

RECEIVED

MAY 27 2014

BEFORE THE BOARD OF COMMISSIONERS

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

IN RE: COMPLAINT AGAINST
WILLIAM RICHARD BIVIANO
108 Main St., S.W., Suite 700
Warren, Ohio 44481
Attorney Registration No. 0017984

CASE NO. 14 - 044 - 12

COMPLAINT AND CERTIFICATE

Respondent

TRUMBULL COUNTY BAR ASSOCIATION
CERTIFIED GRIEVANCE COMMITTEE
120 High Street, N.W.
P. O. Box 4222
Warren, Ohio 44482

(RULE V OF THE SUPREME COURT
RULES FOR THE GOVERNMENT
OF THE BAR OF OHIO)

FILED

JUN 09 2014

Relator

BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

1. Now comes the Relator and says that Respondent, WILLIAM RICHARD BIVIANO, Ohio Supreme Court Registration No. 0017984, was admitted to the practice of law in the State of Ohio on November 9, 1974.
2. Respondent is subject to the Ohio Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio and has heretofore been given notice of the allegations of this Complaint and the opportunity to respond thereto.
3. This Complaint is filed as a result of an investigation conducted by the Trumbull County Bar Association Certified Grievance Committee and a majority of the Committee members constituting a quorum determining that this Complaint is warranted.
4. Respondent is a solo practitioner whose present office address is 108 Main St., S.W., Suite 700, Warren, Ohio 44481.

5. To Relator's knowledge, Respondent has not heretofore been the subject of disciplinary proceedings.

COUNT ONE

THE JAMIE SMITH MATTER

6. The Grievant, Jamie Smith ("Smith"), first consulted with the Respondent by telephone on September 10, 2010 because she wished to hire him to defend her in a case in the Trumbull County Juvenile Court involving child custody, visitation, and support.
7. Smith first met with Respondent on September 15, 2010 to discuss her case.
8. At this initial conference, Smith signed a Fee Agreement with Respondent and Thomas E. Smith and Colleen M. Smith, the parents of Smith, paid Respondent a retainer of \$4,500.00.
9. Pursuant to Smith's request, Respondent filed a Motion to Continue the hearing that was scheduled for September 30, 2010.
10. Smith and Respondent spoke by telephone for a half hour on November 9, 2010, the day before Smith's scheduled hearing.
11. Smith and Respondent appeared at the November 9, 2010 hearing at which the Magistrate ordered both parties to be drug tested.
12. The drug test results subsequently showed that the father of the child passed the drug test.
13. As a result, the father was given standard visitation.
14. Respondent then drafted Objections to the Magistrate's Decision based on the child's young age and the Father's lack of experience caring for the child.
15. On December 28, 2010, the Objections to the Magistrate's Decision for standard visitation were overruled.
16. On January 24, 2011, Respondent appeared at a Pretrial Hearing on behalf of Smith.

17. Respondent requested additional information from Father's counsel regarding his earnings and prior convictions.
18. On February 23, 2011, Respondent received from Father's counsel a Proposed Agreed Judgment Entry.
19. On May 11, 2011, Respondent transmitted a copy of the proposed agreed judgment entry to Smith.
20. On May 25, 2011, Respondent emailed Smith to ask her to sign and return the Agreed Judgment Entry.
21. On June 17, 2011, Respondent's assistant called Smith to discuss the proposed Agreed Judgment Entry.
22. Smith indicated that she wanted changes to the proposed Judgment Entry, including a name change for her child.
23. Respondent's assistant again spoke with Smith on June 23, 2011 to discuss further Smith's desire to have the Agreed Judgment Entry indicate a *name change* for her child.
24. During the June 23, 2011 call, Smith also informed Respondent's assistant that she and her child's father were expecting a second child.
25. The second child was born on September 16, 2011.
26. On January 20, 2012, Smith emailed Respondent to request that he close his file and return the unused portion of her retainer.
27. On March 22, 2012, Smith sent another email to Respondent again requesting that her file be closed.
28. In the March 22, 2012, email Smith also asked to obtain her case folder.
29. On March 22, 2012, Respondent emailed Smith and stated that he will close his file and that she would be contacted.

30. Smith heard nothing further from the Respondent after the March 22, 2012 email.
31. On or about, May 7, 2012, subsequent counsel entered an appearance for Smith in the same case as previously established but to represent her rights regarding her second child.
32. Shortly after May 7, 2012, Father's prior counsel informed Respondent that he had received a copy of the Notice of Appearance filed by Smith's new counsel in error.
33. Because this had come to the attention of the Respondent's paralegal, she sent a note to him asking him how he wanted to address the fact that Smith had new counsel.
34. However, in spite of Respondent's paralegal's request he advise her how to handle the situation, Respondent did not contact Smith.
35. Only July 24, 2012, Smith sent another email to Respondent stating that it had been over four (4) months since her last email and still has not been contacted.
36. Smith further stated in her email to the Respondent that she had spoken with a woman in his office about two (2) months prior to this email.
37. Smith stated that the employee was going to contact her the next day regarding this matter but that she did not do so.
38. On August 20, 2012, Smith again sent an email stating that her file should be closed.
39. Smith stated that she has continued to contact Respondent's office by phone.
40. Smith stated that the woman who answered Respondent's phone said she would talk to him and call her right back.
41. However, said employee of the Respondent did not call Smith back.
42. Smith again stated in this email that Respondent needed to return the amount of her retainer that was unearned.

43. On September 24, 2012, the Complaint was assigned for an investigation to Trumbull County Bar Association Certified Grievance Committee Member, Patricia A. Kearney ("Kearney"), and a copy of the Complaint and Notice of Assignment of Investigator was sent to Respondent.

44. In the letter to Respondent, he was specifically reminded of his duty to fully cooperate with the investigation as required by Gov Bar Rule V, § 4 (g).

45. Upon receiving the grievance, Kearney interviewed Smith and Respondent and verified the facts alleged herein.

46. Respondent's conduct as described in Count One herein violates the Ohio Rules of Professional Conduct, to-wit:

(A) Rule 1.16 (e) Declining or Terminating Representation: A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned.

(B) Rule 1.16 (a) Declining or Terminating Representation: A lawyer shall withdraw from representing a client when the lawyer is discharged.

(C) Rule 1.4 Communication

(a) A lawyer shall do all of the following: (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; (4) comply as soon as practicable with reasonable requests for information from the client.

CONCLUSION

WHEREFORE, pursuant to Gov Bar R V and the Rules of Professional Conduct, Relator says that Respondent is chargeable with misconduct and requests that the Respondent be disciplined pursuant to Rule V of the Rules for the Government of the Bar of Ohio.

TRUMBULL COUNTY BAR ASSOCIATION

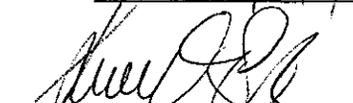
By 

RANDIL J. RUDLOFF #0005590
WILLIAM F. FLEVARES #0059960
BAR COUNSEL FOR RELATOR TRUMBULL
COUNTY BAR ASSOCIATION CERTIFIED
GRIEVANCE COMMITTEE
151 East Market Street
P.O. Box 4270
Warren, Ohio 44482
Phone: (330) 393-1584

CERTIFICATION

The undersigned, Samuel F. Bluedorn, Chairman of the Trumbull County Bar Association Certified Grievance Committee hereby certifies that Randil J. Rudloff and William M. Flevares are authorized to represent the Relator in the premises and have accepted the responsibility of prosecuting the Complaint herein to its conclusion. After investigation, Relator believes reasonable cause exists to warrant a hearing on such Complaint.

Dated: 5/1/14



SAMUEL F. BLUEDORN, #0059154, CHAIRMAN
TRUMBULL COUNTY BAR ASSOCIATION
CERTIFIED GRIEVANCE COMMITTEE

CERTIFICATE OF SERVICE

A copy of the foregoing Complaint was served upon Respondent by Certified and ordinary U.S. Mail the 23rd day of May, 2014 at the address set forth above.



William M. Flevares., Trumbull County Bar
Counsel