

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

In re:

Complaint against

Case No. 2017-070

**Thomas Charles Holmes
Attorney Reg. No. 0073794
and
Ashleigh Brie Kerr
Attorney Reg. No. 0085992**

**Recommendation of the
Board of Professional Conduct**

Respondents

Disciplinary Counsel

Relator

DISCIPLINE BY CONSENT

{¶1} This matter was submitted to a hearing panel consisting of James D. Caruso, Hon. John W. Wise, and Hon. William A. Klatt, panel chair, pursuant to consent to discipline agreements filed by the parties on April 17, 2018. None of the panel members resides in the appellate district from which the complaint arose.

{¶2} The hearing panel finds that the respective agreements were filed on a timely basis and conform to the requirements of Gov. Bar R. V, Section 16. The panel recommends acceptance of each agreement including the statement of facts and the violations by each Respondent of the following Rules of Professional Conduct:

- *Prof. Cond. R. 1.6(a)*—a lawyer shall not reveal information relating to the representation of a client; and
- *Prof. Cond. R. 8.4(h)*—a lawyer shall not engage in conduct that adversely reflects on the lawyer's fitness to practice law.

{¶3} With regard to the stipulated violation of Prof. Cond. R. 8.4(h), the panel finds the conduct of Respondents, specifically the multiple disclosures of confidential client information

during a period of nearly two years, to be sufficiently egregious to warrant separate findings of that rule violation. *Disciplinary Counsel v. Bricker*, 137 Ohio St.3d 35, 2013-Ohio-3998, ¶21.

{¶4} The panel members further concur in the parties' stipulations and finds the following aggravating and mitigating factors with respect to each Respondent:

- *Aggravating factor*: a pattern of misconduct.
- *Mitigating factors*: (1) no prior discipline; (2) a cooperative attitude toward these proceedings; and (3) evidence of good character (Joint Ex. 25 and 26).

{¶5} The parties have stipulated to agreed sanctions of a six-month, fully stayed suspension for each Respondent, citing the recent case of *Cleveland Metro. Bar Assn. v Heben*, 150 Ohio St.3d 335, 2017-Ohio-6965 [one-year suspension, stayed], and *Disciplinary Counsel v. Shaver*, 121 Ohio St.3d 393, 2009-Ohio-1385 [public reprimand].

{¶6} In addition to the cases cited by the parties, the panel reviewed other cases in which lawyers breached their duties with regard to maintaining confidential client information. In *Disciplinary Counsel v. Yurich*, 78 Ohio St.3d 317, 1997-Ohio-239, Yurich was publicly reprimanded for inadvertently disclosing confidential client information that resulted in a son discovering that he had been disinherited by his parents. In *Geauga Cty. Bar Assn. v. Psenicka* (1991), 62 Ohio St.3d 577, Psenicka was publicly reprimanded for revealing confidential client information and having an impermissible conflict of interest. Psenicka filed a complaint for divorce on behalf his client. After the client obtained a new lawyer to represent her, Psenicka agreed to represent the former client's husband in the divorce action. Psenicka both disclosed and used confidential information provided by the wife in furtherance of his representation of the husband. There was no evidence of client harm, and Psenicka had no prior disciplinary record.

{¶7} The fact that Respondents made multiple disclosures over a period of nearly two years, and continued to do so after their initial disclosures were discovered by their respective law

firms, makes their conduct more egregious than the single, and in one case inadvertent, disclosures by Yurich and Psenicka. However, there is no evidence that any clients were harmed by Respondents' disclosures, and neither Respondent has a prior disciplinary record. The absence of these factors mitigates against an actual suspension.

{¶8} Accordingly, the panel unanimously recommends acceptance of the consent to discipline agreements and the imposition upon each Respondent of a six-month suspension, with each Respondent's suspension stayed on the condition of no further misconduct.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct considered this matter on June 8, 2018. The Board voted to accept the agreements entered into by Relator and Respondents and recommends that Respondent, Thomas Charles Holmes, be suspended for a period of six months, with the suspension stayed in its entirety on the condition that he engage in no further misconduct, and that Respondent, Ashleigh Brie Kerr, be suspended for a period of six months, with the suspension stayed in its entirety on the condition that she engage in no further misconduct. The Board incurred no costs in the adjudication of this proceeding.

Pursuant to the order of the Board of Professional Conduct, I hereby certify the forgoing report and recommendation as that of the Board.



RICHARD A. DOVE, Director