

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

In re:

Complaint against

Case No. 2021-019

**Robert Chester Brooks II
Attorney Reg. No. 0040881**

**Findings of Fact,
Conclusions of Law, and
Recommendation of the
Board of Professional Conduct**

Respondent

Cleveland Metropolitan Bar Association

Relator

OVERVIEW

{¶1} This matter was heard on January 13, 2022, via remote videoteleconference, before a panel consisting of Hon. William A. Klatt, Hon. D. Christopher Cook, and Robert B. Fitzgerald, panel chair. None of the panel members resides in the district from which the complaint arose.

{¶2} Respondent was present at the hearing and appeared *pro se*. Christopher J. Klasa and Stephanie R. Anderson appeared on behalf of Relator. Both parties consented to the hearing being conducted via video teleconference.

{¶3} This case arose out of Respondent's representation of certain individuals while he was not permitted to practice law. Respondent's license to practice has been suspended since 2019. On November 1, 2019, the Supreme Court of Ohio entered an order of suspension for failing to comply with his attorney registration requirements pursuant to Gov. Bar R. VI, Section 2(A). Respondent received monetary sanctions in 1992, 1996, 2016, and 2018 for his failure to comply with his obligation for continuing legal education requirements.

{¶4} While under the 2019 administrative suspension, on October 14, 2020, the Supreme Court of Ohio issued a second suspension and sanction order against Respondent, this time for

failure to comply with his continuing legal education requirements pursuant to Gov. Bar R. X. Under both suspension orders, Respondent was to immediately cease the practice of law. He failed to do so.

{¶5} After both suspensions, Respondent continued to represent clients in court, even though he was aware of his suspension. Respondent continuously failed to comply with the Supreme Court's orders.

{¶6} Much of this case was stipulated to by the parties. All of the Joint Exhibits 1 through 22 and Respondent's exhibits were admitted without objection.

{¶7} Based upon the evidence, the substantial stipulations presented at the hearing, as well as the stipulated exhibits, this panel finds by clear and convincing evidence that Respondent engaged in professional misconduct. After consideration of the applicable aggravating and mitigating factors, and case precedent, this panel recommends that Respondent be indefinitely suspended from the practice of law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶8} The facts of this case are simple and not in dispute. Respondent was suspended from the practice of law in November 2019 for failing to register with the Supreme Court and continued to practice law until December 2021—well after this disciplinary case was filed.

{¶9} On November 1, 2019, the Supreme Court of Ohio entered an order of suspension pertaining to Respondent for failing to comply with his attorney registration requirements, pursuant to Gov. Bar R. VI, Section 2(A). Joint Stipulations at ¶4, Joint Ex. 2. Respondent received the order of suspension on or about December 3, 2019 by regular mail. Joint Stipulations at ¶7, Joint Ex. 1. On October 14, 2020, the Supreme Court of Ohio issued suspension and sanction order CLE-2020-40881 because Respondent failed to comply with his continuing legal education

requirements pursuant to Gov. Bar R. X. Joint Stipulations at ¶9, Joint Ex. 3. Pursuant to both orders, Respondent was to “immediately cease and desist from the practice of law in any form and is hereby forbidden to appear on behalf of another before any court, judge, commission, board, administrative agency or other public authority.” Joint Stipulations at ¶¶6 and 11, Joint Ex. 2-3. Respondent, however, continued to practice law while under suspension and appeared in numerous courts in Cuyahoga County.

{¶10} On February 24, 2020, Respondent appeared before the court at a hearing in the matter of *Doug Woods v. Erin Webb*, Garfield Heights Municipal Court, Case No. CVI1801654. Hearing Tr. 22-23. On July 2, 2020, Respondent appeared before the court on behalf of defendant at a hearing in the matter of *Doug Woods v. Erin Webb*, Cuyahoga County Court of Common Pleas, Case No. CV-20-933417. Hearing Tr. 22. In August and September, 2020, Respondent filed a motion and attempted to appear at a hearing in *Doug Woods v. Erin Webb*, Cuyahoga County Court of Common Pleas, Case No. CV-20-933418. Hearing Tr. 21-22.

{¶11} By this time, Respondent was aware that Relator was investigating these allegations of misconduct. In fact, Respondent submitted a written response addressing these allegations on November 12, 2020. Hearing Tr. 26. Despite being well aware of these proceedings, Respondent filed multiple motions during February and March 2021 in *State of Ohio v. Schawn Smith*, Garfield Heights Municipal Court, Case No. 20TRC04296ABC. Hearing Tr. 23-24. Respondent also appeared at hearings in *In Re: K.T., Cuyahoga County Juvenile Court*, Case No. FA19113291 throughout late 2020 and early 2021. Hearing Tr. p. 24. Indeed, Respondent continued to appear at numerous other hearings in Cuyahoga County Juvenile Court until March 2021—long after he was aware of Relator’s investigation. Hearing Tr. 24–26.

{¶12} The complaint in this matter was filed on July 29, 2021. Hearing Tr. 75. Respondent signed the waiver of probable cause determination on July 28, 2021. Hearing Tr. 30-31. Despite the pending complaint before the Board of Professional Conduct, Respondent conducted pretrials as retained counsel in *State of Ohio v. Martez Harrison*, Cuyahoga County Court of Common Pleas, Case No. CR-20-654442 on August 18, 2021, September 8, 2021, and several times prior to the filing of the complaint throughout early 2021. Hearing Tr. 76-77.

{¶13} Respondent showed little regard for the multiple grievances submitted against him, Relator's investigation, or the pending complaint. Despite repeated requests for information regarding the extent that Respondent has continued to practice law while under suspension, that information has either been incomplete, inaccurate, or not forthcoming. Hearing Tr. 26-31.

{¶14} Respondent further stipulated that, prior to his administrative suspensions, he did not maintain professional liability insurance and failed to notify his clients, in writing, that he did not maintain such insurance. Stipulations ¶¶34-35.

{¶15} Respondent testified as to his belief that he suffers from a mental disorder and having undergone an OLAP evaluation. Hearing Tr. 79-80. He also included recommendations in his post-hearing brief regarding CLE and post-reinstatement monitoring. None of these conditions was referenced by relator at the hearing or in its brief. In spite of Respondent's testimony, he failed to provide the necessary evidence or qualified testimony to substantiate his claim that he potentially suffers from a mental disorder.

{¶16} Based on the stipulations, exhibits, and hearing testimony, the panel finds, by clear and convincing evidence, that Respondent's conduct violated the following provisions of the Ohio Rules of Professional Conduct:

Counts I and II—Woods v. Webb, Cuyahoga County Common Pleas Court

- *Prof. Cond. R. 3.4(c)* [a lawyer shall not knowingly disobey an obligation under the rules of a tribunal];
- *Prof. Cond. R. 5.5(a)* [unauthorized practice of law]; and
- *Prof. Cond. R. 8.4(c)* [conduct involving fraud, dishonesty, deceit, or misrepresentation].

Count III—Woods v. Webb, Garfield Heights Municipal Court

- *Prof. Cond. R. 3.4(c)* [a lawyer shall not knowingly disobey an obligation under the rules of a tribunal];
- *Prof. Cond. R. 5.5(a)* [unauthorized practice of law]; and
- *Prof. Cond. R. 8.4(c)* [conduct involving fraud, dishonesty, deceit, or misrepresentation].

Count IV—State v. Smith, Garfield Heights Municipal Court

- *Prof. Cond. R. 3.4(c)* [a lawyer shall not knowingly disobey an obligation under the rules of a tribunal];
- *Prof. Cond. R. 5.5(a)* [unauthorized practice of law]; and
- *Prof. Cond. R. 8.4(c)* [conduct involving fraud, dishonesty, deceit, or misrepresentation].

Count V—In re K.T., Cuyahoga County Juvenile Court

- *Prof. Cond. R. 3.4(c)* [a lawyer shall not knowingly disobey an obligation under the rules of a tribunal];
- *Prof. Cond. R. 5.5(a)* [unauthorized practice of law]; and
- *Prof. Cond. R. 8.4(c)* [conduct involving fraud, dishonesty, deceit, or misrepresentation].

Count VI—Professional Liability Insurance

- *Prof. Cond. R. 1.4(c)* [inform the client if lawyer does not maintain professional liability insurance].

Count VII—Failure to Cooperate

- *Prof. Cond. R. 8.1(b)* [knowingly failing to respond to a demand for information by a disciplinary authority]; and
- *Gov. Bar R. V, Section 9(G)* [failure to cooperate].

AGGRAVATION AND MITIGATION FACTORS

{¶17} The parties stipulated and agreed to the following mitigating and aggravating factors.

Aggravation

{¶18} The parties stipulated to the aggravating factors of a pattern of misconduct, multiple offenses, a lack of cooperation in the disciplinary process, and the submission of false evidence, false statements, or other deceptive practices during the disciplinary process.

{¶19} At the hearing in this matter, the evidence proved clearly and convincingly that Respondent committed multiple acts of misconduct. Respondent admitted that his actions, since November 2019, constituted a pattern of misconduct under Gov. Bar R. V, Section 13(B)(3) and multiple offenses of the disciplinary rules under Gov. Bar R. V, Section 13(B)(4). Hearing Tr. 20-26. Respondent knew of the disciplinary investigation but yet continued practicing.

{¶20} Also, Respondent failed to display true candor during the investigation and prosecution of this matter, and Relator proved by clear and convincing evidence that the aggravating factor lack of cooperation in the disciplinary process under Gov. Bar R. V, Section (13)(B)(5) exists in this case. Respondent never completely disclosed the number of matters that he appeared in while under suspension. That constitutes deceptive practices during the disciplinary process pursuant to Gov. Bar R. V, Section 13(B)(6). Respondent's testimony at the hearing was clear:

Q. And you admit that your failure to ever provide a complete list where you appeared while suspended and your continued practice of law while suspended with full knowledge of your being investigated and this complaint was filed against you constitutes deceptive practices during the disciplinary process, correct?

A. Yeah, I would admit to that.

Hearing Tr. p. 31.

Mitigation

{¶21} Relator stipulated to the existence of evidence of a good character and reputation and acknowledges that Respondent serves an underrepresented segment of the community. Neither factor, however, outweighs the harm to the public resulting from the unauthorized practice of law. And neither factor outweighs Respondent's continued course of conduct with full knowledge of this disciplinary proceeding.

{¶22} The parties also stipulated to the absence of a selfish or dishonest motive. This panel finds that Respondent's continued practice of law was and is inconsistent with the stipulation that Respondent lacked a dishonest or selfish motive for his actions and the stipulated aggravating factor that he submitted false evidence, false statements, or engaged in other deceptive practices. This stipulation is therefore rejected, and the panel declines to find this mitigating factor.

Sanction

{¶23} When imposing sanctions, several factors, including the duties violated, the actual injury caused, the attorney's mental state, the existence of aggravating or mitigating circumstances and sanctions imposed in similar cases. *Stark Cty. Bar Assn. v. Buttacavoli* (2002), 96 Ohio St 3d 424, 428. In Ohio, the primary purpose of the disciplinary process is not to punish the offender, but to protect the public. *Disciplinary Counsel v. O'Neill* (2004), 103 Ohio St 3d 204, 216. The Supreme Court has consistently stated each case presents unique facts and circumstances and all

relevant factors should be considered in determining the appropriate sanction. *Disciplinary Counsel v. Oberholtzer*, 136 Ohio St 3d 314, 2013-Ohio-3706.

{¶24} Relator and Respondent disagree on the sanction that should be imposed in this case. Relator has requested indefinite suspension, and Respondent suggested a definite suspension of 18 months with one year stayed retroactive to January 1, 2022 with other conditions.

{¶25} Respondent in support of his position cited several cases as well including *Disciplinary Counsel v. Ford*, 159 Ohio St 3d 558, 2020-Ohio-998. The Court indefinitely suspended Ford for her professional misconduct that included dishonesty, failing to reasonably communicate with clients, failing to deposit unearned fees into a client trust account, and failing to cooperate in the ensuing disciplinary investigation. Respondent also cited and reviewed several other cases, including: *Columbus Bar Assn. v. Watson*, 144 Ohio St 3d 317, 2015-Ohio-4613; *Cleveland Metro. Bar Assn. v. Thomas*, 154 Ohio St 3d 57, 2018-Ohio-3267; *Lorain Cty. Bar Assn. v. Nelson*, 152 Ohio St 3d 222, 2017-Ohio-8856; *Cuyahoga Cty. Bar Assn. v. Scott-Chestang*, 113 Ohio St 3d 310, 2007-Ohio-1956.

{¶26} Respondent, in his argument suggested that his conduct most warranted a partially stayed suspension. He suggested that his conduct was comparable to the attorney in *Cleveland Metro Bar Association v. Walker*, 142 Ohio St 3d 452, 2015-Ohio-733. Walker neglected a personal injury case, misrepresented the statute of limitations to his client, settled the case without his client's consent, and deposited settlement funds into an IOLTA. Walker also commingled personal and client funds in the IOLTA. Walker violated multiple rules of professional conduct. Respondent also relied upon *Disciplinary Counsel v. Dockry*, 133 Ohio St 3d 527, 2012-Ohio-5014 wherein Respondent deposited and maintained personal funds in an IOLTA, used it to pay

personal and business expenses, borrowed funds for personal use, failed to maintain ledgers, and failed to reconcile his account.

{¶27} When the panel reviewed the different types of cases for practicing law under suspension, a review of the multiple cases, (including the one cited by Relator and Respondent), revealed that the sanctions ranged from a six-month suspension to disbarment. The review of the cases indicate that the following factors made a difference from a sanction perspective when practicing under suspension. These factors are as follows:

- a. The sanction is impacted when the underlying suspension is one related to misconduct versus a CLE or a registration suspension.
- b. The sanction is impacted when there are multiple incidents of practicing under suspension versus one incident.
- c. The sanction is impacted when there is the presence of harm to the client versus no harm to the client.
- d. The sanction is impacted by more overate misrepresentations to the Court or clients about the status of the respondent's license versus no misrepresentations in simple failure to notify the Court or client.
- e. The sanction is impacted when the respondent cooperates fully, partially, or not at all.

{¶28} An indefinite suspension is the presumptive sanction for continuing to practice law while under the registration suspension or CLE suspension when considering Respondent's failure to fully cooperate with those proceedings and continue the violation of terms of his suspension during the course of the proceedings. The Supreme Court has stated "we have routinely imposed indefinite suspensions for attorneys who continue to practice law after we have suspended their licenses for CLE and registration violations." *Disciplinary Counsel v. Freeman*, 126 Ohio St 3d 389, 2010-Ohio-3824. Relator, in support of its recommended indefinite suspension, cited *Disciplinary Counsel v. Higgins*, 117 Ohio St 3d 473, 2008-Ohio-1509. Higgins was indefinitely

suspended for his failure to comply with CLE requirements. Additionally, Relator cited the panel to *Toledo Bar Assn. v. Crandall*, 98 Ohio St 3d 444, 2013-Ohio-1637; *Toledo Bar Assn. v. Christensen* (1996), 77 Ohio St 3d 71 and *Columbus Bar Assn. v. Squeo*, 133 Ohio St 3d 536, 2012-Ohio-504. In *Squeo*, the attorney did not represent a single client but held himself out as an attorney after his administrative suspensions and his failure to cooperate with the disciplinary proceedings. As a result, Squeo was given an indefinite suspension. Likewise, in *Disciplinary Counsel v. Mitchell*, 124 Ohio St 3d 266, 2010-Ohio-135, the attorney was indefinitely suspended from the practice of law after attempting to represent a single minor in a juvenile court proceeding after his license was suspended.

{¶29} In the case at bar, the panel finds that Respondent continued to practice and thus misled the courts, including up to just weeks before the final hearing in this case held on January 13, 2022. Respondent's continued practice indicated a sheer unwillingness to cooperate in the disciplinary process. Additionally, this panel finds that this was not a single isolated incident.

{¶30} The issue in this case was not whether Respondent violated the Rules of Professional Conduct or even whether Respondent should be suspended. Respondent stipulated to and testified at the January 13, 2022 hearing that he did violate multiple rules of professional conduct. Respondent testified "I believe for my conduct, as it relates to public trust and responsibility, I have to be suspended." Hearing Tr. 56. However, because of the multiple suspensions, his failure to cooperate, and his ongoing practice of law, even while he knew the disciplinary process was ongoing, it is appropriate that due to Respondent's continued course of conduct to completely disregard his suspension and the disciplinary process, an indefinite suspension is the appropriate sanction in this case and is necessary to protect the public. One


cannot drive a vehicle without a driver's license and certainly an attorney cannot practice law without a law license.

{¶31} Though Respondent provided no professional substantiation for his suggestion that he might benefit from treatment or counseling, this panel agrees with Respondent's assessment. This panel therefore recommends that Respondent, Robert Chester Brooks, II, be indefinitely suspended from the practice of law and ordered to pay the costs of these proceedings. The panel further recommends that, as a condition of reinstatement, Respondent be required to provide proof that he has undergone an OLAP evaluation and that he is in compliance with any treatment or counseling recommendations made by OLAP. The panel finds this sanction and condition on reinstatement necessary to protect the public.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct considered this matter on June 10, 2022. The Board voted to adopt findings of fact, conclusions of law, and recommendation of the hearing panel and recommends that Respondent, Robert Chester Brooks II, be indefinitely suspended from the practice of law in Ohio and ordered to pay the costs of these proceedings. The Board further recommends that, in addition to the requirements of Gov. Bar R. V, Section 25, Respondent's reinstatement be conditioned on proof that he has undergone an OLAP evaluation and that he is in compliance with any treatment or counseling recommendations made by OLAP.

Pursuant to the order of the Board of Professional Conduct, I hereby certify the forgoing amended findings of fact, conclusions of law, and recommendation as that of the Board.



RICHARD A. DOVE, Director