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

BOARD OF PROFESSIONAL CONDUCT

In re:

Complaint against

Mark Alan Thomas, Esq.
118 West Main Street
St. Clairsville, OH 43950-1225

No. 15-042 d c

Attorney Registration No. (0037922)

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

FILED

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Relator.

BOARD OF PROFESSIONAL CONDUCT

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

1. Respondent, Mark Alan Thomas, was admitted to the practice of law in the state of Ohio on May 11, 1987. 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. Respondent was admitted to the West Virginia State Bar on January 9, 2001.¹

COUNT I – The Kasler, et al. matter

3. On August 16, 2012, a lawsuit was filed by Lanni Curtis, et al. against Kathryn Mitchell, et al. in the Harrison County Court of Common Pleas, Case No. CVH 2012-0082. The lawsuit involved a dispute by family members over mineral interests in real estate.

¹ The West Virginia Office of Disciplinary Counsel filed a two-count formal complaint against respondent on December 30, 2014. The complaint is currently pending before the W.Va. Lawyer Disciplinary Board.

4. The co-defendants in the lawsuit included three family members, Kathryn Mitchell, Virginia Thompson, and Ethel Martin, or their heirs.² The remaining co-defendants at the time of the filing of the complaint were John Doe #1, John Doe #2, and John Doe #3.
5. In September 2012, Michael Kasler was substituted as John Doe #1 based on his assigned interest in the codefendants' mineral rights.
6. On or about October 1, 2012, respondent advised Kasler that he would prepare the answer to the complaint and counterclaim on behalf of the co-defendants.
7. On October 2, 2012, respondent filed a Notice of Appearance of Attorney for the co-defendants Kathryn Mitchell, Virginia Thompson, Ethel Martin, and Michael Kasler in *Curtis, et al., vs. Mitchell, et al.*, Case No. CVH 2012-0082, in the Harrison County Court of Common Pleas.
8. On October 14, 2012, Kasler emailed respondent inquiring about the status of the answer and counter-claim.
9. After not receiving a reply from respondent, Kasler emailed respondent again on October 16, 2012. Respondent replied to Kasler on October 17, 2012 stating that he had secured an extension from the Court until November 12, 2012 to file an answer and counterclaim.
10. On November 20, 2012, Kasler learned that respondent had not yet filed any pleadings on behalf of the co-defendants.
11. On December 4, 2012, albeit untimely, respondent filed an answer and counter-claim on behalf of his clients.
12. On or about December 7, 2012, the plaintiffs' attorney filed a Response to Defendants' Answer and Counterclaim and requested that the Court strike the defendants' answer and

² Defendant Ethel Martin died in June 2012. Ms. Martin's daughter, Nancy Cunningham, became her representative for purposes of the lawsuit. Defendant Kathryn Mitchell died in March 2013. Ms. Mitchell's son, Rick Mitchell, became her representative.

counterclaim due to the untimely filing of the defendants' pleadings. The Court did not rule on the plaintiffs' motion.

13. On or about February 1, 2013, the plaintiff's attorney served respondent with Interrogatories related to the pending litigation.
14. Despite the fact that the codefendants provided their answers to the Interrogatories to respondent, he failed to provide a response to the plaintiffs' discovery request.
15. On June 6, 2013, unbeknownst to respondent's clients, the plaintiffs' attorney filed a Motion for an Order to Compel Discovery.
16. The plaintiffs' motion stated that none of the discovery requests had been complied with despite numerous calls, emails, assurances by the respondent, and repeated follow-ups requesting discovery.
17. On July 2, 2013, the Court granted the Plaintiffs' Motion to Compel Discovery. The Court noted in its Entry that the respondent failed to answer the motion and failed to comply with discovery requests.
18. The Court ordered that the defendants furnish the plaintiffs with all requested discovery on or before July 22, 2013, and set a hearing regarding Discovery Sanctions for August 5, 2013.
19. On June 17 and June 19, 2013, Kasler emailed respondent asking for any progress with their case.
20. On or about June 21, 2013, respondent replied to Kasler's email stating that he was unavailable and would call him over the weekend; however, respondent failed to contact Kasler.

21. Kasler then proceeded to make several calls to respondent to inquire about the status of their case but was repeatedly told by respondent's secretary that respondent was unavailable. Respondent failed to return Kasler's calls.
22. On July 1, 2013, respondent sent an email to Kasler explaining that he had been ill for one month but was now "back at it" and needed to meet with Kasler; however, respondent neglected to inform his clients about the Plaintiffs' Motion to Compel Discovery or the upcoming hearing date for discovery sanctions.
23. On July 3, 2013, Kasler replied to respondent by email asking if respondent was able to conclude their case. He further told respondent that if he was unable to proceed to let them know so the codefendants can obtain other counsel. Kasler also told respondent that there had been some new developments in the case and that he wanted to meet with him sometime in the next week. Respondent failed to reply to Kasler's email.
24. Kasler emailed respondent again on July 8, 2013. Respondent failed to reply to Kasler's email.
25. To date, respondent has made no further contact with Kasler or his codefendants.
26. Having received no information from respondent and due to the codefendants' growing concerns based on respondent's lack of communication,³ Kasler drove to the Harrison County Courthouse on July 29, 2013 to find out the status of their case.
27. It was during this visit to the courthouse that Kasler first learned that respondent had failed to provide the defendants' answers to the interrogatories to plaintiffs' attorney; that plaintiffs' attorney had filed a motion to compel discovery; and that a hearing for discovery sanctions was set for August 5, 2013.

³ Although codefendant Kasler was the primary contact, codefendants Cunningham and Mitchell experienced the failure to respond and lack of communication from respondent.

28. At this point, Kasler and the other codefendants decided to seek new counsel.
29. Kasler attended the August 5, 2013 hearing for discovery sanctions with new counsel. Respondent failed to appear at the hearing.
30. In its Entry from the August 5th hearing, the Court in *Curtis, et al., vs. Mitchell, et al.* allowed for a substitution of counsel for the codefendants.
31. The Judgment Entry further noted that Kasler testified that respondent “would answer about one out of ten inquiries from Kasler” and that “Kasler was unaware of the Court’s Order to compel discovery or the motion for sanctions”.
32. The Court found, in part, that “it would be unjust to assess fees against the defendants as testimony showed they had duly complied with returning answers to the interrogatories to their counsel”; that it was “apparent from the testimony that Attorney Thomas is responsible for the discovery failing to be made”; and that Attorney Thomas failed to appear or contact the Court to explain his absence.
33. The Court awarded attorney fees to the plaintiffs’ attorney against respondent in the amount of \$1,000 for respondent’s failure to make discovery.
34. On August 8, 2013, the Court in *Curtis, et al., vs. Mitchell, et al.* issued a Judgment Entry noticing respondent that a Show Cause hearing would be held on September 5, 2013 in reference to respondent’s failure to appear on August 5, 2013 for the sanction hearing.
35. Respondent attended the Show Cause hearing. According to its Judgment Entry issued September 9, 2013, the Court noted that respondent had complied with the Court’s sanctions imposed related to his violating discovery orders. The Court further noted that respondent apologized to the Court, took responsibility for his actions, and informed the

Court of a medical condition he was being treated for at that time. Based, in part, on the foregoing, the Court did not make a finding of civil contempt against respondent.

36. Respondent's conduct as outlined above violates the Ohio Rules of Professional Conduct, specifically Prof. Cond. R. 1.3 [A lawyer shall act with reasonable diligence and promptness in representing a client]; Prof. Cond. R. 1.4(a)(3) [A lawyer shall keep the client reasonably informed about the status of the matter]; Prof. Cond. R. 1.4(a)(4) [a lawyer shall comply as soon as practicable with reasonable requests for information from the client]; and, Prof. Cond. R. 8.4(d) [a lawyer shall not engage in conduct that is prejudicial to the administration of justice].

COUNT II – Failure to Cooperate

37. Relator incorporates the allegations contained in paragraphs 1-36 as if restated herein.
38. On June 11, 2013, relator sent a Letter of Inquiry (LOI) to respondent relating to a grievance filed by Harold Benline (Benline grievance) by certified mail to respondent's business address. Although respondent received the letter on June 13, 2013, he failed to respond to the allegations.
39. On July 1, 2013, relator sent a second LOI to respondent relating to the Benline grievance by certified mail to respondent's business address. Although respondent replied to relator's office requesting an extension until July 22, 2013 to provide his response, he failed to reply.
40. Due to respondent's failure to provide his response as promised, relator sent a third letter to respondent by first-class mail on July 30, 2013 requiring his response to the LOI by August 7, 2013. Respondent again failed to reply.

41. Relator scheduled a deposition relating to the Benline grievance for September 17, 2013 and issued a subpoena duces tecum requiring respondent's appearance.
42. On September 16, 2013, respondent contacted relator to request that the deposition be suspended and promised to provide his response to relator's LOI no later than September 25, 2013. Relator agreed.
43. On September 25, 2013, relator received an email from respondent stating that he was working on his response to relator's LOI and promised to put his full response in the mail by September 30, 2013.
44. As of October 4, 2013, respondent still had not provided a response to the LOI relating to the Benline grievance; however, on this date, relator received a facsimile from respondent stating that his full reply and documents would be mailed to relator early the following week. Again, respondent failed to reply.
45. On October 24, 2013, relator sent a fourth letter to respondent by first-class mail requiring his response to relator's LOI no later than October 31, 2013. Respondent failed to reply.
46. Due to respondent's ongoing lack of cooperation, relator scheduled another deposition relating to the Benline grievance for February 19, 2014.
47. On February 18, 2014, after a telephone conversation and several email exchanges with respondent, relator agreed to suspend the deposition.
48. Through a series of emails from February 18, 2014 through February 21, 2014, respondent finally provided his reply to relator's LOI relating to the Benline grievance, eight months after the initial LOI had been sent.

49. In the February 21, 2014 email correspondence, respondent was informed that relator had received a new grievance filed by Michael Kasler (Kasler grievance) and that relator's LOI had already been sent to respondent by certified mail. Respondent promised to respond immediately once he received relator's LOI.
50. Two days earlier, on February 19, 2014, relator sent the Kasler LOI to respondent by certified mail to respondent's business address. Relator's letter was returned to sender, with a label from the U.S. Postal Service indicating that the letter was "unclaimed" and "unable to forward".
51. On April 2, 2014, relator's investigator personally delivered the Kasler LOI to respondent. Respondent failed to reply.
52. On April 23, 2014, relator sent a second LOI relating to the Kasler grievance to respondent by certified mail to respondent's business address. Relator's letter was returned to sender, with a label from the U.S. Postal Service indicating that the letter was "unclaimed" and "unable to forward".
53. Relator scheduled a deposition related to the Benline and Kasler grievances for July 16, 2014 and issued a subpoena duces tecum requiring respondent's appearance at 11:00 a.m. at Shutek Reporting in St. Clairsville, Ohio.
54. On June 12, 2014, relator's investigator attempted to personally serve respondent with the subpoena at respondent's business address and at the residential address that respondent provided to the Office of Attorney Services, i.e., 103 Gaywood Drive, St. Clairsville, Ohio. Relator's investigator was unable to locate respondent but taped the subpoena for deposition requiring respondent's appearance in an envelope to the front door of respondent's residence.

55. On July 16, 2014, relator traveled to St. Clairsville, but respondent failed to appear for the deposition.
56. Later that same day, relator and relator's investigator met with respondent, who is also a Belmont County Commissioner, at a commissioner's meeting in the Belmont County Courthouse.
57. Respondent acknowledged receiving the envelope that relator's investigator had taped to the front door of his residence containing the subpoena requiring his appearance at the July 16, 2014 deposition. Respondent further acknowledged his failure to appear for the deposition.
58. Respondent further expressed his belief that he had already faxed his response to the Kasler grievance to relator's office and that he probably had the confirmation page. Despite this claim by respondent, he failed to provide relator with any proof of such, by way of facsimile confirmation page or otherwise, and he never provided a written response to the Kasler LOI.
59. Respondent expressed his willingness to cooperate with relator's investigation and promised to call relator's office on the following Monday, July 21, 2014.
60. On July 21, 2014, relator received an email from respondent indicating that he would forward his response to the Kasler grievance to relator once his secretary arrived at 9:00 a.m. and he requested a meeting with relator on August 8 or 15, 2014.
61. Although relator replied to respondent's email indicating availability for a telephone conference, respondent failed to communicate any further with relator.
62. To date, respondent has not responded to the Kasler grievance.

63. On December 15, 2014, relator received an overdraft notice from WesBanco reporting that respondent overdrew his IOLTA (account number XXXXX7389) on December 8, 2014.
64. On December 23, 2014, relator sent a LOI relating to the December 8, 2014 IOLTA overdraft to respondent by certified mail to respondent's business address. Relator's letter was returned to sender, with a label from the U.S. Postal Service indicating that the letter was "unclaimed" and "unable to forward".
65. On February 10, 2015, relator's investigator hand-delivered to the respondent the LOI relating to the December 8, 2014 overdraft.
66. On February 23, 2015, relator received two emails from respondent providing his WesBanco IOLTA bank statements for January 2014 through January 2015. However, respondent failed to provide all of the requested IOLTA records (i.e., client ledgers) and failed to explain the overdraft.
67. On March 13, 2015, relator sent a second LOI relating to the December 8, 2014 IOLTA overdraft to respondent's email and by first-class mail to respondent's business address. Respondent failed to reply.
68. On April 17, 2015, relator sent a third LOI by certified mail and first-class mail to both respondent's business and residential addresses. Both certified letters were returned to sender with a label from the U.S. Postal Service indicating that the letter was "unclaimed" and "unable to forward". The first-class mail was not returned to sender.
69. To date, respondent has failed to provide a response to the LOI relating to the December 8, 2014 overdraft of respondent's IOLTA.

70. Respondent's conduct as outlined above violates the Ohio Rules of Professional Conduct, specifically Prof. Cond. R. 8.1 (b) [a lawyer shall not fail to disclose a material fact or knowingly fail to respond] and Gov. Bar R. V(9)(G) [failure to cooperate with relator's investigation].

CONCLUSION

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



Scott J. Drexel (0091467)
Disciplinary Counsel

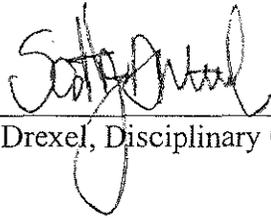


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CERTIFICATE

The undersigned, Scott J. Drexel, Disciplinary Counsel, of the Office of Disciplinary Counsel of the Supreme Court of Ohio hereby certifies that Michelle R. Bowman 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: June 26, 2015



Scott J. Drexel, Disciplinary Counsel