

IN THE SUPREME COURT OF OHIO

Disciplinary Counsel,

Relator,

vs.

Case No. 2018-1766

Timothy Raymond Dougherty,

Respondent's, et.al.

**OBJECTION OF TIMOTHY RAYMOND DOUGHERTY TO THE
FINDINGS AND CONCLUSIONS OF THE BOARD OF PROFESSIONAL
RESPONSIBILITY**

Timothy Raymond Dougherty (hereinafter Respondent) now states that he is objecting to the findings and conclusions of the Board of Professional Responsibility for the reasons set out hereafter.

ADMISSIONS

Respondent made admissions to the Board. Respondent did not register Christopher Cicero as a suspended lawyer employed by Respondent with the Office of Disciplinary Counsel from approximately January, 2013 to June, 2014. Respondent testified that he was not aware that registering Mr. Cicero with Disciplinary Counsel was required. (Trans. V1, Page 62, L. 3-5).

Respondent did not prepare a written notice concerning Attorney Cicero until around June, 2014 (Trans. V1, Page 192, L. 10-16).

Respondent did not provide an itemized statement to two of his clients when requested. (Bd. Findings, Para. 89, 92; Trans. V5, Page 1484, L. 13-19).

Respondent did not complete representation of a client for which he was paid a flat fee. (Bd. Findings, Para 90).

Respondent did not deposit client payments into an IOLTA account. (Bd. Findings, Para. 91, Hearing Tr. 196, L 9-12).

The Board's findings, paragraphs 81 through 83, discuss the sign in front of the building where Respondent worked.

ARGUMENT

The Panel heard from 20 witnesses over 5 days of testimony. There were voluminous exhibits, 181 in total from all the parties. The transcript is 1,731 pages.

The Board was required to find Respondent in violation of the allegations by clear and convincing evidence. This evidence is that degree of proof which will produce in the mind of the court a firm belief or conviction of truth of the charges and specifications sought to be established. *In re Chappell* (1938) 33 N.E.2d 393. It is more than a mere 'preponderance of the evidence', but not to the extent of certainty as is required by 'beyond a reasonable doubt'. *Cross v Ledford* (1954), 161 Ohio St. 469.

No Respondent in any hearing should have to prove a negative. The evidence, the testimony, the statements, the exhibits, and determine what can and cannot be proved by clear and convincing evidence. Equal evidence is ruled on in Respondent's favor. The benefit of the doubt always goes to the Respondent. The burden of persuasion is all on Relator. The registration rule concerning suspended lawyers states that the only time Attorney Dougherty would have to had informed Ms. Granata of Mr. Cicero's suspension is when or if he was to perform some act in her case that was not 'secretarial' in nature. The only act Cicero performed (which was allowed by rule as a secretarial function) was typing a Notice of Substitution for Ms. Granata at Attorney Dougherty's request in Ms. Granata's presence. There is no violation of the rule. The rule does not say a suspended lawyer has to walk around with a placard to 'notice'

everybody of a suspension. The rule says you have to inform the client a suspended lawyer is performing a legal act on Ms. Granata's behalf. This was done and Ms. Granata had knowledge of Mr. Cicero's suspension. To prove Granata knew Cicero was suspended at the time the Notice of Substitution was typed in her presence and to prove she knew on Dougherty was her attorney (not that she had two attorney's); when Granata next went to court after the Notice of Substitution was filed, in April 2013, she knew only to expect Dougherty. When Dougherty did not appear at the hearing, she did not call for Cicero. She did not expect Cicero then and she did not expect him later to defend her at a show cause hearing later in 2013. She never testified Cicero never responded to her letters or emails. She testified she did not expect Cicero to return her album too because Cicero was suspended.

The Board found, on Count One, violations of Prof. Cond. R. 1.3, 1.4(a)(3), 1.4(a)(4), 1.5(a), 1.15(a), 1.16(d), 5.5(a), 8.4(c), and Gov. Bar R. V(8)(G).

The Board's Report, section 98, concerns Respondent and Angela. Ms. Granata. The transcript shows multiple occasions where Ms. Granata was accused of lying and it was proved. (Hearing Tr. 984, L. 13-25; 985, L. 1-24; 986, L. 3-6. *And see* 477, L. 20-25; 478, L. 1-9, for example, Angela Granata lied about having a bullet in her head. Hearing Tr. 979, L. 7-13) Angela Granata filed a grievance against Mr. Brunner to stop a collection effort (Hearing Tr. 979, L. 9-11; Hearing Tr. 984, L. 13-25 (Angela Granata is not truthful)). How could Ms. Granata have more credibility than Mr. Brunner, who represented her for several years. Hearing Tr. 551, L.1. Furthermore, Ms. Granata defined the many cases she has filed as well over three (Hearing Tr. 570, L. 3-5). When asked how successful she was with the cases she had filed, Ms. Granata stated that she felt "successful" about all of the cases. When asked how many of the cases filed had been won, she stated none (Hearing Tr. 570, L. 6-7; 13-18; 570, L. 19-22). Ms.

Granata exaggerates facts, alters documents, makes misleading and outright false statements, and then feels “successful” about losing her litigation. Although attacking the credibility of a witness at the appellate level is difficult, in this instance Ms. Granata has proved, by her own words, to be untruthful and unreliable. Ms. Granata only referred to Mr. Cicero as Respondent’s “law partner” when it suited her, not when it would have proved her case. Hearing Tr. 526, L. 8-13; 527, L. 11-16; 529, L. 1-8; 540, L. 11-24.

Ms. Granata’s testimony does not rise to the level of being clear and convincing. Ms. Granata knew that Mr. Cicero was under a suspension prior to ever coming to the law office. Hearing Tr. 526 L. 8-18. The article Ms. Granata referred to was published in November 2012.

Respondent’s time log discloses Respondent’s work expended on behalf of Ms. Granata. Realtor Exhibit 52. The Board allowed 16.75 of Respondent’s time log toward the fees charged Ms. Granata. However, Ms. Granata paid \$5,000.00 to an attorney to reopen a bankruptcy case. A motion was filed in April, 2015 and a year later had to be refiled because of procedural deficiencies. Hearing Tr. 709, L. 4-9. US Bankruptcy Court, SD, ED, Local Rule 9013-1. The motion was denied. Hearing Tr. 711, L. 11-13. When contrasting the attorney’s motion to reopen, which failed and cost Ms. Granata \$5,000.00, with Respondent’s failure to file such a motion the Court should consider which avenue best served the judicial system. Was it the filing of a motion to reopen which was doomed to failure (*See* Exhibit EE, Hearing Tr. 705; Board Finding 12) or not filing such a motion? From Respondent’s time log for Ms. Granata it can be seen that Respondent spent time on researching the question of reopening the Bankruptcy case but determined that such a motion would not succeed. Ms. Granata insisted that a condominium was sold without the Bankruptcy Court’s permission. Hearing Tr. 479, L. 17-20. Respondent’s

Exhibit EE demonstrates that the condominium was voluntarily released from the bankruptcy case by Ms. Granata's attorney.

Respondent, through his time log, has shown that he was diligent in pursuing the issues presented by Ms. Granata. Respondent did not issue written reports to Ms. Granata but he did talk to her on a regular basis through scheduled appointments or when she would drop in to the office. Hearing Tr. 1492, L 5-7. The Board recommended that Respondent refund \$2,850.00 in what is essentially a fee dispute. Moreover, the time Mr. Dougherty spent reviewing Ms. Granata's file she had with Attorney Brunner and her case against Attorney Stamatakis far exceeds any amount the panel says he would still owe her. In addition, Mr. Dougherty's skill in negotiating a payment of \$100.00 a month for a bill in excess of \$150,000.00 is well worth the expense incurred by Ms. Granata in the Brunner matter.

The Board on Count Two, found two violations; Prof. Cond. R. 5.5(a), and Gov. Bar R. V 23(F). Count Two concerned Mr. Davis and Ms. Sanderell. The Panel determined that Mr. Davis' testimony was unreliable.

Respondent is accused of assisting a suspended attorney in practicing law and not informing the count two grievant that a suspended attorney was working on the grievant's case.

Ms. Sanderell called Respondent when she made the appointment. Ms. Sanderell e-mailed Respondent her entire case file prior to her meeting with him. Ms. Sanderell did not contact Mr. Cicero. She testified that Mr. Cicero lead the interview and that Respondent took all the notes. She testified that Mr. Cicero did not tell her about his suspension. No one asked her for any money. She could not remember how many times the disciplinary counsel visited her, Hearing Tr. 625, L. 14-18, and complained that the interview occurred three years ago and that she did not commit it to memory. Hearing Tr. 631, L. 4-10. Mr. Cicero testified that he took the

notes for the Sanderell interview and that identified the notes as being in his handwriting. Hearing Tr. 1586, L. 17-18, Exhibit VVV-1.

Ms. Sanderell brought with her to the meeting Mr. Jonas Miller. Mr. Miller worked as a reserve Deputy Sheriff. Mr. Miller, unlike most of the other witnesses, knew Mr. Cicero's license was suspended because he testified Mr. Cicero told him and Sanderell of the suspension. Hearing Tr. 725, L. 2-4; 737, L. 10-12. Mr. Miller testified that Ms. Sanderell was angry at her former attorney to the degree that she was an "8 out of 10" upset with her former counsel; that her Guardian Ad Litem and the Magistrate who heard the case were all unprofessional. Hearing Tr. 728, L. 3-5. Mr. The information concerning Ms. Sanderell's complaint was elicited through an interview at Mr. Miller's residence one year after the meeting at the law office. Hearing Tr. 732, L. 18-21. The Panel asked her who quoted her a \$2500 fee and Ms. Sanderell answered Tim Dougherty. Hearing Tr. 642. In light of the evidence gathering abilities of the Disciplinary Counsel investigators, as discussed below, the information gleaned from the interview and used as a basis to file this complaint should be taken with a grain of salt.

The Board on Count Three, found three violations; Prof. Cond. R. 1.15(c); 5.5(a), and Gov. Bar R. V 23(F). Count Three concerned Ms. Ferri.

Respondent is accused of assisting a suspended attorney in practicing law and not informing the count two grievant that a suspended attorney was working on the grievant's case and an IOLTA violation.

Ms. Aronhalt testified she knew Attorney Cicero since she was 8 years old and he was the only person she knew to contact. She testified Mr. Cicero represented her in the past. Ms. Aronhalt stated she met with Mr. Cicero on September 01, 2015. Hearing Tr. 770, L. 19-22. Ms. Aronhalt claimed that she did not have any knowledge concerning Mr. Cicero's license. Ms.

Aronhalt stated that the first time she met Respondent was the next day at court. Later, Ms. Aronhalt stated that she told Mr. Holtz, investigator for Disciplinary Counsel, that only the Respondent represented her. Hearing Tr. 794, L.11-12.

Ms. Aronhalt also sent a text to Mr. Cicero indicating that she knew Mr. Cicero did not have a license. Hearing Tr. 797, L. 6-8. Ms. Aronhalt stated that she was untruthful when speaking to Mr. Holtz initially. Ms. Aronhalt then admitted that there were several occasions in which she had been untruthful, both to the disciplinary counsel, a former attorney, and at her deposition. Hearing Tr. 816 to 818; 827, L. 7-23; 827, L. 7-23. Ms. Aronhalt could not get her story straight. She made or received calls from Disciplinary Counsel on 01-03-2018 for 5:41 minutes, 01-09-2018 for 1:12 minutes, 01-29-2018 for 6:31 minutes, 04-17-2018 for 12:29 minutes at 6:18 pm, 04-17-2018 for 2:06 minutes at 7:18 pm, 04-30-2018 for 40:17 minutes at 6:06 pm, 04-30-2018 for 9:21 at 6:47 pm, 05-01-2018 for 23:38 minutes, and 05-08-2018 for 50:17 minutes. From the length of these phone calls it is apparent that the witnesses' testimony was problematic for the Disciplinary Counsel. Respondent Exhibit AAAA and CCCC. It was apparent, after seeing the witness testify, that Ms. Aronhalt did have many issues. Board Findings 51. Ms. Aronhalt's husband also stated that he learned from her that Mr. Cicero's license was suspended. Hearing Tr. 878, L. 8-13.

Respondent has been accused of taking money from Ms. Aronhalt and not placing it in an IOLTA account. The first payment received from Ms. Aronhalt was on September 01, 2015. Ms. Aronhalt, at that point, had already talked to Respondent on the phone the day before. The initial payment was in the form of a bank card payment, not cash. Hearing Tr. 878, L. 8-13.

In count four Respondent was found to have violated Prof. Cond. R. 1.6(a); Prof. Cond. R.1.15(c); Prof Cond. R. 1.16(e); Prof. Cond. R. 5.5(a); and Gov. Bar R. V(23)(F).

Mr. Kasser testified that he hired Mr. Cicero as his attorney. Mr. Scuderi testified that he recommended Respondent as his new attorney. Hearing Tr. 1308, L. 2-16. Donte Scuderi made an appointment for Mr. Kasser. Hearing Tr. 1307, L. 6-10. Mr. Scuderi asked Mr. Kasser if he was satisfied with using Respondent as his attorney. Hearing Tr. 1309, L. 2-14. Mr. Kasser stated that Mr. Scuderi never went with him to any appointments. Mr. Scuderi stated that he did accompany Mr. Kasser to one appointment with Respondent. Hearing Tr. 1311, L. 2-12. However, when later asked how long his first meeting with Respondent lasted, he stated “we was there for a while.” Hearing Tr. 948, L. 12-14.

Mr. Scuderi testified that he met with Respondent and Mr. Kasser, that Respondent asked Mr. Kasser if it was alright to discuss the case in front of Mr. Scuderi, and that Mr. Kasser said that it was alright to discuss the case in front of Mr. Scuderi. Hearing Tr. 1313, L. 4-19; 1512, L. 5-8.

Mr. Kasser said that Mr. Cicero would resolve his case by taking the prosecutor out for a few beers. Mr. Kasser was unhappy that Respondent did not show up for one of his hearings. Mr. Kasser determined that he was going to fire Respondent. Hearing Tr. 903, L. 9-14. On the same day the Respondent filed a motion to withdraw and explained to the Court that Mr. Kasser was merely trying to prolong his case. Prosecutor McLean testified this was never discussed with Cicero nor did Cicero and he ever socialize except for seeing each other perhaps at a fundraiser.

Mr. Kasser testified that he did not give Respondent permission to explain Mr. Kasser’s intention to prolong his case. This is contrary to Mr. Scuderi’s testimony. Hearing Tr. 1250, L. 1-19.

Mr. Kasser was certain he did not sign a contract, but if he did it would have been with Mr. Cicero. Hearing Tr. 930, L. 22-25. Mr. Kasser lied. Mr. Kasser, when presented with a

signed contract, stated that it was signed by Respondent. Hearing Tr. 932, L. 11-25. Despite claiming that he was represented by Mr. Cicero, Mr. Kasser asked Mr. Scuderi to call Respondent for information about his cases. Mr. David Scuderi stated that he knew Mr. Cicero did not have a law license. Hearing Tr. 1298, L. 10-15. Mr. Kasser, after terminating Respondent, asked for a refund. He felt that he had paid for a “deal off to the side. And that’s what I felt I was paying for.” Hearing Tr. 958, L. 3-10.

Respondent called the Realtor’s investigator, Donald Holtz as a witness in the case. Mr. Holtz testified that he had never testified at a disciplinary hearing in his nine years of employment. Hearing Tr. 1210, L 8-10. Mr. Holtz stated that he took notes at his interviews, that the notes were accurate, that he did not record the interviews, and that note taking, as opposed to recording, promoted a more “relaxed” (versus an accurate) atmosphere. Hearing Tr. 1206, L. 2-25; 1207, L. 1-20. This type of interview makes cross examination of Mr. Holtz next to impossible, in contrast to a recorded interview. Mr. Holtz’s interviews lend themselves to distortion, inaccuracies, and bias with no way to dispute the investigator’s statements. This is shown through the testimony of Respondent’s witness Mr. Scuderi. A video of the interview was made part of this record. (Respondent Video Exhibit of Holtz interview with witness Scuderi) stated that he did not know if the information compiled from the Scuderi interview was ever shared with Mr. Kasser. Hearing Tr. 1256, L. 7-13. However, the subpoenaed phone records show that Mr. Kasser had extensive contact with disciplinary counsel after December 22, 2017, the date of Mr. Scuderi’s interview. Respondent’s Exhibit AAAA and CCCC show that there were phone calls totaling 87 minutes by or to Mr. Kasser with Disciplinary Counsel’s office. Kasser’s cross examination was based on the precise wording of Dante Scuderi’s direct examination as it related to the interview with Mr. Holtz. Mr. Holtz’s cross examination was

prepared the same way. When David Kasser testified using the precise wording for his answers to cross examination, the responses were almost identical.

When Kasser's answers are compared to Scuderi's answers on direct, Kasser categorically denied each answer asked of Scuderi, down to the claim that he never came into the office with Scuderi to meet with the Dougherty. Why deny this simple fact? For Kasser to deny categorically the exact questions asked of Scuderi is too much of a coincidence and the only logical explanation is someone in the disciplinary counsel revealed Scuderi's interview to Kasser.

We know by process of elimination that Holtz never talked to Kasser or met with Kasser, but we subpoenaed the telephone records of the disciplinary counsel and Kasser spoke with Joe Caligiuri twice for about 44 minutes before Don Holtz interviewed Dante Scuderi. And we know Joe Caligiuri spoke to him four times for a total of 43 minutes after Don Holtz interviewed Dante Scuderi. I don't believe either of them never discussed Dante Scuderi's interview during one of the four phone calls. (Respondent Exhibit AAAA & CCCC)

The disciplinary counsel says it does not reveal the contents of its interviews to anybody else. Don Holtz told Scuderi this is the process. This process was not adhered to in Kasser's case. The disciplinary counsel investigator lied to the panel on direct examination. Respondent proved this beyond clear and convincing evidence through both cross examination and use of the video interview with Scuderi. The Panel failed to mention that Don Holtz blatantly lied to them in their findings, giving the disciplinary counsel investigator a 'pass'.

In paragraph 49 of the amended complaint Realtor states that Respondent registered Christopher Cicero as working in his office. This is correct. Paragraph 52 of the amended complaint states that Respondent's name was not on the building. This is correct. To the best of

the undersigned's knowledge, there is no law or rule that says a non-practicing attorney's name cannot be on a building sign. Nor is there any rule that mandates a suspended lawyer must remove his or her name during a period of suspension. The disciplinary counsel has failed to provide a violation of any such rule, because none exist. Respondent has repeatedly argued to the Panel not to make a new rule or infer a violation during the hearing. To do so is unfair to any attorney placed on suspension by the Supreme Court. Likewise, there is no law or rule that says a practicing attorney's name has to be on the marque or sign of a building. Board Findings, paragraphs 81, 82.

In Count Five of the amended complaint Respondent was determined to have violated Gov. Bar R. V(23)(F).

Ms. Kean stated that when she went to the building it was to see Respondent, Hearing Tr. 1189, L. 1-3, and that she hired Respondent, not Mr. Cicero. Hearing Tr. 1193, L. 3-8.

Respondent informed Mr. Kean that Mr. Cicero did not have a license. Hearing Tr. 661, L. 1-2. Mr. Kean was incarcerated for all of the time Respondent represented him.

For the above reasons Respondent moves the Court to impose a penalty consistent with not having an IOLTA account and further, that any penalty imposed by the Court be suspended. Respondent has not had any previous disciplinary action.

CERTIFICATE OF SERVICE

I hereby certify the foregoing motion was served through electronic noticing for all listed participants and by U.S. ordinary mail, postage prepaid, to Joseph M. Caligiuri, Disciplinary Counsel, 250 Civic Center Drive, Suite 325, Columbus, Ohio 43215-7411

this 28th day of January 2019.

/s/Ric Daniell
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