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

DEC 01 2014

**BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE**

In re:

FILED

Complaint against

DEC 15 2014

**Gerald Wayne Phillips, Esq.
461 Windward Way
Avon Lake, OH 44012**

**BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE**

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No. _____

Attorney Registration No. (0024804)

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**

Relator.

Now comes the relator and alleges that respondent, Gerald Wayne Phillips, an attorney at law, duly admitted to the practice of law in the state of Ohio, is guilty of the following misconduct:

1. Respondent was admitted to the practice of law in the state of Ohio on November 4, 1977.
2. As an attorney, respondent is subject to the Code of Professional Responsibility, the Rules of Professional Conduct, and the Rules for the Government of the Bar of Ohio.

Background Facts

3. Sam Cannata (Cannata) was admitted to the practice of law in the State of Ohio on January 20, 2005.

4. In or about May 2009, respondent and Cannata formed Cannata Phillips LPA, LLC and practiced law together as that entity.
5. At all times relevant to this complaint, respondent also practiced law under the name Phillips & Co., L.P.A; however, according to the Ohio Secretary of State's Office, this entity was cancelled in November 1982 and not reinstated until October 17, 2014.
6. Sometime during the mid 1990s, Cannata and David Snider (Snider) decided to form several real estate and property management businesses together. In furtherance of this pursuit, Cannata, Snider, and their respective wives, Jill Cannata and Robin Snider, formed a number of corporate entities in which Cannata and/or his entities and Snider and/or his entities were 50% co-owners or co-managers.
7. These entities, along with Cannata, Snider, and their wives, purchased and managed several real estate properties in Northeast Ohio.
8. Amongst the various entities that Cannata and Snider formed were
 - a. Vista Way Partners, LLC, which was owned 50% by Snider Interests, LLC (a Snider entity) and 50% by Cannata Vista Way (a Cannata entity) and co-managed 50/50 by Robin Snider and Cannata;
 - b. Snider-Cannata Property Management, LLC, which was owned and co-managed 50% by Snider and 50% by Cannata and which served as the property manager for all properties owned by Vista Way Partners, LLC; and
 - c. Bridgeview Center South, LLC, which was owned 50% by Snider Interests, LLC (a Snider entity) and 50% by Cannata-Infinity, LLC (a Cannata entity) and co-managed 50/50 by Robin Snider and Cannata.

9. Between at least 2009 and May 2011, respondent's firm, Phillips & Co., LPA, and respondent's and Cannata's firm, Cannata-Phillips LPA, LLC, rendered legal services to a number of Cannata's and Snider's entities, including but not limited to, Bridgeview Center South, LLC.
10. In or about 2008, the real estate market took a downturn. As a result, Cannata, Snider, and many of their various entities were negatively impacted.
11. In or around 2011, Cannata and Snider began the process of winding up their businesses together and separating their interests. During this process, the personal and professional relationship between Cannata and Snider became increasingly hostile with each blaming the other for the current status of their various businesses.

Count One

12. On July 13, 2012 at 8:38 AM, respondent filed a complaint on behalf of Vista Way Partners, LLC, against Snider-Cannata Property Management, LLC for breach of a lease agreement.
13. Respondent filed this complaint at the request of Cannata, who was a co-manager of Vista Way Partners, LLC, but without the knowledge or consent of Snider Interests, LLC, a 50% owner of Vista Way Partners, LLC or Robin Snider, the other owner co-manager.
14. Respondent's signature block on the complaint indicated that he was filing it as a member of Phillips & Co., LPA, which, as noted above, was not in existence at the time.
15. On July 13, 2012 at 8:38 AM, the same time that the complaint was filed, Cannata filed a Waiver of Service on behalf of Snider-Cannata Property Management, LLC acknowledging that the corporation had already received a copy of the complaint from respondent.

16. On July 13, 2012 at 8:42 AM, four minutes after the complaint was filed, Cannata filed an answer to the complaint on behalf of Snider-Cannata Property Management, LLC of which he was also a 50% co-owner and co-manager.
17. Cannata filed this answer without the knowledge or consent of David Snider, who was the other 50% co-owner and manager.
18. In his answer, Cannata admitted the key allegations of the complaint including, but not limited to, the fact that Snider-Cannata Property Management, LLC had breached the lease agreement with Vista Way Properties, LLC, and that as such, rent was owed to Vista Way Properties, LLC.
19. Respondent and Cannata then drafted a Stipulated Judgment Entry for Judge John P. O'Donnell to sign. The judgment entry specifically provided that "any and all of the defendant's employees and managers shall not be entitled to occupy and be within the leased premises at 9555 Vista Way Suite 200, Garfield Hts., Ohio 44125 after July 16, 2012 and there (sic) will be deemed trespassers after said date and may be remove (sic) from the leased premises by proper law enforcement officers."
20. This entry would have effectively evicted Snider (and Cannata) from his office at Snider-Cannata Property Management, LLC.
21. Later in the day on July 13, 2012, respondent (and Cannata) appeared in Judge Richard McMonagle's chambers in a separate, but related, matter regarding Cannata's and Snider's joint interests and properties. Respondent and Cannata appeared on behalf of Cannata and his entities, but adverse to Snider Interests, LLC, Robin Snider, and David Snider. Respondent and Cannata did not say anything about the answer, complaint, or draft judgment entry that they had just filed.

22. Judge O'Donnell was unavailable to sign the Stipulated Judgment Entry drafted by respondent and Cannata; therefore, it was transferred to Judge McMonagle for signature. Upon seeing the draft judgment entry and realizing that Snider and/or his entities were not aware of it, Judge McMonagle refused to sign it. The case was eventually dismissed.
23. Respondent's conduct as outlined above violates the Ohio Rules of Professional Conduct, specifically Prof. Cond. R. 1.7(a)(2) (prohibiting a lawyer from accepting or continuing the representation of a client if there is substantial risk that the lawyer's ability to consider, recommend, or carry out an appropriate course of action for that client will be materially limited by the lawyer's responsibilities to another client, a former client, a third person, or the lawyer's own personal interests); Prof. Cond. R. 1.10(a) (prohibiting a lawyer associated in a firm from knowingly representing a client when the lawyer knows or reasonably should know that another lawyer in the firm would be prohibited from doing so under Prof. Cond. R. 1.7 or Prof. Cond. R. 1.9); and Prof. Cond. R. 7.5(d) (permitting a lawyer to state or imply that they practice in a partnership or other organization only when that is a fact); Prof. Cond. R. 8.4(d) (prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice).

Count Two

24. Relator herein incorporates paragraphs 1-23.
25. Bridgeview Center South, LLC (BCS) was one of the entities incorporated by Cannata and Snider in pursuit of their real estate business. BCS was owned 50% by Snider Interests, LLC and 50% by Cannata-Infinity LLC, and it was co-managed 50/50 by Robin Snider and Cannata with neither having specific authority to act unilaterally on behalf of the corporation.

26. In or about April 2009, BCS sold property commonly referred to as the "Roadway Property" to Bridgeview Crossing, LLC for \$2,000,000. In turn, Bridgeview Crossing, LLC granted BCS a mortgage in the Roadway Property.
27. Bridgeview Crossing, LLC subsequently defaulted on the mortgage, and in February 2010, BCS obtained a judgment against Bridgeview Crossing, LLC in the amount of \$2,366,575.34. Respondent represented BCS in the matter, and Cannata represented Bridgeview Crossing, LLC. (Cuyahoga County Court of Common Pleas, Case No. CV-10-717293.)
28. Bridgeview Crossing, LLC was also subject to a judgment lien obtained by Huntington National Bank in January 2009 for \$29,348,397.05. Huntington Bank subsequently sold the judgment lien to Garfield Hope Loan Acquisition, LLC (GHLA).
29. GHLA claimed that it had the first and best lien against the Roadway Property; however, respondent and Cannata disagreed with this position and intended to challenge it.
30. On May 19, 2011, Cannata, as co-manager of BCS, assigned BCS's lien on the Roadway Property jointly to respondent's defunct corporation, Phillips & Co., LPA, his firm with respondent, Cannata-Phillips LPA, LLC, and his entity, Cannata-Infinity, LLC, as payment for past legal services performed by Phillips & Co., LPA and in consideration of future legal services, such as the legal challenge to GHLA's priority claim.
31. Cannata assigned the BCS mortgage without the knowledge and/or consent of Snider Interests, LLC or Robin Snider.
32. Respondent signed the mortgage assignment on behalf of his defunct corporation, Phillips & Co., and on behalf of his law firm with Cannata, Cannata-Phillips LPA, LLC. Cannata signed the mortgage assignment on behalf of his entity, Cannata-Infinity, LLC.

33. The mortgage assignment provided that upon sale, disposition, or other transfer of the Roadway Property, payments would be made in the following order of priority with the remainder going to BCS:
- a. Legal fees rendered through respondent's defunct corporation, Phillips & Co, LPA;
 - b. Legal Fees owed to Cannata-Phillips LPA, LLC; and
 - c. Repayment of funds advanced by members of BCS, Cannata Infinity, and "the other member" (Snider Interests, LLC).
34. Snider did not learn of the mortgage assignment until several months after it occurred.
35. Respondent's conduct as outlined above violates Prof. Cond. R. 1.7(a)(2) (a lawyer shall not accept or continue the representation of a client if there is a substantial risk that lawyer's own ability to consider, recommend, or carry out an appropriate course of action for that client will be materially limited by the lawyer's responsibilities to another client, a former client, a third person, or the lawyer's own personal interests).

Count Three

36. Relator herein incorporates the allegations alleged in paragraphs 1-35.
37. Respondent, either through his recently reinstated corporation, Phillips & Co. LPA, or through his firm, Cannata-Phillips LPA, LLC, provided legal services to several of the entities incorporated by Cannata and Snider and/or their wives. For instance, a receiver was appointed for a Snider/Cannata entity in Cuyahoga County Court of Common Pleas case no. CV-09-709391, *Bank of America v. 96th Street Development, LLC et al.* Amongst others, respondent represented Vista Way Partners LLC, Snider Cannata

Interests LLC, Snider Interests LLC, Bridgeview Center South LLC, the Jill K. Cannata Trust in this matter.

38. Respondent's representation in this matter continued until his withdrawal in December 2012.
39. On June 27, 2012, respondent filed suit against Snider Interests LLC, Bridgeview Center South LLC, and several other defendants on behalf of Cannata and his entity, Cannata-Infinity LLC. This suit was filed in the Cuyahoga County Court of Common Pleas and was assigned case no. CV-12-785850.
40. At the time that respondent filed this suit, he was still counsel of record to various Snider/Cannata entities in case no. CV-09-709391, including, but not limited to Snider-Cannata Interests, LLC, Snider Interests, LLC, and Bridgeview Center South, LLC.
41. On July 9, 2012, Snider, Snider Interests LLC, and Robin Snider filed suit against Cannata, Snider-Cannata Property Management LLC, Bridgeview Center South LLC, Cannata-Infinity LLC, Vista Way Partners LLC, Cannata Vista Way LLC, and other defendants in the Cuyahoga County Court of Common Pleas. This case was assigned case no. CV-12-786574.
42. Case nos. CV-12-785850 and CV-12-786574 were consolidated on or about July 16, 2012 and assigned to the docket of Judge Richard J. McMonagle.
43. On July 18, 2012, Attorneys Philip Kushner and Robert Glickman filed a Motion to Disqualify respondent and Cannata from serving as counsel for any party in the consolidated action, as well as the eviction action (Count One) due to multiple conflicts of interest.

44. On October 1, 2012, Judge Richard McMonagle disqualified respondent and Cannata from representing any parties in the matter with the exception that Cannata could represent himself pro se in the various pending matters.
45. Respondent's conduct as outlined above violates Prof. Cond. R. 1.7(a)(1) (prohibiting a lawyer from accepting or continuing the representation of a client if the representation of the client will be directly adverse to another current client); and Prof. Cond. R. 1.7(a)(2) (a lawyer shall not accept or continue the representation of a client if there is a substantial risk that lawyer's own ability to consider, recommend, or carry out an appropriate course of action for that client will be materially limited by the lawyer's responsibilities to another client, a former client, a third person, or the lawyer's own personal interests).

CONCLUSION

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



Scott J. Drexel (0091467)
Disciplinary Counsel

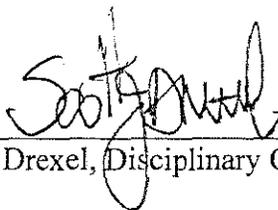


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CERTIFICATE

The undersigned, Scott J. Drexel, Disciplinary Counsel, of the Office of Disciplinary Counsel of the Supreme Court of Ohio hereby certifies that Karen H. Osmond 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: December 1, 2014



Scott J. Drexel, Disciplinary Counsel

Gov. Bar R. V, § 4(I) Requirements for Filing a Complaint.

(1) Definition. "Complaint" means a formal written allegation of misconduct or mental illness of a person designated as the respondent.

* * *

(7) Complaint Filed by Certified Grievance Committee. Six copies of all complaints shall be filed with the Secretary of the Board. Complaints filed by a Certified Grievance Committee shall be filed in the name of the committee as relator. The complaint shall not be accepted for filing unless signed by one or more attorneys admitted to the practice of law in Ohio, who shall be counsel for the relator. The complaint shall be accompanied by a written certification, signed by the president, secretary, 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. The complaint also may be signed by the grievant.

(8) Complaint Filed by Disciplinary Counsel. Six copies of all complaints shall be filed with the Secretary of the Board. Complaints filed by the Disciplinary Counsel shall be filed in the name of the Disciplinary Counsel as relator.

(9) Service. Upon the filing of a complaint with the Secretary of the Board, the relator shall forward a copy of the complaint to the Disciplinary Counsel, the Certified Grievance Committee of the Ohio State Bar Association, the local bar association, and any Certified Grievance Committee serving the county or counties in which the respondent resides and maintains an office and for the county from which the complaint arose.