's own admission, the conduct that led to the filing of the Complaints against him goes to the heart of an attorney's duty to zealously represent his client's interests. With respect to Angela Long, for example, Respondent admitted that failed to keep his client advised as to the status of her case, failed to respond to her inquiries, failed to return a signed copy of the fee agreement, and failed to ensure that her file was timely returned to her upon request. Respondent's Objections at 10. Respondent further admitted that he violated Prof. Cond. R. 1.3 in representing Gretchen Amer and that he failed to timely return a fee to Scott Games. *Id.* at 6-7. These violations are undisputed, and the panel found by clear and convincing evidence that Respondent violated all of the following:

- Prof. Cond. R. 1.1, which requires a lawyer to provide competent representation to a client;
- Prof. Cond. R. 1.3, which requires a lawyer to act with reasonable diligence and promptness in representing a client;

- Prof. Cond. R. 1.4(a)(1-4), which requires a lawyer to: (1) promptly inform the client regarding matters that require the client's informed consent; (2) reasonably consult with the client about the means of meeting the client's objectives; (3) keep the client reasonably informed about the status of a matter; and (4) comply as soon as practicable with reasonable client requests for information;
- Prof. Cond. R. 1.4(b), which requires a lawyer to explain a matter to the extent reasonably necessary in order to allow the client to make an informed decision regarding their representation;
- Prof. Cond. R. 1.5(c)(1), which states that each contingent fee agreement shall be in writing signed by the client and the lawyer shall state the method by which the fee is to be determined;
- Prof. Cond. R. 1.15(a), which requires a lawyer to hold funds in a "separate interest-bearing account in a financial institution authorized to do business in Ohio and maintained in the state where the lawyer's office(s) is situated";
- Prof. Cond. R. 1.15(c), which instructs a lawyer to "deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred";
- Prof. Cond. R. 1.15(d), which requires a lawyer to promptly deliver any funds or fees to which the lawyer's client is entitled;
- Prof. Cond. R. 5.4(a), which prohibits a lawyer or law firm from sharing legal fees with a nonlawyer;
- Prof. Cond. R. 7.1, which forbids a lawyer from making or using a false, misleading, or nonverifiable communication about the lawyer or the lawyer's services;

- Prof. Cond. R. 7.2(b)(3), which precludes a lawyer from giving anything of value to a “person recommending the lawyer’s services except that a lawyer may pay the usual charges for a nonprofit or lawyer referral services that complies with Gov. Bar R. XVI”;
- Prof. Cond. R. 7.5(d), which permits a lawyer to state that he or she practices in a partnership or other organization only when that is a fact;
- Prof. Cond. R. 8.1(a), which provides that a lawyer shall not knowingly make a false statement of material fact in connection with a disciplinary matter;
- Prof. Cond. R. 8.1(b), which provides that a lawyer shall not knowingly fail to disclose a material fact or knowingly fail to respond for a demand for information; and
- Prof. Cond. R. 8.4(c), which provides that it is professional misconduct for a lawyer to “engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.”

Findings of Fact, Conclusions of Law, and Recommendation of the Board of Professional Conduct of the Supreme Court of Ohio (“Findings of Fact”) at 3.

The panel also found the significant aggravating factors:

- Multiple counts of misconduct;
- Lack of cooperation in the disciplinary process. Respondent failed to produce documents when requested. More importantly even when ordered to produce the documents he failed to do so;
- Refusal to acknowledge the wrongful nature of this conduct;
- Failure to make restitution before the hearing; and

- Submission of false statements or other deceptive practices during the disciplinary process.

Id. at 14-15.

Of particular import, the panel determined that Respondent provided *inaccurate testimony* regarding his IOLTA account deposits and *was not forthright and truthful during his testimony*. *Id.* at 15 (emphasis added). In addition, the panel identified Respondent's prior misconduct arising from a finding by the Supreme Court of Kentucky. *Kentucky Bar Assn. v. Hoskins*, 454 S.W.3d 289 (2015) . On April 23, 2015, this Court entered reciprocal discipline and suspended Respondent's Ohio license for sixty days. *Disciplinary Counsel v. Hoskins*, 142 Ohio St.3d 1244, 2015-Ohio-1532.

Based upon the evidence produced, case law, and recent decisions by the Kentucky Supreme Court and the Supreme Court of Ohio, the panel recommended that Respondent be indefinitely suspended from the practice of law. Findings of Fact at 18. As additional conditions of reinstatement, the panel recommended that Respondent should be required to take a law office management course, successfully pass the Multi-State Professional responsibility Examination, and pay the costs of the proceeding. *Id.* The panel's recommendation was adopted by the Board. *Id.*

In reaching their decision, the panel relied heavily upon *Cleveland Metro. Bar Assn. v. Pryatel*, a case which strongly supports the sanction recommended here. *Cleveland Metro. Bar Assn. v. Pryatel*, 125 Ohio St.3d 31, 2010-Ohio-1466. In *Pryatel*, the Respondent violated Prof. Cond. R. 3.3(a)(1) by knowingly making false statements of fact or law to a tribunal. Additionally, Respondent was found to have violated Prof. Cond. R. 1.1, Prof. Cond. R. 1.3, Prof. Cond. R. 1.4(a)(3), Prof. Cond. R.1.4(a)(4), Prof. Cond. R. 1.15(c), and Prof. Cond. R.

8.4(c). Pryatel was also less than cooperative, had a selfish motive for his actions, and pled guilty to theft. The Supreme Court imposed an indefinite suspension, and conditioned reinstatement upon the Respondent's meeting certain criteria.

The sanctions for sharing legal fees with nonlawyers have ranged from public reprimands to stayed suspensions, depending upon the attorney's legal experience and the existence of other mitigating and aggravating factors. Here, Respondent has substantial legal experience, having been in practice since 1997. In *Geauga Cty. Bar Assn. v. Patterson*, the Respondent had represented clients through a foreclosure assistance program, in which he allowed the company to determine the client's objectives. *Geauga Cty. Bar Assn. v. Patterson*, 124 Ohio St.3d 93, 2009-Ohio-6166. The Respondent then accepted a portion of the compensation paid to the company for the company's services. The Respondent failed to meet directly with his clients. The Respondent also shared legal fees with nonlawyers and aided in its unauthorized practice of law. The Court imposed an 18-month suspension, with the last six months stayed on conditions. This scenario is similar to what has transpired with Citizen Disability, LLC, and a suspension is warranted.

The panel also considered *Disciplinary Counsel v. Lord*, 111 Ohio St.3d 131, 2006-Ohio-5341. In *Lord*, the Respondent had engaged in multiple counts of misconduct, some of which violated orders of the bankruptcy court. The Court found various mitigating factors, *i.e.*, the absence of any prior disciplinary violations and good character reputation, but found multiple aggravating factors, *i.e.*, a pattern of misconduct, lack of cooperation in the disciplinary process, refusal to acknowledge the wrongful nature of his conduct, and the failure to make restitution. The Court imposed an indefinite suspension. Considering the number and the nature of the rule

violations found here, *Pryatel*, *Lord*, and the other cases cited support the Board's recommendation of an indefinite suspension.

CONCLUSION

For all the foregoing reasons, Relator respectfully requests that the Court overrule Respondent's objections accept the recommendation of the Board and indefinitely suspend Robert H. Hoskins from the practice of law in Ohio, with conditions on reinstatement.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Relator's Answer to Respondent's Objections to the Findings of Fact, Conclusions of Law, and Recommendation of the Board of Professional Conduct of the Supreme Court of Ohio was mailed by first class United States mail, postage prepaid, to Robert H. Hoskins, 1040 Richwood Avenue, P.O. Box 32484, Cincinnati, Ohio 45208, this 2nd day of August, 2015.

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