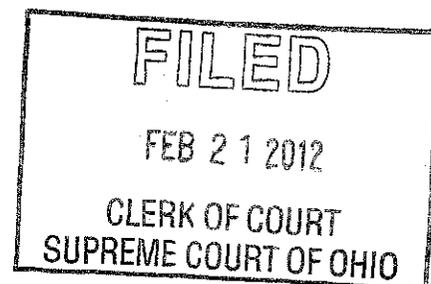


**BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO**



In Re:	:	
Complaint against	:	Case No. 11-087
Richard Allen Luther Attorney Reg. No. 0020164	:	Findings of Fact, Conclusions of Law, and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio
Respondent	:	
Columbiana County Bar Association	:	
Relator	:	

ON MOTION FOR DEFAULT JUDGMENT

{¶1} This matter was referred to Master Commissioner, Joseph L. Wittenberg, on December 13, 2011, by the secretary of the Board pursuant to Gov. Bar R. V, Section 6(F)(2) for ruling on Relator's motion for default judgment. Master Commissioner Wittenberg prepared this report pursuant to Gov. Bar R. V, Section 6(J).

PROCEDURAL HISTORY

{¶2} This action was commenced with the filing of a complaint against Respondent by Relator. On October 7, 2011, a probable cause panel certified the complaint to the Board.

{¶3} The secretary of the Board notified Respondent that the complaint had been certified and the complaint was sent to Respondent by certified mail at his place of employment at 49020 Ashland Place, East Liverpool, Ohio; his residence at P. O. Box 2476, East Liverpool, Ohio; and at an address listed on the certified complaint at 15096 S.W. 10th Street, Apt. 1114,

Miami, Florida 33196. The secretary of the Board was unable to serve Respondent.

{¶4} On December 8, 2011, the secretary of the Board served Kristina D. Frost, Clerk of the Court of the Supreme Court of Ohio, with a copy of the complaint and certificate, an entry, and notice to Respondent of filing of the complaint and advised the Clerk that the Board had been unable to serve Respondent.

{¶5} The Clerk certified that she received the complaint on December 8, 2011. The Clerk was served pursuant Gov. Bar R. V, Section 11(B). To date, Respondent has not filed an answer or any other pleading to the complaint.

{¶6} Relator has filed its motion for default judgment.

{¶7} Materials offered in support of the motion regarding Count 2 (Guthrie matter) are sufficient. *Dayton Bar Assn. v. Sebree*, 104 Ohio St.3d 448, 2004-Ohio-6560; and *Northwestern Ohio Bar Assn. v. Lauber*, 104 Ohio St.3d 121, 2004-Ohio-6237. Materials offered in support of the motion regarding Count 1 (Diddle matter) are not sufficient to establish many of the alleged violations and, for the reasons hereinafter set forth below, the master commissioner recommends dismissal of the majority of the alleged violations in Count 1 except for those relating to Respondent's failure to cooperate in or respond to the disciplinary proceedings.

FINDINGS OF FACT

{¶8} Based upon the materials offered in support of the motion for default, the following findings are made by clear and convincing evidence:

{¶9} Respondent, Richard Allen Luther, was admitted to the practice of law in the State of Ohio on November 1, 1983. Respondent is subject to the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

Count 1–Vicki Diddle Matter

{¶10} Relator’s motion for default concerning the Vicki Diddle matter is largely based on allegations filed in an affidavit by Tad Herold who is a member of the Columbiana County Bar Association Certified Grievance Committee. Motion for Default, Ex. C.

{¶11} Herold was selected to be chair of the three person subcommittee of the certified grievance committee to investigate a grievance filed by Diddle against Respondent. *Id.*

{¶12} On June 29, 2011, Herold along with the other members of the investigative subcommittee met with Diddle to investigate the facts surrounding the grievance complaint Diddle filed against Respondent. *Id.*

{¶13} On April 20, 2011, Relator mailed to Respondent at the address he listed with the Supreme Court of Ohio, a copy of Diddle’s grievance. The letter requested that Respondent respond within 14 days to the grievance filed by Diddle. The certified mail envelope was returned as unclaimed. Motion for Default, Ex. D.

{¶14} Subsequently, Ron Vest, Secretary of the Columbiana Bar Association certified grievance committee, learned of another address for Respondent. On May 11, 2011, Respondent remailed the letter and Diddle’s grievance to Respondent via certified U.S. mail. The certified mail envelope marked as unable to forward was returned to Relator. *Id.*

{¶15} On June 17, 2011, Vest received a telephone call from Columbiana County Magistrate Allison telling him Respondent was in the Columbiana County Courthouse in Lisbon, Ohio. Vest went to the courthouse and hand-delivered to Respondent a copy of the Diddle grievance and the grievance committee letter requesting his response to the grievance. *Id.*

{¶16} Relator did not receive a response from Respondent to the Diddle grievance. *Id.*

{¶17} On July 8, 2011, Relator mailed via certified U.S. mail, to Respondent at his

Miami, Florida address, the Diddle grievance. The certified mail was accepted and signed for by Kristy Harris/Haines on July 20, 2011. *Id.*

{¶18} Relator has not received a response from Respondent regarding the Diddle grievance. *Id.*

Count 2—Lori Guthrie Matter

{¶19} Guthrie first met with Respondent on June 29, 2010 regarding, representing her in a divorce to be filed against her husband. On that date, she paid Respondent \$125 for the initial consultation. Motion for Default, Ex. B.

{¶20} Guthrie met a second time with Respondent on August 18, 2010. Respondent agreed to file a complaint in divorce on behalf of Guthrie without delay. Guthrie gave Respondent two checks, one in the amount of \$2,675 on August 18, 2010, and a second check for \$299 on August 18, 2010. *Id.*

{¶21} When Respondent did not file the divorce complaint, Guthrie attempted to contact Respondent numerous times in September 2010 to discuss the filing of the divorce complaint. When Guthrie was finally able to talk to Respondent, Respondent told her he did not understand why the divorce had not been filed and he told Guthrie divorces take a long time. *Id.*

{¶22} Respondent did not file the divorce complaint. Rather, on October 13, 2010 Guthrie's husband's attorney filed a divorce complaint. *Id.*

{¶23} The court set a series of pre-trials over the next six months. Respondent appeared for only one hearing and did not appear for the final divorce hearing on April 18, 2011. *Id.*

{¶24} After Guthrie filed her grievance with Relator, Respondent told her he would return some of her money only if she dismissed the grievance. *Id.*

{¶25} Prior to filing the complaint in this matter, Relator sent Respondent by certified

mail a copy of Guthrie's grievance. The letter was returned as unable to forward. Motion for Default, Ex. D.

{¶26} Subsequently, Relator learned of another address for Respondent. On April 15, 2011, Relator mailed a second letter to Respondent via certified U.S. mail. Relator received the certified mail envelope back as unclaimed. *Id.*

{¶27} On June 17, 2011, Ron Vest, Secretary of the Columbiana County Bar Association Certified Grievance Committee, was notified in a telephone call from Columbiana County Magistrate Allison that Respondent was in the Columbiana County Courthouse in Lisbon, Ohio. Vest went to the courthouse and hand delivered to Respondent a copy of Guthrie's grievance and the grievance committee letter requesting his response to the grievance. *Id.*

{¶28} Respondent gave Vest a new address where to send all future correspondence. That address was in Miami, Florida. *Id.*

{¶29} Relator did not receive a response from Respondent to the Guthrie grievance that had been hand delivered to him on June 17, 2011. *Id.*

{¶30} On July 8, 2011, Relator mailed via certified U.S. mail the Guthrie grievance to Respondent at the Miami, Florida address he had given Relator. The certified mail was accepted and signed for by Kristy Harris/Haines on July 20, 2011. *Id.*

{¶31} Relator did not receive a response from Respondent regarding the Guthrie grievance matter. *Id.*

CONCLUSIONS OF LAW

{¶32} With respect to Count 1, Relator alleges that Respondent has violated the following Rules of Professional Conduct: Prof. Cond. R. 1.3 [diligence]; Prof. Cond. R.

1.4(a)(2) [consult with the client]; Prof. Cond. R. 1.4(a)(3) [keep the client informed about the status of a matter]; Prof. Cond. R. 1.4(a)(4) [comply with requests for information from the client]; Prof. Cond. R. 1.16(e) [refund unearned fees]; Prof. Cond. R. 1.15(e) [deliver funds or other property that the client is entitled to receive]; Prof. Cond. R. 8.1(b) [failure to respond]; and Gov. Bar R. V, Section 4(G) [failure to cooperate].

{¶33} Prior to filing Relator's motion for default, Tad Herold attempted to locate Diddle but could not locate her and her phone number was disconnected. Motion for Default, Ex C.

{¶34} The allegations of misconduct contained in Relator's affidavit of Tad Herold are hearsay-filled and are not supported by prima facie evidence of misconduct required by Gov. Bar R. V, Section (6)(F). The affidavit of Herold contains conclusory assessments of misconduct based solely on conversations with the Diddle.

{¶35} An affidavit executed by an investigator may suffice, but the affidavit must delineate why the grievant's sworn statement is unattainable in addition to reciting the investigator's own knowledge of the alleged misconduct. *Dayton Bar Assn. v. Sebree*, 104 Ohio St.3d 448, 2004-Ohio-6560.

{¶36} Herold's affidavit delineates why the grievant's sworn statement is unattainable (*i.e.*, her phone was disconnected and efforts to contact her were unsuccessful), but affiant does not recite any personal knowledge of the alleged misconduct.

{¶37} Therefore, the master commissioner recommends dismissal of the alleged violations of Prof. Cond. R. 1.3, Prof. Cond. R. 1.4(a)(2), Prof. Cond. R. 1.4(a)(3), Prof. Cond. R. 1.4(a)(4), Prof. Cond. R. 1.16(e), and Prof. Cond. R. 1.15(e).

{¶38} Based upon the affidavit of Ron Vest attached to the motion for default as Exhibit D, the master commissioner finds by clear and convincing evidence that Respondent violated

Prof. Cond. R. 8.1(b) and Gov. Bar R. V, Section 4(G) based on Respondent's failure to respond to the inquiries from Relator and cooperate in these proceedings.

{¶39} With respect to Count 2, Relator alleges that Respondent has violated Prof. Cond. R. 1.3, Prof. Cond. R. 1.4(a)(2), Prof. Cond. R. 1.4(a)(3), Prof. Cond. R. 1.4(a)(4), Prof. Cond. R. 1.15(e), Prof. Cond. R. 1.16(e), Prof. Cond. R. 8.1(b), and Gov. Bar R. V, Section 4(G).

{¶40} Based upon the referenced exhibits, the master commissioner finds by clear and convincing evidence that Respondent has violated Prof. Cond. R. 1.3, Prof. Cond. R. 1.4(a)(2), Prof. Cond. R. 1.4(a)(3), Prof. Cond. R. 1.4(a)(4), Prof. Cond. R. 1.16(e), Prof. Cond. R. 8.1(b), and Gov. Bar R. V, Section 4(G). The master commissioner recommends dismissal of the alleged violation of Prof. Cond. R. 1.15(e) in that Relator did not prove by clear and convincing evidence a violation of this rule.

AGGRAVATION AND MITIGATION

{¶41} The Master Commissioner is not aware of any mitigating factors.

{¶42} The aggravating factors present in this case are multiple offenses, including a November 1, 2011 registration suspension of Respondent's license by the Supreme Court of Ohio, and a lack of cooperation in the disciplinary process.

RECOMMENDED SANCTION

{¶43} Relator recommends that Respondent be indefinitely suspended.

{¶44} The Supreme Court of Ohio has consistently held that neglect of client matters coupled with the failure to cooperate in the disciplinary investigation warrants an indefinite suspension of the practice of law. *Disciplinary Counsel v. Boylan*, 85 Ohio St.3d 115, 1999-Ohio-255; *Akron Bar Assn. v. Snyder*, 87 Ohio St.3d 211, 1999-Ohio-34; and *Columbus Bar Assn. v. Torian*, 106 Ohio St.3d 14, 2005-Ohio-3216.

{¶45} Based on the evidence in this case and the sanctions imposed in the above-referenced cases, the master commissioner finds Relator's recommended sanction of an indefinite suspension acceptable. Therefore, the master commissioner recommends that Respondent be suspended indefinitely from the practice of law. In addition, the master commissioner recommends that Respondent must refund any unearned fees to Lori Guthrie before applying for reinstatement to the practice of law.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 6(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on February 10, 2012. The Board adopted the Findings of Fact, Conclusions of Law, and Recommendation of the Master Commissioner and recommends that Respondent, Richard Allen Luther, be indefinitely suspended from the practice of law in the State of Ohio and that he refund any unearned fees to Lori Guthrie before applying for reinstatement. The Board further recommends that the cost of these proceedings be taxed to Respondent in any disciplinary order entered, so that execution may issue.

Pursuant to the order of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendations as those of the Board.



**RICHARD A. DOVE, Secretary
Board of Commissioners on
Grievances and Discipline of
the Supreme Court of Ohio**