BEFORE THE BOARD OF COMMISSIONERS ON
GRIEVANCE AND DISCIPLINE\OF
THE SUPREME COURT OF OHIO

In re:
Complaint against

Case No. 15-006

JOHN J. SCACCIA (0022217)
Scaccia and Associates, LLC
1814 E. Third St.
Dayton, OH 45403-1827

RECEIVED
JAN 05 2015
BOARD OF PROFESSIONAL CONDUCT

FILED
JAN 16 2015
BOARD OF PROFESSIONAL CONDUCT

COMPLAINT

Respondent

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

Relator

---

1. John J. Scaccia is an attorney licensed by the Supreme Court of Ohio, November 13, 1983.

2. Respondent was suspended by the Supreme Court of Ohio on October 2, 2014 for one year, with six months of said suspension stayed. (See Ex. A)

3. Respondent did, on March 24, 2010, on behalf of one Marco Smith, institute suit in the Van Wert Ohio Common Pleas Court, being case No. CV-10-03-144.

4. The referenced case above was an appeal of an adverse ruling by the State of Ohio denying Marco Smith's claim for compensation under Ohio's Workers Compensation laws.

5. Among the defendants named in the litigation were V.H. Cooper & Co. Inc., Marco Smith's employer, who came to be represented by attorney Sara Rose of Pickerington, OH.

6. Attorney Rose on behalf of her client Cooper, answered the complaint of

Smith on April 5, 2010 and served Respondent with Discovery Requests May 24, 2010 consisting of Interrogatories, Requests for Admissions and Requests for Production of Documents, which were too replied to by June 25, 2010.

7. Respondent, on Smith's behalf, failed to timely respond to any of the discovery demands.

8. Respondent voluntarily dismissed the case under Civil Rule 41 (D) on June 6, 2011.

9. Respondent again filed the Smith litigation on June 6, 2012 in the Common Pleas Court of Van Wert Court being Case Number CV-12-06-159.

10. Attorney Rose, appearing again for defendant Cooper, filed an answer along with similar Discovery Requests as in the prior case, on June 14, 2012, with responses due July 11, 2012.

11. Respondent failed to timely respond to any of the Discovery Requests.

12. Attorney Rose, on August 13, 2012 again on Cooper's behalf, filed a Motion that the requests for Discovery be deemed admitted, that plaintiff be required to respond to other requests and for sanctions.

13. One August 21, 2012, Rose's motion was set for hearing on September 21, 2012.

14. Respondent, on September 20, 2012, moved to continue the hearing set for the following day, which motion was denied by the Court.

15. Respondent failed to appear September 21, 2012 at the hearing previously set.

16. The Court, on September 21, 2012, sustained Cooper's motion that had been filed by Rose, ordering that the Requests for Admission were deemed admitted, that Plaintiff had until September 26, 2012 to answer the interrogatories and provide the requested documents and that Plaintiff pay sanctions to attorney Rose in the amount of $2,669.04 by October 15, 2012, providing Plaintiff until September 26, 2012 to object to said amount. (See Ex. B.)

17. The Court's September 21, 2012 Order (Ex. B) further ordered that should Plaintiff fail to provide the Discovery by the September 26 date, the case would be dismissed with prejudice.

18. Plaintiff, through his attorney the Respondent, did not respond to the court order of September 21, 2012 and on September 28, 2012, the Court dismissed the case with prejudice. (see Ex. C)

19. Respondent, on Plaintiff's behalf, filed a Notice of Appeal on October 30, 2012, being Case Number CA-15-12-15.

20. The Court of Appeals for Van Wert County dismissed the appeal November 9, 2012 finding that the appeal of the Court Order of September 28, 2012 being appealed on October 30, 2012, had been filed out of time. (See Ex. D)

21. Attorney Rose filed a Motion to Show Cause why Plaintiff should not be held in contempt for failure to pay the sanctions ordered, which motion originally set for December 9, 2012, was continued at Respondent's request three times.

22. Respondent agreed with Rose in March 2013 to a payment plan to satisfy the Court ordered sanctions.

23. Respondent failed to abide by the payment plan he had proposed and a hearing was set for May 14, 2013 on the motion to show cause.

24. Respondent had been notified of the May 14, 2013 hearing on April 14, 2013 but moved to continue the hearing on May 13, 2013, which motion to continue was denied by the Court. (See Ex. E)

25. The May 14, 2013 hearing was continued when Respondent presented attorney Rose with a check from Respondent's law office account for the full amount of the outstanding sanctions.

26. The check from Respondent's law office account was not honored by the account bank and returned for insufficient funds.

27. Respondent presented Rose with a cashier's check on June 13, 2013 for the full amount of the sanctions ordered on October 15, 2012.

28. On June 11, 2013, Rose filed a Motion for Additional Fees and Expreses, which was set for hearing July 10, 2013.

29. Respondent requested and received a continuance of the July 10 hearing until August 21, 2013.

30. Following the August 21 hearing, a briefing schedule was set by the Court and the Court ruled September 27, 2013 that Respondent should pay as and for additional fees and

expenses the amount of $5,980.00, with judgment in that amount being ordered against Respondent.

31. The judgment for $5,980.00 remains outstanding as referenced by a Certificate of Judgment in that amount presently pending in both the Common Pleas Court of Van Wert and Montgomery counties.

32. Respondent filed a Notice of Appeal of the Common Pleas decision of September 27, 2013 in the Van Wert County Court of Appeals, which was dismissed by said Court December 13, 2013 due to the appeal being in the name of the original plaintiff, Marco Smith, when the order appealed from was directed against Respondent and not Smith. (See Ex. G)

33. Respondent did not inform Smith that his case had been dismissed by the Court on September 28, 2012.

34. Smith was informed of the dismissal of his case in June 2014 by the investigator for the Dayton Bar Association.

35. Respondent, on September 28, 2012, did maintain a policy of professional liability insurance.

36. Respondent allowed his policy of professional liability insurance to lapse on March 31, 2013.

MISCONDUCT

37. Respondent in his representation of Marco Smith failed to provide competent representation in violation of Prof. Cond. Rule 1.1.

38. Respondent in his representation of Marco Smith failed to abide by the Civil Rules and provide opposing counsel discovery materials in the timely manner in violation of Prof. Cond. Rule 1.3

39. Respondent in his representation of Marco Smith filed to communicate with Smith concerning decisions and circumstances of the case, the status of the matter and any relevant limitations on Respondent's conduct in violation of Prof. Cond. Rule 1.4(a)

40. Respondent in his representation of Marco Smith did throughout the course of the litigation ignore the Ohio Civil Rules, and the Rules of the Van Wert County Common Pleas court in violation of Prof. Cond. Rule 3.4 (c) and (d).

41. Respondent in his conduct throughout the Smith litigation did show disregard for the Court, opposing counsel and his client, diminishing the Rules of Law and causing prejudice to the administration of justice in violation of Prof. Con. Rule 8.4(d).

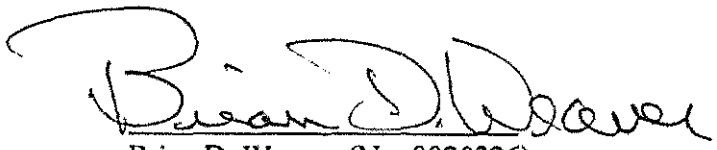
42. Respondent, in failing to inform his client Marco Smith of the September 28, 2012 dismissal of his case, prejudiced Smith from asserting a claim against Respondent which would have been covered by insurance , in violation Prof. Cond. Rule 1.4(A)(3).

43. Respondent, in failing to inform his client Marco Smith of the lapse of Respondent's professional Liability Insurance, violated Prof. Cond. Rule 1.4(c).

CONCLUSION

Pursuant to Gov. Bar Rule V and the Ohio Rules of Professional Conduct, Relator alleges that respondent is charged with the misconduct. Relator requests that Respondent be disciplined pursuant to Rule V of the Rules for the Government of the Bar.

Respectfully submitted.



Brian D. Weaver (No. 0020326)
5822 Jennysim Place
Dayton, OH 45415
(937) 278-9077

CERTIFICATE

The undersigned Bar Counsel of the Dayton Bar Association hereby certifies that Peter Certo, 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 1-2-15

John M. Ruffolo

John M. Ruffolo Esq. (0006224)
Ruffolo Stone & Dressel
7501 Paragon Rd.
Dayton, OH 45459-5318

RECEIVED NOV 05 P.M.

FILED

OCT 02 2014

CLERK OF COURT
SUPREME COURT OF OHIO

The Supreme Court of Ohio

Case No. 2013-1982

Dayton Bar Association,
Relator,
v.
John Joseph Scaccia,
Respondent.

ON CERTIFIED REPORT BY THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE OF THE SUPREME COURT

ORDER

The Board of Commissioners on Grievances and Discipline filed its final report in this court on December 17, 2013, recommending that pursuant to Gov.Bar R. V(6)(B)(3), respondent, John Joseph Scaccia, be suspended from the practice of law for a period of one year with six months stayed. Respondent filed objections to said final report, relator filed an answer, oral argument was held, and this cause was considered by the court.

On consideration thereof, it is ordered and adjudged by this court that pursuant to Gov.Bar R. V(6)(B)(3) and consistent with the opinion rendered herein, respondent, John Joseph Scaccia, Attorney Registration No. 0022217, last known business address in Dayton, Ohio, is suspended from the practice of law for a period of one year with six months stayed on the conditions that respondent (1) complete 12 hours of continuing legal education addressing law-office management in addition to the general requirements of Gov.Bar R. X(13), (2) upon reinstatement, serve a one-year period of monitored probation in accordance with Gov.Bar V(9), and (3) commit no further misconduct. It is further ordered that if respondent fails to comply with any of these conditions, the stay will be lifted and he will serve the full one-year suspension. It is further ordered that respondent's reinstatement to the practice of law is conditioned upon his payment of restitution. It is further ordered that within 90 days of the date of this order, respondent shall submit to relator and the court a list of all of the Mound clients, an accounting of the payments he received from each of those clients, and the amount, if any, that he has previously refunded to each of those clients.

It is further ordered that respondent immediately cease and desist from the practice of law in any form and is hereby forbidden to appear on behalf of another before any court, judge, commission, board, administrative agency, or other public authority.

It is further ordered that respondent is hereby forbidden to counsel, advise, or prepare legal instruments for others or in any manner perform legal services for others.

It is further ordered that respondent is hereby divested of each, any, and all of the rights, privileges, and prerogatives customarily accorded to a member in good standing of the legal profession of Ohio.

It is further ordered that before entering into an employment, contractual, or consulting relationship with any attorney or law firm, respondent shall verify that the attorney or law firm has complied with the registration requirements of Gov.Bar R. V(8)(G)(3). If employed pursuant to Gov.Bar R. V(8)(G), respondent shall refrain from direct client contact except as provided in

Ex. A

3. Refund any part of any fees or expenses paid in advance that are unearned or not paid and account for any trust money or property in respondent's possession or control;

4. Notify opposing counsel or, in the absence of counsel, the adverse parties in pending litigation of respondent's disqualification to act as an attorney after the effective date of this order and file a notice of disqualification of respondent with the court or agency before which the litigation is pending for inclusion in the respective file or files;

5. Send all notices required by this order by certified mail with a return address where communications may thereafter be directed to respondent;

6. File with the clerk of this court and disciplinary counsel of the Supreme Court an affidavit showing compliance with this order, showing proof of service of the notices required herein, and setting forth the address where the respondent may receive communications; and

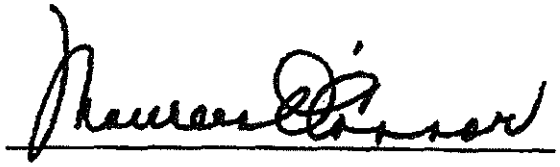
7. Retain and maintain a record of the various steps taken by respondent pursuant to this order.

It is further ordered that respondent shall keep the clerk, the Dayton Bar Association, and disciplinary counsel advised of any change of address where respondent may receive communications.

It is further ordered that on or before 30 days of the date of this order respondent shall surrender his attorney registration card for the 2013/2015 biennium.

It is further ordered that service shall be deemed made on respondent by sending this order, and all other orders in this case, to respondent's last known address.

It is further ordered that the clerk of this court issue certified copies of this order as provided for in Gov.Bar R. V(8)(D)(1), that publication be made as provided for in Gov.Bar R. V(8)(D)(2), and that respondent bear the costs of publication.



Maureen O'Connor
Chief Justice

I HEREBY CERTIFY that this document is a true and accurate copy of the entry of the Supreme Court of Ohio filed October 22, 2014 in Supreme Court case number 2013-1782

In witness whereof I have hereunto subscribed my name and affixed the seal of the Supreme Court of Ohio on this 22nd day of October, 2014

CLERK OF COURT

by _____, Deputy

RECEIVED NOV 05 P.M.

Received By:
SEP 24 2012
Sara L. Rose, LLC

COURT OF COMMON PLEAS
2012 SEP 21 PM 2:06
VAN WERT CO. OHIO

IN THE COURT OF COMMON PLEAS
VAN WERT COUNTY, OHIO

Marco Smith,	:	
	:	
Plaintiff,	:	Case No.: CV-12-06-159
	:	
vs.	:	
	:	Judge Charles D. Steele
V. H. Cooper & Co., Inc., et. al,	:	
	:	
Defendants.	:	

ENTRY GRANTING DEFENDANT V.H. COOPER'S MOTION FOR ORDER DEEMING REQUESTS FOR ADMISSIONS ADMITTED, COMPELLING DISCOVERY, AND IMPOSING SANCTIONS

This matter came for Hearing before this Court on September 20, 2012 on Defendant V.H. Cooper's Motion for Order Deeming Requests for Admissions Admitted, Compelling Discovery, and Imposing Sanctions. Despite fax confirmation that all counsel were timely notified of the Hearing, counsel for Plaintiff faxed two requests for a continuance of the Hearing; the first was faxed after court had closed for business on the day prior to the Hearing, and the second was faxed at approximately the time the Hearing was scheduled to take place. Plaintiff's requests for a continuance were denied as untimely, and because granting such requests would have created an undue burden and expense on Defendant who had already traveled to attend the Hearing. Additionally, counsel for Defendant made reasonable and timely efforts to confirm Plaintiff's counsel would appear for the hearing but Defendant failed to timely act.

Therefore, the Hearing on the merits of Defendant's Motion proceeded on the record before Judge Steele, with Sara L. Rose, attorney for Defendant V.H. Cooper & Co. in attendance. After consideration of Defendant's Motion, in light of Plaintiff's failure to respond to said Motion or appear for the Hearing, and Plaintiff's similar course of action in the original filing of

Ex. B

COURT OF COMMON PLEAS

IN THE COURT OF COMMON PLEAS
VAN WERT COUNTY, OHIO

2012 SEP 28 AM 8: 26

VAN WERT CO. OHIO

Marco Smith	:	
Plaintiff,	:	Case No.: CV-12-06-159
vs.	:	Judge Charles D. Steele
V. H. Cooper & Co., Inc., et. al.	:	
Defendants	:	

Received By:
OCT 0 8 2012
Sara L. Rose, LLC

ORDER

This cause came on to be heard on Defendant's Motion to Dismiss the action for failure of Plaintiff to comply with this Court's September 21, 2012 Entry ordering Plaintiff to fully respond to Defendant's discovery requests in full compliance with the Ohio Rules of Civil Procedure. Because Plaintiff has failed to comply with this Court's Entry, and pursuant to Civil Rules 37(B)(2)(c) and 41(B)(1), it is hereby

ORDERED that this action be and it is hereby dismissed with prejudice, with costs to Plaintiff. This order is a final order pursuant to R.C. 2505.02.

September 28, 2012
Date

Charles D. Steele, Judge

000738

Ex. C

RECEIVED NOV 05 P.M.

COURT OF APPEALS

IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
VAN WERT COUNTY

2012 NOV -9 AM 11:23

VAN WERT CO. OHIO

MARCO SMITH,

PLAINTIFF-APPELLANT,

v.

V.H. COOPER & CO., INC., ET AL.,

DEFENDANTS-APPELLEES.

CASE NO. 15-12-15

JUDGMENT ENTRY

This cause comes before the Court *sua sponte* to determine whether the appeal should be dismissed for want of jurisdiction.

Upon consideration the Court finds that the trial court's final judgment was filed on September 28, 2012. Appellant's notice of appeal was filed with the trial court on October 30, 2012. The notice of appeal was filed outside the thirty days required by App.R. 4(A). Accordingly, the Court has no jurisdiction to entertain this appeal.

It is therefore **ORDERED, ADJUDGED** and **DECREED** that the appeal be, and hereby is, **DISMISSED** at the costs of the Appellant for which judgment

207
Ex D

RECEIVED NOV 05 P.M.

Received By:

MAY 15 2013

Sara L. Hoge, LLC

IN THE COURT OF COMMON PLEAS OF VAN WERT COUNTY, OHIO

COURT OF COMMON PLEAS

2013 MAY 13 A 10:50

MARCO SMITH
Plaintiff,

vs.

CASE NO CV 12-06-159
ENTRY

V.H. COOPER & CO., INC. ET AL.,
Defendants,

This matter came on upon the plaintiff's Motion to Continue Show Cause Hearing and the memoranda of the parties.

The court finds that this matter was previously scheduled for a hearing on December 19, 2012, for plaintiff to show cause why the plaintiff and/or his counsel should not be held in contempt for failure to abide by the court's order dated September 21, 2012. Said order was issued due to the plaintiff's failure to abide by the court's order compelling discovery.

The December 19, 2012 hearing was continued upon motion of plaintiff and the matter was rescheduled for hearing on January 9, 2013. The January 9, 2013 hearing was rescheduled to March 6, 2013 at plaintiff's request due to "scheduling conflicts." The March 6, 2013, hearing was vacated allegedly due to the parties having agreed to a payment plan.

Defendant has alleged that the plaintiff and/or his counsel failed to abide by the payment plan. Notice was sent to the parties on April 16, 2013 setting the show cause hearing for May 14, 2013 at 2:30 p.m.

On May 10, 2013, the plaintiff counsel filed a motion to continue the May 14, 2013 hearing alleging that on April 10, 2013, a pretrial hearing on a domestic relations case had been set in Hamilton County for May 14, 2013 at 2:15 p.m.

The court finds that the matter for the plaintiff and/or his counsel to show cause why he/they should not be held in contempt has been continued three times at the request of the plaintiff and vacated once based upon an alleged payment agreement. The court further finds that the plaintiff's counsel has been aware of the scheduling conflict for the present hearing since April 16, 2013, yet filed his motion to continue the present hearing only two business days before the scheduled hearing.

The court finds the plaintiff's Motion to Continue Show Cause Hearing not timely and DENIES the same.

000231

Ex. E

RECEIVED NOV 05 P.M.

IN THE COURT OF COMMON PLEAS OF VAN WERT COUNTY, OHIO

2013 SEP 27 A 10:58

MARCO SMITH,
Plaintiff,

vs.

V.H. COOPER & CO., INC., et al.
Defendants,

CASE NO. CV 12-06-159
ENTRY

This matter came on for hearing on August 21, 2013, for John Scaccia, attorney for Plaintiff, to show cause why he should not be held in contempt and for additional fees.

As a preliminary matter, the court will address the Defendant's Motion to Strike Plaintiff's Closing Memorandum as Untimely.

The court finds that, indeed, the plaintiff's Memorandum was filed late, as has been the pattern in this case; however, the court finds that in the interest of justice it will consider the Memorandum, and therefore, denies the Defendant's Motion to Strike.

As to the show cause hearing the court notes that the attorney for the Plaintiff arrived one hour late for the hearing, however, said attorney did call the court to report that he had experienced a flat tire on route to the court.

Having reviewed the evidence and Motion for Additional Fees the court finds that during this case Defendant V. H. Cooper served a discovery request on Plaintiff and Plaintiff failed to respond. Defendant the filed a motion to compel to which Plaintiff failed to respond.

After a hearing on Defendant's motion to compel, the court ordered discovery to be produced no later than 4:00 p.m. on September 26, 2012. The court also awarded attorney fees in connection with the motion to compel as a sanction, which were to be

Ex F

The court, therefore, orders that John Scaccia, attorney for the Plaintiff, shall pay for additional attorney fees incurred by the Defendant as a result of Plaintiff's attorney's actions or lack thereof the amount of $5,980.00 to Defendant, and the court grants judgment to Defendant and against John Scaccia in that amount. Costs to Attorney John Scaccia.

So Ordered.

Dated: September 27, 2013

Charles D. Steele, Judge

Copy to:
Attorney for Plaintiff
Attorney for Defendant

RECEIVED NOV 05 P.M.

Received By:

DEC 17 2013

Sara L. Hose, LLC

COURT OF APPEALS
Date: 12-13-13
Time: 11:00 am
CINDY MOLLENKOPF-CLERK
VAN WERT CO. OHIO

IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
VAN WERT COUNTY

MARCO SMITH,

PLAINTIFF-APPELLANT,

CASE NO. 15-13-06

v.

V.H. COOPER & CO., INC., ET AL.,

DEFENDANTS-APPELLEES.

JUDGMENT ENTRY

This matter comes before the Court on Appellee's motion to dismiss the appeal for want of prosecution, with no response having been filed by or on behalf of Appellant.

The notice of appeal in this case reflects that the appeal is taken by "Marco Smith, Plaintiff-Appellant." However, the judgment on appeal is entered in a special contempt proceeding held against Attorney John Scaccia, who is counsel for Marco Smith. The judgment orders Attorney John Scaccia to pay attorney fees to Defendant-Appellee in the amount of $5,980.00. Appellee's motion alleges that the appeal is taken improperly and without authority of Marco Smith and, in addition, the appeal is filed without the required docketing statement and praecipe.

Upon consideration of same, the Court finds that the motion is well taken and the appeal should be dismissed. Appellant, Marco Smith, has no "substantial right" affected by the trial court's judgment ordering Attorney John Scaccia to pay

Ex G. 50