

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

RECEIVED

JUN 23 2017

In re:

Complaint against

BOARD OF PROFESSIONAL CONDUCT

Richard Ahlman Oviatt, Esq.
55 Public Square, Suite 2100
Cleveland, Ohio 44113-1926

No. 17-031

Attorney Registration No. (0025563)

COMPLAINT AND CERTIFICATE

Respondent,

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

Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411

FILED

JUN 23 2017

Relator.

BOARD OF PROFESSIONAL CONDUCT

Now comes the relator and alleges that Richard Ahlman Oviatt, an Attorney at Law, duly admitted to the practice of law in the state of Ohio, is guilty of the following misconduct:

1. Respondent, Richard Ahlman Oviatt, was admitted to the practice of law in the state of Ohio on December 18, 1967. Respondent is subject to the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.
2. On June 24, 1983, Jeff Grimes allegedly smashed a beer bottle into John Selwyn's face.
3. Selwyn retained respondent and, on October 24, 1984, sued Grimes in the Cuyahoga County Court of Common Pleas, Case No. CV-84-082351. On June 21, 1985, the trial court granted a default judgment against Grimes, awarding Selwyn \$50,000 in compensatory damages and \$50,000 in punitive damages.

4. In September 1985, Selwyn attempted to execute the judgment against Grimes, but was unsuccessful.
5. On March 30, 1987, Grimes filed for bankruptcy. In response, Selwyn, through respondent, filed an adversary action contesting the discharge of his judgment. The bankruptcy court declared the judgment non-dischargeable but otherwise discharged Grimes in bankruptcy.
6. On June 4, 2012, after the death of Grimes's father, Selwyn filed a motion to revive the June 1985 judgment.
7. On the same day, respondent, who was still representing Selwyn, forwarded an unsigned and unfiled copy of the revival motion to Grimes's attorney; but respondent failed to provide the summons with the motion attached as required by Civ. R. 4(F).
8. On June 7, 2012, the trial court granted the motion to revive the judgment.
9. On June 18, 2012, respondent transferred the revived judgment to the Cleveland Municipal Court and garnished Grimes's bank accounts.
10. On July 5, 2013, Grimes, through counsel, filed a motion to vacate the trial court's order reviving the judgment; however, that motion was denied.
11. Grimes then appealed, but, on October 15, 2013, his appeal was dismissed for lack of a final appealable order.
12. On remand, the trial court sua sponte reconsidered the denial Grimes's motion to vacate, deciding instead to grant it based upon the lack of service under Civ. R. 4(F). It also found that respondent's previous attempt to revive the judgment tolled the time period for revival and ordered that Selwyn had until March 14, 2014 to refile his motion to revive the dormant judgment.

13. On January 16, 2014, respondent refiled his motion to revive the dormant judgment and properly served Grimes.
14. On March 24, 2014, the trial court granted the motion to revive, ordering that the judgment would date back to June 7, 2012, which was the date the trial court granted the first revival motion.
15. Grimes then appealed to the Eighth District Court of Appeals, arguing that the trial court erred when it revived the dormant judgment, *Selwyn v. Grimes*, 2014-Ohio-5147.
16. On November 20, 2014, the court of appeals sustained Grimes's assignment of error and reversed and remanded, stating that:
 - a. Under R.C. 2329.07, the judgment from June 1985 went dormant five years after the last attempt to execute;
 - b. Under R.C. 2325.18, Selwyn had to revive the dormant judgment within 21 years of it becoming dormant;
 - c. The last attempt to collect on the judgment was made in September 1985;
 - d. The 1987 adversarial action contesting discharge of the judgment did not qualify as an attempt to execute on the judgment; and
 - e. The time period within which to revive the judgment ended in 2011; thus, Selwyn's motion to revive was untimely.
17. Respondent then appealed to the Supreme Court of Ohio, which declined to hear the case.
18. Upon remand, consistent with the Eighth District's decision, the trial court found that the period within which to revive the judgment had expired, which rendered the judgment uncollectable.
19. On July 20, 2015, Grimes sued respondent and Selwyn citing several causes of action, including third-party legal malpractice and malicious civil prosecution. That suit potentially exposed respondent to approximately \$400,000 in liability. The case was

filed in the Cuyahoga County Court of Common Pleas, *Grimes v. Oviatt, et. al.* Case No. CV-15-848472.

20. Respondent represented both himself and Selwyn.
21. On September 24, 2014, respondent filed a joint answer to the complaint and a motion for an order authorizing the depositions of the appellate judges who decided the previous appeal, *Selwyn v. Grimes*, 2014-Ohio-5147. See ¶¶ 15 & 16.
22. In his answer, respondent impugned the integrity of the three appellate judges who decided the previous appeal. Respondent stated that:
 - a. The statute-of-limitations issue “was contrived by the appellate judges to justify a decision to favor Grimes”;
 - b. The appellate decision was “premised apparently upon outside influences and not premised upon the facts or the law”;
 - c. The appellate court ruled in favor of Grimes “for apparently undisclosed and non-legal reasons”; and
 - d. The appellate court refused to address the determinative issue, which was whether the action taken in the bankruptcy matter qualified as an “execution.”
23. On the same day, Grimes filed a motion to disqualify respondent from representing Selwyn based upon a conflict of interest.
24. On September 27, 2015, Grimes filed a motion to strike the joint answer filed by respondent.
25. On October 5, 2015, respondent and Selwyn filed a joint motion opposing Grimes’s motion to disqualify respondent. In the motion, they revealed that respondent had filed a grievance with the Office of Disciplinary Counsel and attached a copy of the “Memorandum In Support of Disciplinary Complaint” that respondent submitted in support of his grievance. In the motion and the attached memorandum, respondent

impugned the integrity of the three appellate judges who decided the previous appeal.

For example, respondent stated that:

- a. The judges relied upon the statute-of-limitations issue to “facilitate and substantiate a predetermined favorable ruling for Grimes”;
 - b. The decision “clearly indicates impropriety and underscores a non-legal reason for such a blatant perverse ruling” (emphasis in original);
 - c. The judges acted with a “predetermined bias”;
 - d. “[S]omething happened beyond judicial reasoning and justice to accommodate Grimes”;
 - e. “The connection between Grimes and the Appellate Judges is clear; Grimes is a lifetime member, as was his father, of the iron workers union; the iron workers’ union is embedded in Cuyahoga County democratic politics; and the three Judge Appellate Panel were all elected to the bench as democratic candidates”;
 - f. The “[r]ecent criminal conviction of Cuyahoga County Common Pleas Court Judges Bridgett McCafferty and Steven Terry involved undue influence and corruption by Democratic Party Officials. The within situation is not something new, but merely an extension of past practices”;
 - g. “[T]he only viable reason judges would render such a Decision in this case is because judicial reasoning was replaced by undue influence and corruption”;
 - h. The judges were predisposed “to favor Grimes and save him \$400,000”;
 - i. “There are reasons for everything and it is not because these judges are intellectually deprived. A conspiracy to pervert justice is confirmed when all three judges have put their names to this Decision”;
 - j. “It is impossible to believe that this judicial decision is not the result of undue influence and corruption, however, there is at the very minimum judicial incompetence”;
 - k. “Confronted with making a predetermined decision with no assistance from Grimes, the Appellate Judges necessarily had to conjure up legal reasoning”; and
 - l. “[T]hese Appellate Judges are very much aware as to how to use their vast power and the appellate process so that an opposing view is left without a forum to be heard and is thereby silenced.”
26. On the same day, respondent filed a brief to oppose Grimes’s motion to strike respondent’s motion seeking to depose the appellate judges. In that brief, respondent


again commented on the integrity of the appellate judges, stating: “It also should be clear that [Grimes’s attorney] participated as to what occurred behind closed-doors to generate this Appellate decision. These decisions just don’t happen without someone starting the ball rolling.”


27. On October 21, 2015, the trial court granted Grimes’s motion to disqualify respondent from representing Selwyn, citing conflict of interest concerns. The trial court also granted Grimes’s motion to strike respondent’s answer and admonished him not to “engage in any further ad hominem attacks upon the integrity and competency of plaintiff’s counsel, or the court, or any other persons.”
28. On February 29, 2016, Grimes dismissed his lawsuit under Civ. R. 41(A)(1).
29. On April 28, 2017, relator sent respondent an inquiry to his registered address, asking questions related to respondent’s malpractice coverage, if any, and requesting a copy of the notice required by Prof. Cond. Rule 1.4(c), if applicable. Respondent’s response was required to be postmarked no later than May 12, 2017.
30. Respondent sent relator a letter in response, but failed to substantively respond to relator’s malpractice-coverage inquiry.
31. On May 17, 2017, relator reissued the April 28th inquiry and advised respondent that, under both the Rules of Professional Conduct and the Gov. Bar R. V, he is required to cooperate with relator’s inquiries. Respondent’s response was required to be postmarked no later than May 26, 2017.
32. Respondent failed to respond to the May 27th inquiry.
33. On June 1, 2017, relator’s assistant called respondent, but was unable to reach him. As a result, relator’s assistant left respondent a voicemail, asking him to return the call.

34. On June 5, 2017, respondent left relator's assistant a voicemail, stating that he had not been feeling well and that his secretary was sick. Although he stated he would need more time to respond, he did not indicate when he would respond.
35. On June 6, 2017, relator's assistant returned respondent's call and left another voicemail in which she indicated that he could have until June 9th to respond and asked that he return the call. Respondent failed to return relator's call.
36. On June 16th, 2017, relator received a letter dated June 13, 2017 from respondent. Respondent again refused to provide the information requested by relator on both April 28 and May 17, 2017.
37. Respondent's conduct, as alleged in this complaint, violates the following Rules of Professional Conduct and Rules for the Government of the Bar:
 - a. Prof. Cond. Rule 1.7(a)(2) [representing a client when there is a substantial risk that the lawyer's ability to consider, recommend, or carry out an appropriate course action for that client will be materially limited by lawyer's own personal interests]: the conduct forming the basis of this violation includes, but is not limited to, representing Selwyn in Grimes's lawsuit against both respondent and Selwyn, Case No. CV-15-848472;
 - b. Prof. Cond. Rule 8.2(a) [A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard for its truth or falsity concerning the qualifications or integrity of a judicial officer];
 - c. Gov. Bar. R. V(8)(A)(1) [Prior to a determination of probable cause by the Board, all proceedings, documents, and deliberations relating to review, investigation, and consideration of grievances shall be confidential];
 - d. Prof. Cond. R. 8.1(b) [In connection with a disciplinary matter, a lawyer shall not knowingly fail to respond to a demand for information from a disciplinary authority]; and
 - e. Gov. Bar R. V(9)(G) [No attorney shall neglect or refuse to assist or testify in an investigation or hearing].

CONCLUSION

Wherefore, pursuant to Gov. Bar R. V and the Rules of Professional Conduct, relator alleges that respondent is chargeable with misconduct; therefore, relator requests that respondent be disciplined pursuant to Rule V of the Rules of the Government of the Bar of Ohio.


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CERTIFICATE

The undersigned, Scott J. Drexel, Disciplinary Counsel, of the Office of Disciplinary Counsel of the Supreme Court of Ohio hereby certifies that Donald M. Scheetz is duly authorized to represent relator in the premises and has accepted the responsibility of prosecuting the complaint to its conclusion. After investigation, relator believes reasonable cause exists to warrant a hearing on such complaint.

Dated: June 23, 2017


Scott J. Drexel, Disciplinary Counsel