

FILED

JUL 07 2017

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

BOARD OF PROFESSIONAL CONDUCT

In Re

Complaint Against

R. PAUL CUSHION II (0037116)
7015 Orchard Avenue
Parma, Ohio 44129

Respondent,

v.

CLEVELAND METROPOLITAN BAR
ASSOCIATION
1375 E. Ninth Street, Floor 2
Cleveland, Ohio 44114

Relator.

NO. 17-029 a 2

COMPLAINT

(Rule V of the Supreme Court Rules for
the Government of the Bar of Ohio)

Relator Cleveland Metropolitan Bar Association alleges that Respondent R. Paul Cushion, an Attorney at Law, duly admitted to the practice of law in the State of Ohio on November 12, 1986, under Ohio Supreme Court Registration Number 0037116 ("Respondent"), is subject to sanctions pursuant to the Supreme Court Rules for the Government of the Bar of Ohio and the Ohio Rules of Professional Conduct. Respondent has previously been suspended in the previous instances: 1) a felony suspension, effective May 6, 1999; 2) an indefinite suspension, effective June 20, 2001; and 3) an attorney registration suspension, effective December 2, 2005. Respondent was reinstated on April 6, 2009, but was placed on probation on the same date. This probation was terminated effective May 10, 2012. In this instance, Relator submits that Respondent is guilty of the following misconduct:

**COUNT ONE:
VIOLATION OF PROFESSIONAL RULES OF CONDUCT RELATED TO
GRIEVANT NANCY KOVACIC**

1. On or about September 2014, Nancy Kovacic (“Ms. Kovacic”) hired Respondent to represent her in an appeal of a matter involving the alleged wrongful seizure of her children. Ms. Kovacic also asserted that she hired Respondent to file a motion for relief from judgment in the same matter. The fee agreement Ms. Kovacic and Respondent signed states that the matter at issue relates to “a Sixth Circuit appellate matter arising from a Federal Decision Involving the Savings Statute and the dismissal of her claims in the Northern District, Eastern Division, Akron, Ohio 42 USC Section 1983 matter and nothing more at this time.”

2. Shortly after signing the engagement letter, Respondent appeared in federal district court on behalf of Ms. Kovacic during a court hearing.

3. On or about October 31, 2014, Respondent filed a notice of appeal in the lawsuit captioned *Nancy Kovacic, et al v. Cuyahoga County Department of Children and Family Services, et al.*, Case No. 1:05-cv-02746, in the Sixth Circuit Court of Appeals.

4. After filing the appeal, Respondent discovered that a federal appeal of the same matter and issue had already been filed, and was notified of the same by opposing counsel in the district court case. Realizing that any appeal would be fruitless, Respondent notified Ms. Kovacic of his discovery of the duplicate appeals.

5. On or about December 2, 2014, Respondent withdrew as Ms. Kovacic’s counsel in the appellate matter. Before withdrawing, Respondent sought and obtained an extension of 30 days in which Ms. Kovacic could file a brief and obtain new counsel.

6. Respondent and Ms. Kovacic disputed the amount of fees Respondent earned reviewing the docket of Ms. Kovacic's case, preparing the appeal, and researching issues involving the case.

7. On multiple occasions throughout this process, Respondent did not respond to all of Ms. Kovacic's calls and letters requesting an update on the status of her case.

8. Ms. Kovacic paid Respondent a total of \$5,000 for Respondent's representation, in the form of two checks of \$2,500 each paid on separate dates. The first \$2,500 check was deposited in Respondent's IOLTA account, but the second \$2,500 check was deposited at CheckSmart, a check cashing business. The second check was never deposited into Respondent's IOLTA account.

9. After Respondent withdrew from representation of Ms. Kovacic, he attempted to return \$1,000 of the total \$5,000 paid in January 2014. The \$1,000 return check Respondent issued was drawn from the checking account of Francine Cushion, Respondent's mother. Ms. Kovacic has never cashed the check pursuant to the advice of her new counsel.

10. Respondent's conduct as described above amounts to violations of the following provisions of the Rules of Professional Conduct:

- a. Prof. Cond. Rule 1.15(c) – Failure to maintain and deposit all client property in an IOLTA account until fully earned;
- b. Prof. Cond. Rule 1.4(a)(3) - Failure to keep the client reasonably informed about the status of the matter; and
- c. Prof. Cond. Rule 1.4(a)(4) - Failure to comply as soon as practicable with reasonable requests for information from the client.

**COUNT TWO:
VIOLATION OF PROFESSIONAL RULES OF CONDUCT RELATED TO
GRIEVANTS ANECIA ROBINSON & GENEVA ROBINSON**

11. On May 20, 2011, Anecia Robinson and Geneva Robinson (“Ms. Duncan and Ms. Robinson”) hired Respondent to represent Leonard Duncan (“Mr. Duncan”) in various post-conviction proceedings.

12. Ms. Duncan and Ms. Robinson believed they hired Respondent to represent Mr. Duncan to complete the following post-conviction matters: first, to file a motion to withdraw a guilty plea/motion for resentencing, and, later, to file a motion for judicial release. The fee agreement Ms. Duncan and Ms. Robinson signed with Respondent mentions “performing legal research. . . preparing a Motion for a New Trial based upon newly discovered evidence . . . and nothing more.” Respondent’s fee agreement stated that all fees paid were nonrefundable, and stated that the initial retainer was \$7,500.

13. In consideration for Respondent’s representation of Mr. Duncan, Ms. Robinson and Ms. Duncan paid Respondent \$2,500 by check in May 2011, and paid Respondent another \$2,500 by check in December 2011. Ms. Robinson and Ms. Duncan also paid \$500 cash at some point, but did not receive a receipt. Ms. Duncan and Ms. Robinson believed that the \$5,500 paid would cover the entirety of Respondent’s representation of Mr. Duncan, including the motion for judicial release, which could not be filed until approximately three years later pursuant to rules governing judicial release.

14. On March 6, 2012, Respondent filed a “Motion to Withdraw Plea; Motion for Resentencing,” in Mr. Duncan’s criminal matter, requesting leave for Mr. Duncan to withdraw his guilty plea and request resentencing. The State of Ohio opposed the motion on March 15, 2012. The court denied the motion on March 29, 2012, holding that Mr. Duncan did not

provide an adequate basis to withdraw his plea, and that the court lacked jurisdiction to amend the sentence at this juncture.

15. Ms. Duncan and Ms. Robinson met with Respondent a number of times throughout 2011 – 2014, and Ms. Duncan and Ms. Robinson noted that Respondent was generally disorganized, unprepared for meetings, and did not adequately communicate the status of the case to them in each instance.

16. At some point before early 2015, Respondent made a list of items needed to draft the motion for judicial release. Respondent asked Ms. Duncan and Ms. Robinson to contact him again when the appropriate time for filing the motion for judicial release was about to arise.

17. On or about February 2015, Respondent suffered a debilitating stroke.

18. As a result of the stroke, Respondent currently suffers from aphasia, a disorder that makes it extremely difficult for Respondent to communicate. While Respondent is able to understand questions, he has difficulty formulating a meaningful response or answering anything other than simple “yes” or “no” questions.

19. When Ms. Duncan and Ms. Robinson sought to contact Respondent in early 2015, Respondent had “disappeared.” Ms. Duncan and Ms. Robinson never received any update by Respondent or any other individual regarding Respondent’s medical condition. Ms. Duncan and Ms. Robinson hired another attorney to handle the motion for judicial release.

20. Respondent's conduct as described above amounts to violations of the following provisions of the Rules of Professional Conduct:

- a. Prof Cond. Rule 1.3 – Failure to act with reasonable diligence and promptness in representing a client;

- b. Prof Cond. Rule 1.4(a)(3) - Failure to keep the client reasonably informed about the status of the matter;
- c. Prof Cond. Rule 1.4(a)(4) - Failure to comply as soon as practicable with reasonable requests for information from the client;
- d. Prof Cond. Rule 1.5(d)(3) – Entering into a nonrefundable/earned upon receipt fee arrangement.

WHEREFORE, Relator requests that Respondent be found to be in violation of the provisions cited and that an impairment suspension, pursuant to Gov. Bar. R. V(15)(C), is imposed.

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Respectfully submitted,

CLEVELAND METROPOLITAN BAR
ASSOCIATION, BY

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