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BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

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

In re:

Complaint against

Bruce Martin Broyles, Esq.
Bruce M. Broyles Co. LPA
5815 Market Street
Boardman, OH 44512

Attorney Registration No. (0042562)

Respondent,

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

Relator.

No. 14-106

COMPLAINT AND CERTIFICATE

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

FILED

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

1. Respondent, Bruce Martin Broyles, was admitted to the practice of law in the state of Ohio on November 6, 1989. 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.

2. On April 5, 2011, respondent attended a hearing on a motion for default judgment on behalf of the Plaintiff, The Bank of New York Mellon (hereinafter "NY Mellon"), in the foreclosure action it filed against Felix and Barbara Aponte, which was captioned *The Bank of New York Mellon Trust Co. v. Felix R. Aponte, et al.*, and filed in the Mahoning County Common Pleas Court under case number 10CV4681.

3. NY Mellon was represented by the Lerner, Sampson & Rothfuss law firm, which hired respondent to appear at the motion hearing as local counsel.

4. During the hearing, respondent presented a proposed judgment entry of default and the trial court entered default judgment and a decree of foreclosure against the defendants, Felix and Barbara Aponte, and in favor of NY Mellon.

5. Respondent subsequently presented an invoice for his appearance at the hearing and was paid for his time.

6. Approximately nine months later, on or about January 20, 2012, respondent was retained by the Apontes to defend them in the foreclosure action filed by NY Mellon. Their home, on which NY Mellon sought to foreclose, was scheduled to be sold at a sheriff's sale on February 14, 2012.

7. Respondent agreed to represent the Apontes for a flat fee of $4,800. The Apontes paid monthly installments of $200 totaling at least $4,400.

8. When respondent first met with Barbara Aponte, he was aware that Lerner Sampson & Rothfuss was the law firm that represented the Plaintiff, NY Mellon. He checked the case docket for dates on which events occurred in the case and compared those dates with the dates of his previous appearances in court as local counsel for Lerner, Sampson & Rothfus. He did not see any conflict.

9. On February 9, 2012, respondent filed, on behalf of the Apontes, a motion for relief from the judgment he had obtained on behalf of NY Mellon on April 5, 2011. He also filed a motion to stay execution, affidavit of Mrs. Aponte, affidavit of counsel and a proposed order to stay execution. As a result, the trial court cancelled the sheriff's sale by Order filed February 13, 2012.

10. On or about February 15, 2012, during respondent's second meeting with Barbara Aponte, respondent told her that he might have a conflict of interest and that NY Mellon might make an issue of it. He also stated that, if questioned, he would argue that he was merely a messenger when he appeared in court on April 5, 2011 for the hearing on the motion for default judgment filed by NY Mellon.

11. On March 13, 2012, NY Mellon filed a memorandum in opposition to the Apontes' motion for relief from judgment. On April 27, 2012, respondent filed a reply in support of the motion for relief from judgment on behalf of the Apontes.

12. NY Mellon did not give informed consent, confirmed in writing, to allow respondent to represent the Apontes. On May 7, 2012, NY Mellon filed a motion to disqualify respondent as counsel for the Apontes based on his previous representation of NY Mellon in the same case.

13. After the motion to disqualify was filed, respondent again checked the dates of events that occurred in the case and compared them to the dates that he appeared in court as local counsel for Lerner, Sampson & Rothfuss. This time, he discovered that he attended the April 5, 2011 hearing on NY Mellon's motion for default. With full knowledge of that fact, he continued to represent the Apontes.

14. Respondent opposed NY Mellon's motion to disqualify on behalf of the Apontes, arguing that he never had an attorney-client relationship with NY Mellon.

15. On May 23, 2012, the magistrate found that respondent had a conflict of interest and granted the motion to disqualify respondent. At the same time, the magistrate struck the motion for relief from judgment filed by respondent due to the conflict.

16. On June 6, 2012, respondent filed objections to the magistrate's decision on behalf of the Apontes, arguing, *inter alia*, that respondent did not advocate on behalf of NY Mellon during the April 5, 2011 hearing and that he "merely provided a service to the law firm of Lerner, Sampson & Rothfuss;" and that there was no evidence "of the dissemination of confidential information."

17. On June 12, 2012, the trial court adopted the magistrate's decision and granted the Apontes 45 days to obtain new counsel and an additional 15 days to refile their motion for relief from judgment.

18. On July 6, 2012, respondent filed a notice of appeal of the trial court's decision to the Eleventh District Court of Appeals on behalf of the Apontes.

19. On appeal, respondent claimed that he did not have a conflict of interest because he was merely providing a service to the Lerner, Sampson & Rothfuss law firm, and not to NY Mellon, as he had no authority to make any representations to the court and did not advocate for any position in the case.

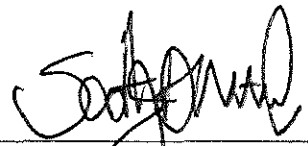
20. The court of appeals found that respondent's representation of both sides of the same lawsuit amounted to a conflict of interest and "offends the notions of trust and confidence that the public, including NY Mellon, have when retaining counsel in our legal system."

21. Respondent's conduct violates Prof. Cond. R. 1.9 (A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that persons' interest are materially adverse to the interest of the former client).

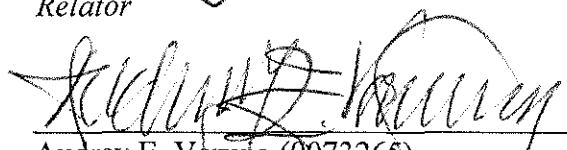
CONCLUSION

Wherefore, pursuant to Gov. Bar R. V, the Code of Professional Responsibility and 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.

Respectfully submitted,



Scott J. Drexel (0091467)
Disciplinary Counsel
Relator



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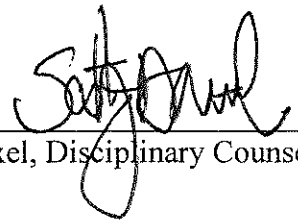
Counsel for Relator

CERTIFICATE

The undersigned, Scott J. Drexel, Disciplinary Counsel, of the Office of Disciplinary Counsel of the Supreme Court of Ohio hereby certifies that Audrey E. Varwig 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: ~~plot~~ 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.