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JUL 25 2016

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

BOARD OF PROFESSIONAL CONDUCT

In re:
Complaint against

CASE NO. 16 - 029

DERRICK A. STRAHORN, (0034483)
6233 N. Main St.
Dayton, OH 45415-3112
Respondent,

COMPLAINT AND CERTIFICATE

DAYTON BAR ASSOCIATION,
109 N. Main St., Ste. 600
Dayton, OH 45402
Relator.

FILED

JUL 29 2016

BOARD OF PROFESSIONAL CONDUCT

Now comes the Relator, Dayton Bar Association (hereinafter "DBA"), by and through counsel, and for its Complaint states as follows that Derrick A. Strahorn, an attorney-at-law duly admitted to the practice of law in the state of Ohio, has committed the following misconduct:

1. The Relator, DBA, is a Certified Grievance Committee approved by the Supreme Court of Ohio.
2. Respondent, Derrick A. Strahorn, is an individual admitted to the practice of law in the state of Ohio on November 12, 1986.
3. Respondent is subject to the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.
4. Respondent has not been previously disciplined.
5. This complaint is brought on behalf of Harry Drake, Margaret H. Drake, and Katherine Drake, a minor ("Complainants") who at all relevant times owned and or resided at 12 Deschler Place, Dayton, Ohio.
6. This Complaint arises from an attorney-client relationship Complainants formed with Respondent, who currently practices law, and who at all relevant times practiced law as an attorney licensed in the State of Ohio at an office located at 6233 North Main Street, Dayton, Ohio.

COUNT 1 – Nonrefundable retainer

7. On July 19, 2013, Complainant Harry Drake entered into a written Fee Contingency Agreement with Respondent. A true and exact copy of the Fee Agreement is attached hereto and incorporated herein as Exhibit A.
8. Harry Drake and Margaret Drake paid Respondent a nonrefundable retainer. Pursuant to the terms of the fee agreement, Respondent was to provide legal representation to Complainant regarding a “Consumer – Home Improvement Case”.
9. The terms of the written fee agreement stated that the Complainant agreed to pay a “nonrefundable” retainer in the amount of \$3000 to secure legal representation from Respondent.
10. Respondent’s written fee agreement contained no simultaneous disclosure advising that if Respondent did not complete the representation for any reason, the client (Complainant) may be entitled to a refund of all or part of the fee based upon the value of the representation.
11. Respondent’s conduct as outlined above violated the Ohio Rules of Professional Conduct, specifically:
 - a. By entering into a written agreement that required the client to pay a nonrefundable fee, without simultaneously advising the client in writing that if Respondent does not complete the representation for any reason, the client may be entitled to a refund of all or part of the fee based on the value of the representation, Respondent violated Rule 1.5(d)(3).

COUNT 2 – Notice of professional liability insurance

12. On July 19, 2013, the date Respondent entered into the written fee agreement to represent the Complainant, Respondent did not have Professional Liability (Malpractice) Insurance.
13. Although the written fee agreement contained a clause that stated, “[A]ttorney does not presently carry malpractice insurance”, no further language regarding malpractice insurance was contained in the agreement.
14. Respondent did not provide the Complainant with a separate form which notified Complainant of the fact that Respondent did not maintain professional liability insurance in the amounts required pursuant to the Ohio Rules of Professional Conduct.

15. Respondent did not obtain the Complainant's signature on a separate form acknowledging notification of the fact that Respondent did not maintain professional liability insurance.
16. Respondent did not maintain a copy of the notice signed by the Complainant for five years after termination of representation of the Complainant.
17. Respondent's conduct as outlined above violated the Ohio Rules of Professional Conduct, specifically:
 - a. By not providing notice on a separate form informing the client that Respondent, at the time of the client's engagement, did not maintain professional liability insurance in the amounts of at least one hundred thousand dollars per occurrence and three hundred thousand dollars in the aggregate or that Respondent's professional liability insurance was terminated, Respondent violated Rule 1.4(c).
 - b. By failing to have the client sign a separate form providing notice as described in paragraph 17a (above), Respondent violated Rule 1.4(c).
 - c. By failing to maintain a copy of the required notice signed by the client for five years after termination of the representation, Respondent violated Rule 1.4(c)(1).
18. Respondent also undertook the representation of clients, Margaret Drake, Anne Drake and Katherine Drake, a minor.
19. Respondent provided no notice in accordance with Rule 1.4(c)(1) of no professional liability insurance as required by Rule 1.4(c).

COUNT 3 – Competence

20. On June 27, 2013, Case Number 2013 CV 03850 was filed in the Common Pleas Court of Montgomery County, Ohio.
21. The Plaintiff was Motorists Mutual Insurance Company ("Motorists Mutual") and the Defendants were Restoration Resources of Dayton LLC ("Restoration Resources"); Amos Schwartz; and John Doe Corporation.
22. The Complaint filed in the case alleged that Motorists Mutual was a Subrogee of Harry W. Drake. Mr. Drake was the owner of the property located at 12 Deschler Place, Dayton, Ohio.
23. Mr. Drake had contracted with Restoration Resources to repair and replace portions of a roof.

24. Restoration Resources then subcontracted with Amos Schwartz to complete the roof repair and replacement.
25. The Defendants were alleged to have negligently performed the roof repair and replacement.
26. As a result, Motorist Mutual paid \$103,700.63 due to the negligence of the Defendants.
27. The Defendants filed timely Answers to the Complaint.
28. A Final Pretrial conference in the matter was set for August 13, 2014, and a Trial date was scheduled for August 25, 2014.
29. Although no party had sued the Complainants, on September 30, 2013, Respondent filed a "Third Party Complaint" on behalf of Margaret Drake Harwood, Harry Drake, Anne Drake, and Katherine Drake (a minor child).
30. The Third Party Complaint asserted causes of action for negligence, breach of contract, over payment for services rendered, violation of the Ohio Consumer Practices Act, and violation of the Ohio Deceptive Trade Practices Act.
31. The Clerk of Courts treated this document as an Intervening Complaint, although no Motion to Intervene was ever filed by Respondent with the Trial Court.
32. Discovery was served upon the Complainants on October 20, 2013.
33. Despite receiving discovery on October 20, 2013, Respondent never turned over the discovery to the Complainants until December 7, 2013. At that time, Respondent told the Complainants that they needed to answer the interrogatories and production of documents as soon as possible.
34. Complainants attempted to schedule an appointment with Respondent in order to have Respondent assist them with the discovery process, however due to Respondent's schedule he advised that he was not available to meet until February 28, 2014.
35. Respondent failed to return phone calls placed to him by the Complainants.
36. Respondent also failed to return emails sent to him by the Complainants.
37. Discovery was not timely answered by Complainants.

38. On March 17, 2014, Defendants filed a Motion to Compel Discovery from Complainants.
39. Respondent filed no response to the Motion to Compel Discovery.
40. On April 22, 2014, the Court granted the Defendant's Motion to Compel Discovery.
41. Up until April 22, 2014, Respondent had failed to ask that Service of Process be completed on the Third Party Defendants named in the Third Party Complaint which was filed September 30, 2013.
42. On April 22, 2014, Respondent finally asked that the Clerk of Courts serve the Third Party Defendants.
43. Depositions of the Complainants were scheduled by the Third Party Defendants.
44. On June 4, 2014, Respondent requested to withdraw as counsel for the Complainants.
45. His representation spanned from July 19, 2013 to June 4, 2014.
46. Respondent has not refunded any of the \$3000 "nonrefundable" retainer paid by Complainants.
47. Respondent has not provided Complainants with an itemized bill of services rendered.
48. After Respondent withdrew from the representation of the Complainants, multiple requests were made by the Complainants for the return of their file.
49. Only after multiple requests were made did Respondent provide a portion of the file to the Complainants.
50. Respondent was licensed to practice law in 1986. He began to work for Lexis-Nexis in October of 1986.
51. He entered the full time practice of law in May of 1987.
52. Respondent's practice consists of family law, guardian ad litem work, divorce and dissolution representations, child custody matters, real estate and landlord-tenant matters.

53. Respondent's previous experience in construction litigation consisted of 24 smaller cases.
54. Respondent has never represented a client in a case of the size or magnitude of the Complainant's case.
55. This is the largest construction representation Respondent has ever undertaken.
56. Respondent did not associate with or consult with a lawyer of established competence in the field of construction litigation relating to his representation of the Complainants.
57. Once retained, Respondent did not inquire into or analyze the factual and legal elements of the particular issues involved in this construction litigation matter.
58. Respondent's lack of competence in the matter is evidenced by his filing of the Third-Party Complaint.
59. Respondent's lack of competence in the matter is further evidence by his handling of the Discovery served upon him by the opposing parties.
60. Respondent failed to turn over the Discovery to the Complainants for six weeks, failed to meet with the Complainants for an additional two months, and then did nothing to respond to the Discovery.
61. Respondent's failure to act resulted in a Motion to Compel being filed against the Complainants.
62. Respondent did not respond to the Motion to Compel filed against the Complainants.
63. Respondent's failure to act or respond ultimately resulted in the Court granting the Motion to Compel against the Complainants.
64. Respondent's conduct as outlined above violated the Ohio Rules of Professional Conduct, specifically:
 - a. By failing to employ the requisite knowledge and skill necessary in this complex construction case, and by failing to engage in preparation reasonably necessary for the representation, Respondent violated Rule 1.1.

COUNT 4 – Diligence

65. Respondent's conduct as previously outlined in paragraphs 18-64 above violated the Ohio Rules of Professional Conduct, specifically:
- a. By failing to request the Clerk of Courts to serve the Third-Party Complaint upon the Defendants. Respondent failed to pursue this construction matter with reasonable diligence and promptness, thereby violating Rule 1.3.
 - b. By failing to pursue the completion of the Discovery request with his clients (Complainants) once it had been served upon him. Respondent failed to pursue this construction matter with reasonable diligence and promptness, thereby violating Rule 1.3.
 - c. By failing to respond to the Motion to Compel filed against his clients. Respondent failed to pursue this construction matter with reasonable diligence and promptness, thereby violating Rule 1.3.
 - d. By failing to complete the Discovery, even after a Motion to Compel had been filed against his clients, and subsequently sustained by the Court. Respondent failed to pursue this construction matter with reasonable diligence and promptness, thereby violating Rule 1.3.
 - e. Failing to prepare his clients for the litigation process with reasonable diligence and promptness violates Rule 1.3.

COUNT 5 – Cooperation with Bar Investigation

66. Mark Chilson, Esq., a member of the Dayton Bar Association Certified Grievance Committee ("Committee"), was assigned to investigate the complaint made against Respondent in this matter.
67. On February 20, 2015, Mr. Chilson's office contacted Respondent via email and advised Respondent that Mr. Chilson had been assigned to investigate a complaint filed against Respondent with the Committee. In the email, Respondent was requested to contact Mr. Chilson in order to schedule a meeting to review the matter. The email further listed several dates and times that Mr. Chilson was available to meet between the dates of February 24 and March 6, 2015. Respondent failed to respond to this attempt to contact him.
68. On February 25, 2015, Mr. Chilson's office called and left a message with a receptionist at Respondent's office requesting that Respondent contact Mr. Chilson. Respondent failed to respond to this attempt to contact him.

69. On February 25, 2015, Mr. Chilson's office also sent an email to Respondent's office, following up on the phone call that had been placed that day, and requested that Respondent contact Mr. Chilson to set up a meeting. Respondent failed to respond to this attempt to contact him.
70. On February 26, 2015, Mr. Chilson's office called and left a recorded message with Respondent's office asking that Respondent contact Mr. Chilson. Respondent failed to respond to this attempt to contact him.
71. Also on February 26, 2015, Mr. Chilson's office sent an email to Respondent reiterating the fact that Mr. Chilson had been assigned to investigate a bar complaint against Respondent, and asking that Respondent contact Mr. Chilson as soon as possible to set up a meeting. Respondent failed to respond to this attempt to contact him.
72. On March 2, 2015, Mr. Chilson's office called and spoke to a receptionist at Respondent's office. The receptionist indicated that Respondent was not available to speak, and thus another message was left. Respondent failed to respond to this attempt to contact him.
73. On March 3, 2015, Mr. Chilson's office called and left another recorded message at Respondent's office requesting that Respondent contact Mr. Chilson.
74. On March 4, 2015, Respondent returned the call for the first time and scheduled a meeting for March 9, 2015.
75. A meeting was held on March 9, 2015 between Mr. Chilson and Respondent. As a result of that meeting, Mr. Chilson requested that Respondent specifically provide legal billing statements regarding his representation of the Complainants, copies of any emails or letters to the Complainants about any negative aspects of the case, and copies of any Discovery served upon opposing parties on behalf of the Complainants.
76. On March 10, 2015, Mr. Chilson emailed Respondent documenting his request for Respondent to provide the following items: legal time billing statements; emails/letters to the Complainants about any negative aspect of the case; and copies of any discovery Respondent served on opposing parties on behalf of the Complainants.
77. Respondent never produced any emails/letters regarding negative aspects of Complainants' case and never produced any discovery he prepared in the case.
78. On June 25, 2015, Mr. Chilson submitted a report of his investigation to the Committee. In his report, Mr. Chilson recommended that Respondent

be invited to appear before the Committee in order to address his possible violation of Rules 1.1, 1.3, 1.4, and 1.5 of the Rules of Professional Conduct, and Rule V (9)(G) of the Rules for Government of the Bar of Ohio.

79. On June 25, 2015 the Committee unanimously voted to invite Respondent to appear before the Committee, pursuant its bylaws, to address the complaint made against him. As such, Respondent was invited to appear before the Committee at a meeting to be held on August 27, 2015.
80. Respondent did not respond to Mr. Chilson's request for documents relating to the investigation until August 26, 2015, one day before he was scheduled to appear before the Committee regarding the complaint filed against him. On August 26, 2015, Respondent faxed to Mr. Chilson four (4) pages of hand-written billing records regarding the case. On his faxed correspondence, Respondent noted that he was unable to find any relevant emails regarding the case. No additional documentation was provided by Respondent.
81. On August 27, 2015, Respondent appeared before the Committee regarding the complaint filed against him. Respondent was given a full opportunity to address all of the allegations and evidence against him. Respondent answered questions posed by the Committee members and was allowed to make any statement he wanted on his own behalf.
82. On August 27, 2015, the Committee voted that there exists substantial credible evidence that Respondent has violated Rules 1.1, 1.3, 1.4, and 1.5(D)(3) of the Rules of Professional Conduct, and Rule V(9)(G) of the Rules for the Government of the Bar of Ohio.
83. Respondent's conduct as outlined above violated the Ohio Rules of Professional Conduct and Rules for the Government of the Bar of Ohio, specifically:
 - a. By failing to timely respond to the numerous attempts by Mr. Chilson (the investigator) to set up a meeting to discuss the complaint/grievance filed in this matter, Respondent violated Gov. Bar. R. V(9)(G).
 - b. By failing to timely respond to the requests by Mr. Chilson (the investigator) for documentation pertaining to investigation of Respondent's representation of the Complainants in this matter, Respondent violated Gov. Bar. R. V(9)(G).

WHEREFORE, the Relator respectfully requests that the Board of Commissioners find that the Respondent violated the aforementioned sections of the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio, and that

Respondent be disciplined and sanctioned in accordance with the Rules of the Government of the Bar of Ohio.

PRAYER FOR RELIEF

WHEREFORE, Relator respectfully asks judgment by this Board:

1. The Board prepares and files a final report with findings that Respondent has violated the Ohio Rules of Professional Conduct.
2. The Board recommend to the Supreme Court of Ohio to issue an Order which:
 - a. Suspends Respondent's license to practice law in the State of Ohio for an appropriate period of time;
 - b. Requires the Respondent to reimburse the costs and expenses incurred by the Board and the Relator; and
3. Relator further requests that the Supreme Court of Ohio confirm such report and issue orders consistent with the Relator's request for relief described above.

Respectfully submitted,

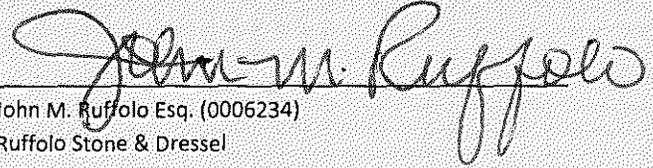


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CERTIFICATE

The undersigned Bar Counsel of the Dayton Bar Association hereby certifies that Daniel J. Brandt, 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 7-22-16



John M. Ruffolo Esq. (0006234)
Ruffolo Stone & Dressel
7501 Paragon Rd.
Dayton, OH 45459-5318

FEE CONTINGENCY AGREEMENT

I have read, understand, and do agree to the following agreement concerning the attorney's fees being charged for representation in my **CONSUMER - HOME IMPROVEMENT CASE**.

I will be charged for all time spent on my case as follows:

Attorney time at the rate of \$240.00 per hour;

Paralegal/Legal Assistant time at the rate of \$80.00 per hour; and

Secretary time at the rate of \$30.00 per hour.

My attorney and his or her associates will maintain a written record of all time spent on my case, including, but not limited to, time spent for legal research, telephone conferences, both with me and other persons, conferences, both with me and other persons, as well as time spent for document preparation, Court appearance and investigation.

I agree to pay a non-refundable retainer in the amount of \$3,000.00 to secure legal representation. The sum of \$ 500.00 to be paid upon execution of this agreement. Client agrees to pay a minimum of \$200.00 per week each week hereafter until said amount is paid in full. The parties herein agree that in addition to the \$ 3,000.00 fee, the attorney herein shall be entitled to receive a contingency fee of one-third (1/3) of any award obtained for the client in this matter.

The \$ 3,000.00 minimum fee being paid shall be subtracted from any such contingency payment due the attorney as long as the contingency payment due the attorney is in excess of \$ 3,000.00.

Client further agrees to pay any and all costs incurred in relation to the case, including, but not limited to, certified mailings, long distance telephone calls, filing fees, citation and service fees, deposition costs, etc.

Client agrees that if he/she does not abide by this agreement, the attorney will withdraw from representation in the case. Client further agrees that if a suit is instituted against client for non-payment of fees and/or costs, that my attorney shall be entitled to recover attorney fees and court costs in connection with said case.

ATTORNEY DOES NOT PRESENTLY CARRY MALPRACTICE INSURANCE.

DATED this 19th day of July, 2013



Client
Harry Drake



Strahorn & Company, LLC
Derrick A. Strahorn