

FILED

FEB 25 2015

BOARD OF PROFESSIONAL CONDUCT

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

In Re

Complaint Against

JOHN BARRY FRENDE (0076200)
3901 Lakeside Avenue East, Suite 104
Cleveland, Ohio 44114

Respondent,

v.

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

Relator.

NO. 15 - 015 ²

COMPLAINT
AND
CERTIFICATE

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

RECEIVED

FEB 23 2015

BOARD OF PROFESSIONAL CONDUCT

Relator Cleveland Metropolitan Bar Association alleges that Respondent John B. Frenden, an Attorney at Law, duly admitted to the practice of law in the State of Ohio on November 10, 2003, is guilty of the following misconduct:

COUNT I – Dubois’s Motor Vehicle Accident

1. On January 4, 2011, Ms. Diane Dubois (“Ms. Dubois”) was involved in a motor vehicle accident where she sustained injuries when a semi-truck, owned by Walters Trucking Inc., backed into the front of a vehicle where she was a passenger (“Accident”).

2. Because Ms. Dubois sustained multiple injuries from the Accident, she decided to hire an attorney to represent her.

3. On or around January 5, 2011 Ms. Dubois hired John B. Frenden (“Respondent”) to represent her relative to her Accident.

4. Upon beginning the representation related to the Accident, Respondent failed to obtain a Contingency Fee Agreement signed by him and Ms. Dubois.

COUNT II – Respondent’s Conduct in Handling Ms. Dubois’s Claim

5. After the representation began, Ms. Dubois attempted to contact Respondent multiple times in 2011 inquiring as to the status of her Accident and claims relating thereto (“Claims”).

6. Because of injuries related to her Accident, Ms. Dubois became ill and was in and out of the hospital during 2011 and 2012 and was unable to reach out to Respondent regarding her Claims.

7. During the Summer of 2012, Continental Western Insurance Group (“Continental”), the insurance carrier for the Walters Trucking Inc., attempted to get ahold of Respondent regarding a resolution of the Claims.

8. On June 6, 2012, Continental sent a letter to Respondent indicating that the adjustor, Shelly Brooks, had been trying to get a hold of Respondent.

9. In the June 6, 2012 letter, Continental offered Respondent \$28,000.00 to settle the Claims due to Ms. Dubois’ pre-existing back injuries.

10. In July of 2012, Respondent contacted Ms. Dubois and indicated that he had an offer for settlement of \$83,000.00 from Continental that she should take it to settle her Claims.

11. Without communicating with Ms. Dubois, Respondent countered with a settlement demand of \$35,000.00 to which Continental agreed to pay to settle all Claims (“Settlement”).

12. At no time did Continental offer, nor did Respondent demand, \$83,000.00 to settle the Claims.

13. Respondent failed to gather adequate information, appropriate medical records, or information related to insurance or any medical liens related to the Accident and Claims to fully evaluate the nature and the seriousness of Ms. Dubois’s Claims prior to Settlement.

14. Some time after negotiating the Settlement, Respondent informed Continental that Ms. Dubois had Medicare which he alleges he was not aware of when negotiating the Settlement.

15. Pursuant to Respondent's representations regarding Medicare, on November 28, 2012, Continental sent a letter to Respondent requesting that Ms. Dubois sign and return a "Consent to Release" form so that Continental could report Ms. Dubois's injuries to Medicare.

16. On December 18, 2012, Respondent sent a letter to Continental returning the settlement check for \$35,000.00 and requesting to renegotiate the Settlement because of the Medicare issues.

17. Continental refused to renegotiate the Settlement.

18. On January 4, 2013, the statute of limitations ran on Ms. Dubois's Claims.

19. Throughout 2012 and early 2013, Ms. Dubois called and wrote to Respondent numerous times inquiring as to the status of her Claims because she had not heard from him.

20. Respondent repeatedly failed to respond to Ms. Dubois's calls and letters requesting a status of her Claims.

21. At no time did Respondent inform Ms. Dubois that he settled her Claims or that a settlement check had been issued by Continental.

22. In March of 2013, Continental contacted Respondent upon receipt of a letter from Medicare stating that they were unable to identify Ms. Dubois as a Medicare beneficiary.

23. In response to Continental's inquiry, on May 9, 2013, Respondent advised Continental that he had recently discovered that Ms. Dubois had Medicaid and not Medicare, as previously represented.

24. Because of how Respondent handled the Claims, Continental insisted that Respondent provide a signed release before Continental would reissue a settlement check.

25. On May 15, 2013, Respondent finally contacted Ms. Dubois and came to her home and had her sign a "General Release of All Claims."

26. May 15, 2013 was the first time Respondent informed Ms. Dubois of the Settlement.

27. In addition to having failed to have Ms. Dubois sign a Contingency Fee Agreement related to his representation; Respondent failed to communicate with Ms. Dubois regarding the status of the Claims throughout his representation; Respondent failed to communicate with Ms. Dubois regarding the Settlement of her Claims; Respondent failed to obtain adequate information to fully evaluate the nature and the seriousness of Ms. Dubois's injuries; and Respondent failed to research and gather information regarding Ms. Dubois's medical insurance or any medical liens related to the Accident prior to settling the Claims.

COUNT III – Respondent's Misconduct Related to His IOLTA Account

28. On May 16, 2013, Continental received the signed "General Release of All Claims" and promptly re-issued a settlement check dated May 20, 2013, in the amount of \$35,000.00 payable to "Diane Dubois and John B. Frenden LLC as her Attorney" as full and final settlement of the Claims ("Check").

29. Respondent returned to Ms. Dubois's home a few days later and had her sign the Check from Continental and indicated he would be back with the net settlement proceeds.

30. Respondent never returned to Ms. Dubois's home nor did he provide her with the net settlement proceeds until after this Grievance action was filed.

31. On June 27, 2013, Respondent deposited the Check into his IOLTA account.

32. The Check remained on deposit in Respondent's IOLTA while Ms. Dubois repeatedly attempted to get ahold of Respondent regarding her funds.

33. Having not received the funds and not being able to reach Respondent, Ms. Dubois filed a grievance on October 30, 2013 ("Grievance").

34. It was not until on or around May 6, 2014, after Ms. Dubois filed the Grievance and nearly one year after receiving and depositing the Check, that Respondent provided Ms. Dubois with the net proceeds of the settlement funds and disbursed funds to Ms. Dubois's medical providers and the Department of Medicaid.

RESPONDENT VIOLATED THE RULES OF PROFESSIONAL CONDUCT

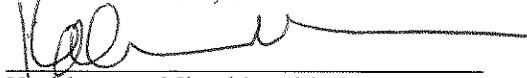
35. Respondent's conduct as described above amounts to violations of the following provisions of the Rules of Professional Conduct:

- a. Prof Cond Rule 1.1 – A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.
- b. Prof Cond Rule 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client.
- c. Prof. Cond. R. 1.4(a)(1) – Failure to inform the client of any decision or circumstance with respect to which the client's informed consent is required;
- d. Prof. Cond. R. 1.4(a)(2) – Failure to consult with the client about the means by which the client's objectives are to be accomplished;
- e. Prof. Cond. R. 1.4(a)(3) – Failure to keep the client reasonably informed about the status of the matter;
- f. Prof. Cond. R. 1.4(a)(4) – Failure to comply as soon as practicable with reasonable requests for information from the client;
- g. Prof. Cond. R. 1.5(c)(1) – Failure to have a contingent fee agreement signed by the client and the lawyer;
- h. Prof. Cond. R. 1.15(d) – Failure to promptly notify a client that funds have been received in which a client had a lawful interest.

WHEREFORE, Relator requests that Respondent be found to be in violation of the provisions cited and that an appropriate sanction be imposed.

Respectfully submitted,

CLEVELAND METROPOLITAN BAR
ASSOCIATION, BY:



Kathleen A. Nitschke (0073397)

Lauren C. Tompkins (0087304)

Giffen & Kaminski, LLC

1300 East Ninth Street

Suite 1600

Cleveland, Ohio 44114

Tel: 216-621-5161

Fax: 216-621-2399

Email : ltompkins@thinkgk.com

knitschke@thinkgk.com

Attorneys for Relator,
Cleveland Metropolitan Bar Association



Heather M. Zirke (0074994)

CLEVELAND METROPOLITAN BAR
ASSOCIATION

1375 East Ninth Street, Floor 2

Cleveland, OH 44114-1785

Tel: 216.696.3525

Fax: 216.696.2413

Email: hzirke@clemetrobar.org

Assistant Counsel,

Cleveland Metropolitan Bar Association

CERTIFICATE

The undersigned, COLIN JENNINGS CHAIRPERSON, of the CLEVELAND METROPOLITAN BAR ASSOCIATION'S CERTIFIED GRIEVANCE COMMITTEE, hereby certifies that KATHLEEN A. NITSCHKE AND LAUREN C. TOMPKINS are duly authorized to represent Relator in the premises and have 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: 2/11/15
Colin Jennings

COLIN JENNINGS
CHAIRPERSON
Certified Grievance Committee

Rule V of the Supreme Court Rules for the Government of the Bar of Ohio, Section (10)

(E)(1) Content of the Complaint. A complaint filed with the Board shall be filed in the name of either disciplinary counsel or the bar association that sponsors the certified grievance committee, as relator. The complaint shall include all of the following:

- (a) Allegations of specific misconduct including citations to the rules allegedly violated by the respondent, provided that neither the panel nor the Board shall be limited to the citation to the disciplinary rule in finding violations based on all the evidence if the respondent has fair notice of the charged misconduct;
- (b) If applicable, an allegation of the nature and amount of restitution that may be owed by the respondent or a statement that the relator cannot make a good faith allegation without engaging in further discovery;
- (c) A list of any discipline or suspensions previously imposed against the respondent and the nature of the prior discipline or suspension;
- (d) The respondent's attorney registration number and his or her last known address;
- (e) The signatures of one or more attorneys admitted to the practice of law in Ohio, who shall be counsel for the relator and, where applicable, by bar counsel;
- (f) A written certification, signed by disciplinary counsel or the president or chair of the certified grievance committee, that the counsel are authorized to represent the relator in the action and have accepted the responsibility of prosecuting the complaint to conclusion. The certification shall constitute the authorization of the counsel to represent the relator in the action as fully and completely as if designated and appointed by order of the Supreme Court with all the privileges and immunities of an officer of the Supreme Court.