

**BEFORE THE BOARD OF PROFESSIONAL CONDUCT
OF THE SUPREME COURT OF OHIO**

In re:	SCO No. 2015-0602
Complaint against	BPC Case No. 2014-100
Richard Lake Hiatt Attorney Reg. No. 0082009	Findings of Fact, Conclusions of Law, and Recommendation of the Board of Professional Conduct of the Supreme Court of Ohio
Respondent	
Disciplinary Counsel	
Relator	

OVERVIEW

{¶1} This matter was heard on May 26, 2016 in Columbus before a panel consisting of David W. Hardymon, Dr. John R. Carle, and David L. Dingwell, chair. None of the panel members resides in the district in which the complaint arose or served as a member of the probable cause panel that reviewed the complaint pursuant to Gov. Bar R. V, Section 11.

{¶2} Respondent was present at the hearing and proceeded *pro se*. Scott Drexel appeared on behalf of Relator.

{¶3} The panel finds that Respondent engaged in professional misconduct arising from his failure to appear at a hearing on behalf of a client, his representation of three separate clients after having been suspended on an interim basis by the Supreme Court, and his failure to cooperate with Relator's investigation of his misconduct. For the reasons set forth below, the panel recommends that Respondent be suspended for a period of two years, with six-months stayed on conditions, and that he be given no credit for time served under the interim default suspension imposed by the Supreme Court on May 14, 2015.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶4} The parties entered into 52 written stipulations of fact. The parties further stipulated to the admission of 39 exhibits into evidence at the hearing. Respondent testified at the hearing. The panel finds the following facts to have been proven by clear and convincing evidence.

{¶5} Respondent was admitted to the practice of law in the state of Ohio on November 5, 2007 and is subject to the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

{¶6} Prior to the Supreme Court of Ohio's imposition of an interim default suspension on May 14, 2015 arising out of Respondent's failure to file an answer to the certified complaint in this proceeding, *infra* at ¶28, Respondent had no prior discipline.

{¶7} Respondent was a sole practitioner. Hearing Tr. 54. Respondent's practice was of a general nature as he represented clients in criminal and civil matters.

Count One—Stotler Matter and Respondent's Initial Failure to Cooperate

{¶8} On February 22, 2013, Respondent entered an appearance in Kettering Municipal Court on behalf of Dale Stotler and Donald Stotler in two separate criminal proceedings.

{¶9} The court scheduled pretrial conferences in both cases to take place on March 14, 2013. Respondent was served with notices of both pretrials.

{¶10} Respondent failed to appear at either pretrial conference.

{¶11} The court then scheduled trial for both cases to take place on May 8, 2013. Respondent was served with notices of the trials.

{¶12} Neither Respondent nor his clients appeared on May 8, 2013 for either trial.

{¶13} The prosecutor on the cases, at the request of the court, contacted Respondent on May 8, 2013. Respondent informed the prosecutor that he would not be appearing for either trial.

{¶14} The court then issued an order to show cause directing Respondent to appear in court on May 21, 2013 to address his failure to appear for trial on May 8, 2013. Respondent was served with the order.

{¶15} Respondent did not appear for the hearing on May 21, 2013.

{¶16} On September 4, 2013, the court filed a contempt complaint against Respondent. Respondent was served with the complaint.

{¶17} Respondent admitted his contempt of court, and a sentencing hearing was scheduled for December 10, 2013. Respondent was aware of the date of the sentencing hearing.

{¶18} Respondent failed to appear at the sentencing hearing. On December 30, 2013, the court entered an order for the issuance of a warrant for Respondent's arrest. The warrant was issued on January 17, 2014. Respondent was never arrested on the warrant.

{¶19} Judge Thomas M. Hanna of the Kettering Municipal Court referred the matter of Respondent's contempt to Relator.

{¶20} Upon receiving the referral from Judge Hanna, Relator sent two letters of inquiry to Respondent. Respondent ignored both.

{¶21} Relator then attempted to schedule a deposition of Respondent, but was unable initially to serve Respondent at the address Respondent listed with the Office of Attorney Services. Eventually, Relator personally served Respondent with the subpoena for his deposition which was scheduled to take place on August 7, 2014.

{¶22} On August 6, 2014, Respondent contacted Relator and requested that the deposition be rescheduled. Respondent and Relator agreed to reschedule the deposition to take place on September 10, 2014 at 10:00 a.m.

{¶23} On September 10, 2014, Respondent failed to appear for the deposition. Respondent called Relator after the deposition was scheduled to begin and claimed that a car was parked in front of Respondent's driveway and he was therefore unable to back out of his driveway.

{¶24} Relator and Respondent then agreed to reschedule Respondent's deposition to take place on October 2, 2014 at 10:30 a.m.

{¶25} Respondent failed to appear for his deposition on October 2, 2014.

{¶26} On December 15, 2014, Relator filed the complaint against Respondent alleging violations of the Ohio Rules of Professional Conduct arising out of the Stotler matter and Respondent's failure to cooperate.

{¶27} Respondent failed to file an answer to Relator's complaint.

{¶28} On May 14, 2015, after the Board certified Respondent's default to the Supreme Court of Ohio, the Supreme Court of Ohio ordered an interim default suspension against Respondent. *Disciplinary Counsel v. Hiatt*, 2015-Ohio-1813.¹

{¶29} According to Respondent, he became aware of the interim default suspension "about a week after it happened." Hearing Tr. 21-22.

{¶30} Despite his knowledge that he had been suspended from the practice of law by the Supreme Court of Ohio, Respondent continued to practice law on behalf of three separate clients. With leave of the panel chair, Relator filed an amended complaint regarding these matters on December 15, 2015.

¹ On June 22, 2016, Respondent filed a motion for leave to answer the complaint and a request to terminate the interim default suspension. The Supreme Court granted the motion for leave to answer and remanded the case to the Board for further proceedings. The Supreme Court denied Respondent's request to terminate the interim default suspension. *Disciplinary Counsel v. Hiatt*, 2015-Ohio-3275.

Count Two—Khodadad Matter

{¶31} On August 28, 2015, Respondent agreed to represent Anissa Khodadad relative to seeking a civil protective order against Ms. Khodadad’s husband. Ms. Khodadad paid Respondent the sum of \$1,200 as a retainer.

{¶32} Respondent entered his appearance as counsel for Ms. Khodadad in Hamilton County Domestic Relations Court on September 4, 2015 in *Khodadad v. Khodadad*, Case No. DV 150082.

{¶33} At no time, did Respondent alert his client, opposing counsel, or the Hamilton County Domestic Relations Court that he was suspended from the practice of law.

{¶34} Respondent has not refunded Ms. Khodadad the retainer that she paid to him.

{¶35} Upon discovery of this representation, Relator sent a letter of inquiry to Respondent on October 26, 2015.

{¶36} Respondent never responded to the letter of inquiry.

{¶37} During the hearing, Respondent testified that when he received confirmation of his attorney registration renewal for the next biennium, “I thought my suspension was over.” Hearing Tr. 33. He believed that his suspension was only going to be brief based on his discussions with counsel for Relator. Hearing Tr. 62.

{¶38} However, even though he testified as to what he believed was simply a misunderstanding as to the status of his interim suspension, Respondent was fully aware of his suspension, and he made the conscious decision to continue representing clients with the hope that the interim suspension would be resolved. According to Respondent: “I gambled and lost.” Hearing Tr. 62.

{¶39} Respondent further testified, “on that one particular matter I thought I could fend it off and wait until -- and I really thought I had, but in hindsight that wasn’t -- did not come to fruition.” Hearing Tr. 64. Accordingly, while he claims that he believed his suspension was over or would soon be resolved, there is no dispute that he knew and understood that he was engaged in the practice of law while his license was under suspension.

Count Three—Innovative Management Lien Matters

{¶40} As set forth above, Respondent was suspended from the practice of law by the Supreme Court of Ohio on May 14, 2015.

{¶41} Prior to that date, Respondent had been engaged to serve as legal counsel for Innovative Management for purposes of preparing and filing notices of liens against homeowners and condominium owners who failed to pay their association fees.

{¶42} The fee arrangement between Respondent and Innovative Management provided that Respondent would receive a monthly flat fee of \$800 for the legal services he performed.

{¶43} After May 14, 2015, Respondent signed 29 different lien-related documents in his capacity as attorney for the various homeowner/condominium owner associations even though he had been suspended from the practice of law.

{¶44} Respondent did not refund any portion of the \$800 monthly flat fee that he received from Innovative Management after May 14, 2015.

{¶45} Respondent gave misleading testimony during the hearing regarding his work for Innovative Management when he testified, “I was reviewing these more as an engineer than as an attorney.” Hearing Tr. 40.

{¶46} Exhibit 31, stipulated by the parties, clearly demonstrates that Respondent was signing these documents in his capacity as “Attorney for Association.” Once again, Respondent attempted to mislead the panel in an effort to legitimize or minimize his conduct.

Count Four—Forney Matter

{¶47} As set forth above, Respondent was suspended from the practice of law by the Supreme Court of Ohio on May 14, 2015.

{¶48} On May 19, 2015, despite being suspended from the practice of law, Respondent entered an appearance in Hamilton County Municipal Court on behalf of Melanie Leigh Forney who had been charged with various traffic offenses.

{¶49} At no time, did Respondent alert his client, opposing counsel, or the Hamilton County Municipal Court that he was suspended from the practice of law.

{¶50} Despite his knowledge that he was suspended from the practice of law, Respondent continued to represent Forney until her case reached final disposition on September 30, 2015.

{¶51} Upon discovery of this representation, Relator sent a letter of inquiry to Respondent on November 10, 2015.

{¶52} Respondent never responded to the letter of inquiry.

{¶53} The panel concludes, by clear and convincing evidence, based upon the stipulations, exhibits and the testimony presented at the hearing, that Respondent’s conduct violated the following Rules:

- Prof. Cond. R. 1.3 [diligence] (Count One).
- Prof. Cond. R. 3.4(c) [a lawyer shall not knowingly disobey an obligation under the rules of the tribunal] (Count One: failure to properly withdraw as counsel; Counts Two and Four: entering an appearance as counsel when under suspension).

- Prof. Cond. R. 8.4(d) [conduct prejudicial to the administration of justice] (Count One: failure to appear at trial and failure to appear at show cause hearings when ordered to do so).
- Prof. Cond. R. 5.5(a) [a lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction] (Counts Two, Three, and Four).
- Prof. Cond. R. 3.3(a) [a lawyer shall not knowingly make a false statement of fact to a tribunal] (Counts Two and Four: falsely implying to the courts that Respondent was entitled to practice law in the state of Ohio).
- Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation] (Counts Two and Four: failing to notify clients that Respondent's license to practice law was suspended).
- Prof. Cond. R. 8.1(b) [a lawyer shall not knowingly fail to respond to a demand for information] (Counts One, Two, and Four).
- Gov. Bar R. V, Section 9(G) [a lawyer shall cooperate with a disciplinary investigation] (Counts One, Two, and Four).

MITIGATION, AGGRAVATION, AND SANCTION

{¶54} The panel finds the following aggravating factors:

- Respondent has exhibited a pattern of misconduct;
- Respondent has committed multiple offenses;
- Respondent has failed to make full restitution to the victims of his misconduct;
- Respondent's conduct exhibits his dishonest and selfish motive;
- Respondent failed to acknowledge the wrongful nature of his conduct;
- Respondent failed to cooperate with the investigation; and
- Respondent gave false and misleading testimony during the hearing of this matter.

{¶55} In mitigation, the panel finds Respondent has no disciplinary record prior to the May 14, 2015 interim default suspension.

{¶56} Although Respondent testified that his physician (a cardiologist) diagnosed him as having depression, no medical evidence of any kind was admitted at the hearing in order to substantiate that Respondent actually does suffer from depression or any other mental health condition. Therefore, Respondent's psychological condition is not a mitigating factor.

{¶57} Relator recommends that Respondent be suspended from the practice of law for a period of time between 18 months and two years. Relator suggests that no more than six months of the suspension be stayed on certain conditions, including restitution to Ms. Khodadad and to Innovative Management, and that Respondent be in compliance with a contract with the Ohio Lawyers' Assistance Program.

{¶58} The panel is primarily troubled with Respondent's violations associated with his conscious decision to continue practicing law even though he knew he was under an interim suspension from the practice of law.

{¶59} The Supreme Court of Ohio has held that "When lawyers continue to practice law despite the suspension of their licenses and then fail to cooperate in investigations of that misconduct, an indefinite suspension is warranted." *Disciplinary Counsel v. Higgins*, 117 Ohio St.3d 473, 2008-Ohio-1509, at ¶15. The Supreme Court has also held that disbarment is "the normal penalty for continuing to practice law while under suspension." *Disciplinary Counsel v. Seabrook*, 133 Ohio St.3d 97, 2012-Ohio-3933, at ¶12, quoting *Disciplinary Counsel v. Koury*, 77 Ohio St.3d 433, 436, 1997-Ohio-91.

{¶60} In two cases dealing with some facts similar to those presented here, the Supreme Court of Ohio chose to indefinitely suspend the attorney where that attorney continued to practice law while under suspension and failed to cooperate. See *Disciplinary Counsel v. Higgins, supra*, and *Toledo Bar Assn. v. Woodley*, 132 Ohio St.3d 120, 2012-Ohio-2458.

{¶61} However, a review of several other cases demonstrates that the Supreme Court of Ohio has imposed a lesser sanction in cases with facts similar to those found in this case. In the following cases, the Court was faced with attorneys who continued to practice law in various matters while their license was under suspension. In each case, the Court ordered a suspension for

a period of time with a portion of that suspension stayed on various conditions which usually included referral to the Ohio Lawyers' Assistance Program.

{¶62} Two-year suspension, with one year stayed on conditions: *Disciplinary Counsel v. Seabrook*, 133 Ohio St.3d 97, 2012-Ohio-3933; *Disciplinary Counsel v. Eisler*, 143 Ohio St.3d 51, 2015-Ohio-967; *Disciplinary Counsel v. Troller*, 138 Ohio St.3d 307, 2014-Ohio-60.

{¶63} Eighteen-month suspension, with six months stayed: *Disciplinary Counsel v. Meyer*, 134 Ohio St.3d 180, 2012-Ohio-5487.

{¶64} One-year suspension, with six months stayed: *Disciplinary Counsel v. Bancsi*, 79 Ohio St.3d 392, 1997-Ohio-378; *Disciplinary Counsel v. Simmons*, 120 Ohio St.3d 304, 2008-Ohio-6142.

{¶65} Fully stayed suspension: *Disciplinary Counsel v. Meehan*, 133 Ohio St.3d 51, 2012-Ohio-3894 (two-year suspension, with all two years stayed on conditions); *Cincinnati Bar Assn. v. Gilbert*, 138 Ohio St.3d 218, 2014-Ohio-522 (one-year suspension, with the entire year stayed on conditions).

{¶66} In reviewing all of these cases, and considering Respondent's violations in this matter, the panel recommends that an actual suspension, with a portion stayed on conditions, is the most appropriate sanction.

{¶67} Respondent's conduct does not appear to be as egregious as that of the attorneys in the *Higgins* and *Woodley* cases. Therefore, the panel does not believe that an indefinite suspension should be recommended. However, Respondent's conduct is more egregious than those cases where only a one-year suspension or a fully stayed suspension was ordered.

{¶68} Had Respondent simply been prompt in responding and cooperating with Relator when the original Stotler grievance was filed, a far lesser sanction would likely have been in order,

assuming that Relator would have even pursued the matter based upon that single violation. Unfortunately, Respondent compounded and exacerbated the problems by refusing to respond to and cooperate with Relator's investigation of the matter. That resulted in the interim default suspension.

{¶69} Respondent's conduct that gave rise to the various complaints in this matter, and his refusal to face the reality of the complaint and blindly violating the interim suspension order may, as Respondent suggests, be the result of an ongoing psychological condition. Without medical evidence, the panel is unwilling to consider this in mitigation. However, the panel recommends that a mandated treatment plan would be a valuable condition to any stay of some or all of an actual suspension.

{¶70} The panel, having considered the case law, the Rule violations, the aggravating and mitigating factors, and circumstances present here, recommends that Respondent be suspended from the practice of law for a period of two years, with six months of the suspension be stayed on the following conditions: (1) Respondent commit no further misconduct; (2) Respondent make restitution in the amount of \$1,200 to Ms. Khodadad and in the amount of \$1,600 to Innovative Management; (3) Respondent establish a contract and treatment plan with the Ohio Lawyers' Assistance Program, and remain in compliance with that contract; and (4) Respondent pay the costs of these proceedings

{¶71} The panel further recommends that no credit be given to Respondent for any period of time that he has served under the interim suspension.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct of the Supreme Court of Ohio considered this matter on August 5, 2016. The Board adopted the findings of fact,

conclusions of law, and recommendation of the panel and recommends that Respondent, Richard Lake Hiatt, be suspended from the practice of law in Ohio for two years, with six months stayed on conditions contained in ¶70 of this report. The Board further recommends that Respondent be given no credit for time served under the interim default suspension and ordered to pay the costs of these proceedings.

Pursuant to the order of the Board of Professional Conduct of the Supreme Court of Ohio, I hereby certify the foregoing findings of fact, conclusions of law, and recommendation as those of the Board.

A handwritten signature in black ink, appearing to read "Richard A. Dove", written over a horizontal line.

RICHARD A. DOVE, Director