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BOARD OF PROFESSIONAL CONDUCT

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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:

No. **15 - 004** *2 2*

BEAUREGARD M. HARVEY
P.O. Box 836
Sylvania, Ohio 43560

RESPONDENT.

**COMPLAINT
AND CERTIFICATE**
(Rule V of the Supreme Court
Rules for Government of the
Bar of Ohio)

vs.

TOLEDO BAR ASSOCIATION
311 North Superior Street
Toledo, Ohio 43604-1454,

RELATOR.

Now comes the Toledo Bar Association (Relator) and alleges that Beauregard M. Harvey (Respondent), an Attorney at Law, duly admitted to the practice of law in the State of Ohio, is guilty of the following misconduct:

JURISDICTION

1. Relator through its Certified Grievance Committee is authorized to file this Complaint pursuant to RULE V, Section 3(C) and RULE V, Section (4) of the SUPREME COURT RULES FOR THE GOVERNMENT OF THE BAR OF OHIO.

2. Respondent, Supreme Court Registration Number is 0078717, was admitted to the practice of law in the State of Ohio on May 9, 2005, and is subject to the Supreme Court Rules for the Government of the Bar of Ohio.

PRIOR DISCIPLINE

3. In *Toledo Bar Association v. Harvey*, 133 Ohio St. 3d 228, 977 N.E. 2d 628 (Ohio 2012), the Supreme Court of Ohio held that respondent's failure to file required documents in bankruptcy cases and pleadings in a small claims action violated the professional rules. Respondent was suspended for a term of one year effective October 4, 2012, and the suspension was stayed on the condition that he commit no further misconduct and submit to a one-year period of monitored probation in accordance with Gov.Bar R. V(9).

4. In *Toledo Bar Association v. Harvey*, Ohio No. 2013-1995, 2014-Ohio-3675, the Supreme Court of Ohio held that respondent violated various rules of professional conduct arising from his representation of four clients and suspended him for a term of two years effective September 4, 2014, with six months of the suspension stayed subject to certain conditions.

STATEMENT OF FACTS – THE KOTT ENTERPRISES GRIEVANCE

5. On May 6, 2013, Kott Enterprises, Ltd., ("Kott"), filed a complaint in Sylvania Municipal Court against Darrah Okeke. Darrah Okeke was duly served on May 11, 2013, and failed to file an answer or responsive pleading on or before the due date of June 8, 2013.

6. On June 12, 2013, plaintiff filed a motion for default judgment.

7. On June 13, 2013, respondent entered an appearance on behalf of defendant Darrah Okeke and filed an answer and counterclaim.

8. On June 14, 2013, plaintiff's motion for default was denied.

9. On June 18, 2013, plaintiff filed a motion to dismiss defendant's counterclaim.
10. On June 25, 2013, plaintiff served discovery requests upon respondent, including, interrogatories, a request for production of documents and a request for admissions. Respondent failed to respond to plaintiff's discovery, and plaintiff's requests for admission were deemed admitted by operation of Civil Rule 36(A)(1).
11. Respondent failed to oppose plaintiff's motion to dismiss defendant's counterclaim, and on July 23, 2013, plaintiff's motion to dismiss was granted as to count one of defendant's counterclaim and denied as to count two.
12. On July 26, 2013, plaintiff filed a reply to count two of defendant's counterclaim.
13. On July 30, 2013, plaintiff filed a motion for summary judgment as to the complaint and as to count two of defendant's counterclaim.
14. Respondent failed to oppose plaintiff's motion for summary judgment, and on September 3, 2013, plaintiff's motion for summary judgment as to the complaint and counterclaim was granted. Judgment was granted for plaintiff, and defendant's counterclaim was ordered dismissed.
15. On September 12, 2013, plaintiff moved to execute on its judgment and proceeded to garnish defendant's wages.
16. On October 22, 2013, defendant Okeke filed a *pro se* request for a hearing, and the matter was set for hearing on October 31, 2013.
17. On October 31, 2013, a hearing was held and respondent appeared on behalf of the defendant. At the hearing respondent informed the court that he intended to file a motion to set aside the judgment. Respondent offered no explanation for his failures to oppose plaintiff's motions. The

matter was taken under advisement.

18. On November 7, 2013, respondent filed a motion to set aside judgment, and on November 13, 2013, plaintiff filed its opposition.

19. On November 14, 2013, plaintiff filed a motion for sanctions against respondent, personally, and the defendant, claiming that respondent's motion to set aside judgment was wholly unsupported by law and contained factual misrepresentations. Respondent failed to file an opposition to plaintiff's motion for sanctions.

20. On November 21, 2013, a hearing was held on respondent's motion to set aside judgment and plaintiff's motion for sanctions.

21. On December 19, 2013, plaintiff's motion for sanctions was granted, respondent's motion to set aside judgment was denied, and the prior garnishment order was reinstated and ordered to continue in full force and effect.

22. On December 27, 2013, plaintiff filed an application for attorney fees and costs to be assessed against respondent and his client.

23. On January 19, 2014, respondent and his client were granted until January 24, 2014, to file any memorandum opposing plaintiff's application for attorney fees and costs. Respondent failed to file any opposition.

24. On January 22, 2014, new counsel entered an appearance on behalf of defendant and requested a hearing on plaintiff's application for attorney fees and costs.

25. On January 30, 2014, a hearing was held on plaintiff's application for attorney fees and costs, and at that time the defendant testified that respondent never discussed with her the evidence in the case and never discussed the preparation of responses to either the discovery requests

or the various motions filed against her. It was ordered that plaintiff's attorney fees and costs were to be assessed against respondent, but not against the defendant.

26. On December 31, 2013, counsel for plaintiff Kott Enterprises, Ltd., filed a grievance with relator's Certified Grievance Committee, alleging misconduct by respondent.

27. On January 21, 2014, relator wrote to respondent, informed him of the grievance that had been filed against him, reminded him of his affirmative duty to assist in the investigation, and advised him to contact relator's investigator within 10 days.

28. Respondent has failed to contact relator's investigator, has failed to respond to the relator's demand for information, and has failed to cooperate with relator's investigation.

COUNT ONE

29. Respondent's conduct in failing to meet discovery deadlines or comply with discovery requests and failing to respond to a motion to dismiss counterclaim, a motion for summary judgment, a motion for sanctions, and an application to assess attorney fees and costs, constitutes violations of PROFESSIONAL CONDUCT RULE 1.1, requiring a lawyer to provide competent representation; PROFESSIONAL CONDUCT RULE 1.3, prohibiting neglect of client matters and requiring a lawyer to act with reasonable diligence and promptness in representing a client; and PROFESSIONAL CONDUCT RULE 8.4(d), prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice.

COUNT TWO

30. Respondent's failure to communicate with his client constitutes conduct that violates PROFESSIONAL CONDUCT RULE 1.4(a)(1), requiring a lawyer to promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required;

PROFESSIONAL CONDUCT RULE 1.4(a)(2), requiring a lawyer to reasonably consult with the client about the means by which the client's objectives are to be accomplished; PROFESSIONAL CONDUCT RULE 1.4(a)(3), requiring a lawyer to keep the client reasonably informed about the status of a matter; and PROFESSIONAL CONDUCT RULE 1.4(b), requiring a lawyer to explain matters to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

COUNT THREE

31. Respondent's failure to cooperate and respond to the request for information from a disciplinary authority is a violation of GOV BAR RULE V (4)(G), requiring a lawyer to cooperate in the investigation of a disciplinary matter, and PROFESSIONAL CONDUCT RULE 8.1(b), prohibiting a lawyer from failing to disclose a material fact or failing to respond to a demand for information from a disciplinary authority.

STATEMENT OF FACTS – THE PAMELA STAHL GRIEVANCE

32. In March 2010, Pamela C. Stahl hired respondent to file a motion for relief from judgment pursuant to Rule 60(B) of the Ohio Rules of Civil Procedure and paid him a retainer of \$1,000.00.

33. On April 20, 2010, Ms. Stahl and respondent entered into a contract for legal services retainer agreement (the "Agreement"). Under the terms of the Agreement respondent was to file a 60(B) motion or any other motion necessary to remedy a judgment entry previously filed with the Lucas County Court of Common Pleas, Domestic Relations Division and was to bill Ms. Stahl at the rate of \$200 per hour.

34. Specifically, under the Agreement, respondent was to attempt to modify the language in a final judgment entry of divorce involving Ms. Stahl and request that attorney William

Kimmelman complete a new Qualified Domestic Relations Order.

35. On July 19, 2010, Ms. Stahl paid respondent an additional \$1,000 retainer.

36. At the time Ms. Stahl paid responded the retainer, the retainer represented fees paid in advanced but not yet earned by the respondent.

37. Respondent did not deposit any portion of the retainer to his client trust account.

38. Respondent did not contact Mr. Kimmelman and did not file a Rule 60(B) motion on behalf of Ms. Stahl.

39. Respondent did not keep Ms. Stahl of the progress, or lack thereof, on his filing a 60(B) motion on her behalf and did not inform her that he never filed a 60(B) motion on her behalf.

40. Respondent did not return any of the \$2,000 he received from Ms. Stahl.

COUNT FOUR

41. Respondent's conduct in failing to file a 60(B) motion on behalf of Ms. Stahl constitutes violations of PROFESSIONAL CONDUCT RULE 1.1, requiring a lawyer to provide competent representation; PROFESSIONAL CONDUCT RULE 1.3, prohibiting neglect of client matters and requiring a lawyer to act with reasonable diligence and promptness in representing a client; and PROFESSIONAL CONDUCT RULE 8.4(d), prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice.

COUNT FIVE

42. Respondent's failure to communicate with Ms. Stahl constitutes conduct that violates PROFESSIONAL CONDUCT RULE 1.4(a)(1), requiring a lawyer to promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required; PROFESSIONAL CONDUCT RULE 1.4(a)(2), requiring a lawyer to reasonably consult with the client

about the means by which the client's objectives are to be accomplished; PROFESSIONAL CONDUCT RULE 1.4(a)(3), requiring a lawyer to keep the client reasonably informed about the status of a matter; and PROFESSIONAL CONDUCT RULE 1.4(b), requiring a lawyer to explain matters to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

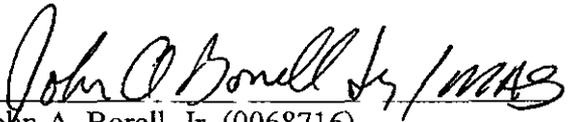
COUNT SIX

43. Respondent's failure to file a 60(B) motion on behalf of Ms. Stahl and his failure to return the funds paid to him constitute violations of PROFESSIONAL CONDUCT RULE 1.5(a), prohibiting a lawyer from charging or collecting a clearly excessive fee, and PROFESSIONAL CONDUCT RULE 1.16(e), requiring a lawyer to promptly refund any part of a fee paid in advance that has not been earned.

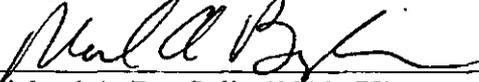
COUNT SEVEN

44. Respondent's failure to deposit the fees paid in advance by Ms. Stahl into a client trust account constitutes a violation of PROFESSIONAL CONDUCT RULE 1.15(c) requiring a lawyer to deposit into a client trust account legal fees and expenses that have been paid in advance.

Respectfully submitted,


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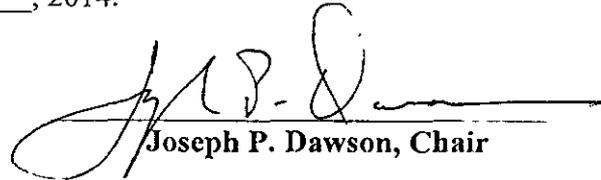

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Attorneys for Relator

CERTIFICATE

The undersigned, **Joseph P. Dawson, Chair** of the Certified Grievance Committee of the **Toledo Bar Association** hereby certifies that **John Borell, Jr., Gordon R. Barry, and Michael A. Bonfiglio** 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 Dec. 3, 2014.



Joseph P. Dawson, Chair

Supreme Court Rules for the Government of the Bar of Ohio, Rule V, Section 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.

(2) **Notice of Intent to File.** No investigation conducted by the Disciplinary Counsel or a Certified Grievance Committee shall be completed, and no complaint shall be filed with the Board, without first giving the judge or attorney who is the subject of the grievance or investigation notice of each allegation and the opportunity to respond to each allegation.

(6) **Attachments to Complaint.** Sufficient investigatory materials to demonstrate probable cause shall be submitted with the complaint. The materials shall include any response filed by or on behalf of the respondent pursuant to division (I)(2) of this section and an affidavit from bar counsel or other appropriate representative of the relator documenting relator's contacts with or attempts to contact the respondent prior to filing the complaint. The materials may include investigation reports, summaries, depositions, statements, the response of the respondent, and any other relevant material.

(7) **Complaint.** Complaints filed by the Disciplinary Counsel shall be filed in the name of Disciplinary Counsel as relator. 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, and by bar counsel. 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. Relator shall file both of the following with the secretary of the Board:

- (a) Four paper copies of the complaint and attachments;
- (b) One electronic copy of the complaint and attachments in a readable electronic medium

authorized by the secretary.

(8) **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.