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BOARD OF PROFESSIONAL CONDUCT

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BOARD OF PROFESSIONAL CONDUCT

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

In re:

Complaint against:

No.

15 - 029

JOAN M. CROSSER
P.O. Box 60436
Rossford, Ohio 43460

COMPLAINT AND CERTIFICATE

RESPONDENT.

(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 Joan M. Crosser (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 (5) and RULE V, Section (9) of the SUPREME COURT RULES FOR THE

GOVERNMENT OF THE BAR OF OHIO.

2. Respondent, Supreme Court Registration Number is 0061345, was admitted to the practice of law in the State of Ohio on May 17, 1993, and is subject to the Supreme Court Rules for the Government of the Bar of Ohio.

STATEMENT OF FACTS

3. On December 2, 2013, Respondent entered into a fee agreement with Craig and Andrea Schuele for representation of Mr. Schuele in a post-divorce custody matter. Mr. Schuele paid Respondent a retainer of \$750.00 on December 2, 2013, and agreed to pay and did pay an additional retainer of \$750.00 on January 15, 2014.

4. When Respondent received each of the retainers from Mr. Schuele, she deposited the monies into her business account rather than her client trust account.

5. Respondent's fee agreement with Mr. Schuele states that she would "... send client, on a monthly basis, a billing statement showing work and hours expended each month on this case." Respondent did not issue any billing statement to Mr. Schuele until after he terminated Respondent.

6. Respondent's sole billing statement, dated August 1, 2014, was provided to Relator's investigator, but not to Mr. Schuele.

7. Respondent's August 1, 2014, billing statement reflects charges for time prior to December 2, 2013, the date on the signed fee agreement and receipt for the first retainer.

8. According to Respondent's billing statement, her fees up to and including December 2, 2014, totaled \$652.50, which is less than the \$750.00 retainer paid by Mr. Schuele on or about December 2, 2013.

9. As part of her representation, Respondent agreed to file a motion for change of

custody in the Lucas County, Ohio, Court of Common Pleas, Domestic Relations Division (hereinafter referred to as the "Domestic Relations Division").

10. In December, 2013, Mr. Schuele provided information for and executed the necessary documents and forms required of the Domestic Relations Division when filing a motion for a change in a custody arrangement.

11. In December, 2013, Respondent advised Mr. Schuele that she would file the change of custody motion either before Christmas, or between the Christmas and New Year's holidays.

12. On December, 31, 2013, January 13, 2014, and January 16, 2014, Mr. Schuele sent emails to Respondent asking for a status on the change of custody motion. In response, on or about February 14 or 15, 2014, Respondent emailed and stated that "if LCCS [Lucas County Children Services] supports your bid for LC [legal custody], then it would be more advantageous to dismiss your motion for LC [legal custody] in DR [Domestic Relations Court] and let the juvenile court take over".

13. At the time Respondent sent the February, 2014, email suggesting that Mr. Schuele consider dismissing the motion for a change in custody, Respondent knew that she had never filed the motion, but chose to conceal this fact from Mr. Schuele.

14. On February 20, 2014, Mr. Schuele and his current wife Andrea Schuele met with Respondent. During the February 20, 2014, meeting Respondent stated to Mr. Schuele and his wife that she had filed the motion for change of custody in the Domestic Relations Division in December, 2013, when, in fact, she had not filed the motion.

15. On April 8, 2014, in response to an inquiry from Mr. Schuele regarding the status of

the allegedly pending motion, Respondent wrote that she would “. . . be at the courthouse tomorrow and will get the date for the first hearing”, even though she knew no hearing could be scheduled because no motion had been filed.

16. Mr. Schuele ultimately contacted the Domestic Relations Division, was informed that there had been no activity on the case since 2012, and on May 2, 2014, he sent Respondent an email terminating her representation and requesting a refund of the entire retainer.

17. On May 5, 2014, Mr. Schuele sent another email to Respondent stating he had retained new counsel and requesting that Respondent “return our retainer and any information we provided”.

18. On May 23, 2014, Respondent sent an email to Mr. Schuele stating that “[t]he monthly billing process, and any refund, will be completed within a thirty day cycle.”

19. Mr. Schuele again contacted Respondent by email on June 9, June 19, July 8, and August 8, 2014, regarding a refund of the retainer and return of his case file.

20. Respondent did not provide Mr. Schuele with an invoice until September 16, 2014, when she filed her written response to the grievance Mr. Schuele had filed against her on July 14, 2014.

21. Respondent never filed the motion for change of custody and did not return Mr. Schuele’s case file to him until February, 2015.

22. In November, 2014, Respondent made a partial refund to Mr. Schuele in the amount of \$750.00. On February 6, 2015, Respondent refunded an additional \$750.00 to Mr. Schuele.

COUNT ONE

23. By virtue of her failure to file the change of custody motion, and her subsequent

misrepresentations that she had done so, Respondent's conduct constitutes violations of 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; Professional Conduct Rule 1.4(a)(3), requiring a lawyer to keep the client reasonably informed about the status of the matter; and Professional Conduct Rule 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, . . . deceit, or misrepresentation.

COUNT TWO

24. Respondent's conduct in failing to return Mr. Schuele's case file materials to him upon demand after termination of the attorney-client relationship violates Professional Conduct Rule 1.16(d), requiring a lawyer to promptly deliver client papers and property to a client after termination of the attorney-client relationship.

COUNT THREE

25. Respondent's conduct in failing to return a full refund of the fees after termination of the attorney-client relationship violates Professional Conduct Rule 1.16(e), requiring a lawyer to refund promptly any part of a fee paid in advance that has not been earned.

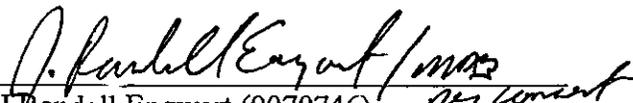
COUNT FOUR

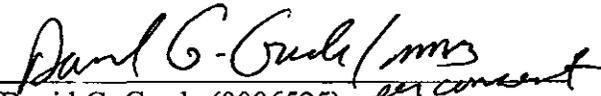
26. Respondent's conduct in failing to deposit the client's retainers into her client trust account violates Professional Conduct Rule 1.15(c), requiring a lawyer to deposit into a client trust account legal fees that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

COUNT FIVE

27. Respondent's conduct in billing for time incurred prior to being retained, and in receiving advance payments from the client and failing to perform the work for which she was retained, violates Professional Conduct Rule 1.5(a), prohibiting a lawyer from charging, or collecting a fee that is clearly excessive.

Respectfully submitted,


J Randall Engwert (0070746) *per consent*
Anspach Meeks Ellenberger LLP
300 Madison Ave., Suite 1600
Toledo, Ohio 43604
Telephone: (419) 246-5757
rengwert@anspachlaw.com


David G. Grude (0006525) *per consent*
4253 Monroe Street
Toledo, Ohio 43606
Telephone: (419) 472-9774
dggrude@gmail.com

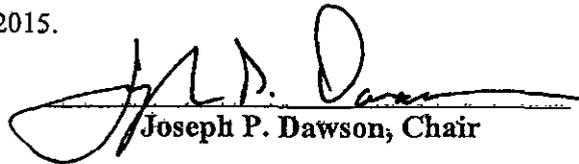

Michael A. Bonfiglio (0029478)
Bar Counsel
Toledo Bar Association
311 North Superior Street
Toledo, Ohio 43604
Telephone: (419) 242-4969
mbonfiglio@toledobar.org

Attorneys for Relator

CERTIFICATE

The undersigned, **Joseph P. Dawson, Chair** of the Certified Grievance Committee of the Toledo Bar Association hereby certifies that **David G. Grude, J. Randall Engwert, 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 April 16, 2015.


Joseph P. Dawson, Chair

Supreme Court Rules for the Government of the Bar of Ohio, Rule V, Section 10: Requirements for Filing a Complaint.

(A) Notice of Intent to File. No investigation conducted by the Office of Disciplinary Counsel or a certified grievance committee shall be completed, and no complaint shall be filed with the Board, without first giving the judicial officer or attorney who is the subject of the grievance or investigation notice of each allegation and the opportunity to respond to each allegation. The Office of Disciplinary Counsel or a certified grievance committee shall provide the judicial officer or attorney with a minimum of fourteen days to respond to the allegations.

....

(E)(1) Content of the Complaint. A complaint filed with the Board shall be filed in the name of either disciplinary counsel or the bar association that sponsors the certified grievance committee, as relator. The complaint shall include all of the following:

(a) Allegations of specific misconduct including citations to the rules allegedly violated by the respondent, provided that neither the panel nor the Board shall be limited to the 19 citation to the disciplinary rule in finding violations based on all the evidence if the respondent has fair notice of the charged misconduct;

(b) If applicable, an allegation of the nature and amount of restitution that may be owed by the respondent or a statement that the relator cannot make a good faith allegation without engaging in further discovery;

(c) A list of any discipline or suspensions previously imposed against the respondent and the nature of the prior discipline or suspension;

(d) The respondent's attorney registration number and his or her last known address;

(e) The signatures of one or more attorneys admitted to the practice of law in Ohio, who shall be counsel for the relator and, where applicable, by bar counsel;

(f) A written certification, signed by disciplinary counsel or the president 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.

(2) The complaint shall not include any documents, exhibits, or other attachments unless specifically required by Civ. R. 10.

(F) Materials Submitted with the Complaint. The relator shall submit with the complaint sufficient investigatory materials to demonstrate probable cause. The materials shall include any response submitted by or on behalf of the respondent to the notice of intent to file provided by the relator pursuant to Section 10(A) 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, and any other relevant material.