

INTRODUCTION

1. That Respondent, Gerald M. Smith (“Respondent”), was admitted to the practice of law in the State of Ohio on October 11, 1961.
2. That Respondent is subject to the Code of Professional Responsibility; The Ohio Rules of Professional Conduct; and the Ohio Supreme Court Rules for the Government of the Bar.
3. That Respondent has no prior Discipline from the Supreme Court of Ohio.
4. That Respondent’s status as an attorney in the State of Ohio is currently “In Good Standing.”
5. That on February 10, 2014 a Grievance (“The Grievance”) was filed with the Lorain County Bar Association (“LCBA.”)
6. That the complaining party is one Robert Gonzalez (“Gonzalez.”)
7. That LCBA, by and through its Certified Legal Ethics and Grievance Committee (“The Committee”), opened an investigation and assigned the case to Attorney Richard Mellott (“Attorney Mellott”), a member of The Committee.
8. That on or around February 11, 2014 Attorney Mellott sent Respondent notice of The Grievance via certified mail and requested that he respond within twenty (20) days.
9. That on or about March 12, 2014 Respondent provided his Response to The Committee with supporting documentation.
10. That on or about March 14, 2014 Attorney Mellott forwarded a copy of Respondent’s written response to Gonzalez and invited him to provide a rebuttal to Respondent’s response.

11. That sometime thereafter Gonzalez provided a written rebuttal to the response of Respondent.

12. That on April 28, 2014 at a regularly scheduled meeting of The Committee, affirmative votes were recorded finding probable cause that Respondent had committed multiple violations of the Ohio Rules of Professional Conduct and the Ohio Supreme Court Rules for the Government of the Bar.

13. That the matter was assigned to Attorney D. Chris Cook, undersigned, a member of The Committee and Bar Counsel to LCBA, for prosecution.

14. That on or around April 29, 2014 Attorney Cook sent Respondent correspondence via fed-ex requesting that he supplement his Response with additional information and documentation relating to the fees he charged Gonzalez; his billing records; and, proof of his professional liability insurance.

15. That on June 6, 2014 Respondent replied with a comprehensive response with the information sought by Relator.

16. That on December 22, 2014 Relator took the deposition of Respondent.

17. That on January 12, 2015 a Notice of Intent to File with Certified Copy of Complaint was served upon Respondent.

18. That on January 12, 2015 the Investigative Summary with Exhibits in Support was served upon Respondent.

19. That pursuant to the Notice of Intent to File and the local rules of The Committee, Respondent was given the opportunity to appear at a specially scheduled meeting of The Committee to address the Certified Complaint, Investigative Summary, and allegations contained therein.

20. That counsel for Respondent did attend the special meeting of The Committee on January 14, 2015 and addressed The Committee.

21. That thereafter, the parties entered into settlement discussions in order to determine if a resolution could be reached by way of a stipulated hearing and sanction.

22. That in furtherance of those discussions, on March 30, 2015 counsel for Respondent again appeared before The Committee to further discuss the matter.

23. That despite the party's best-efforts, a stipulated or agreed resolution could not be reached.

FACTUAL ALLEGATIONS

24. Relator incorporates and realleges the allegations contained in paragraphs 1-23 above as if fully rewritten herein.

25. That on or about March 12, 2008 Gonzalez was arrested and charged with multiple felonies which were subsequently filed in the Oberlin Municipal Court in a matter captioned *State of Ohio v. Robert Gonzalez*, Case No. 08CRA00233.

26. That Gonzalez was also charged with several misdemeanors which were subsequently filed in the Oberlin Municipal Court in a matter captioned *State of Ohio v. Robert Gonzalez*, Case No. 08CRB00234.

27. That on or about March 12, 2008 Gonzalez' son, Robert Gonzalez, Jr., (hereinafter, "Gonzalez, Jr.") contacted Respondent to provide legal representation for Gonzalez.

28. That on or about March 13, 2008 Attorney James Smith (hereinafter, "Attorney Smith"), an associate attorney in Respondent's firm, appeared in the Oberlin Municipal Court on behalf of and with Gonzalez.

29. That Attorney Smith advised Gonzalez that in order for Respondent to represent Gonzalez the "total cost" would be \$5,000.00 per felony.

30. That as Gonzalez was charged with five (5) felonies, the "total cost" for the representation was to be \$25,000.00.

31. That Gonzalez agreed to pay Respondent the sum of \$25,000.00 for the representation.

32. That the Oberlin Municipal Court entered a Domestic Violence Criminal Temporary Protection Order (DVTPO) against Gonzalez in the case and set a Domestic Violence Bond of \$500,000.00.

33. That Gonzalez waived his rights to a preliminary hearing and the court set Gonzalez' bond at \$500,000.00 subject to the protection order.

34. That on or about March 14, 2008 Gonzalez, Jr. made a payment of \$10,000.00 to Respondent on Gonzalez' behalf.

35. That on March 18, 2008 Gonzalez, Jr. made a second payment of \$15,000.00 to Respondent on Gonzalez' behalf.

36. That within the first week of Gonzalez' representation by Respondent, Respondent was paid \$25,000.00.

37. That Respondent personally visited Gonzalez while he was in the Lorain County Jail only on one occasion.

38. That Respondent's associate, Andrew Robinson (hereinafter, "Attorney Robinson"), visited Gonzalez on several other occasions while he was in the Lorain County Jail.

39. That Gonzalez requested Attorney Robinson bring him certain Ford retirement documents to execute while he was in jail to ensure that he received his \$50,000 retirement bonus from his employer, Ford Motor Company ("Ford").

40. That Attorney Robinson complied with Gonzalez' request and brought Gonzalez the Ford retirement documents which Gonzalez executed.

41. That Gonzalez returned the executed Ford documents to Attorney Robinson to process.

42. That Gonzalez was indicted on April 9, 2008 in the Lorain County Court of Common Pleas in a matter captioned, *State of Ohio v Robert Gonzalez*, Case No. 08CR075527.

43. That the matter was assigned to Common Pleas Court Judge Edward Zaleski ("Judge Zaleski")

44. That the indictment charged Gonzalez with ten counts, to wit:

1. Kidnapping with a Firearm Specification – F2
2. Abduction with a Firearm Specification – F3
3. Violating Protection Order with a Firearm Specification – F3
4. Menacing by Stalking with a Firearm Specification – F4
5. Carrying Concealed Weapon – F4
6. Illegal Possession of a Firearm in Liquor Permit Premises with a Firearm Specification – F5
7. Aggravated Menacing – M1
8. Aggravated Menacing – M1
9. Criminal Damaging or Endangering – M2
10. Domestic Violence – M2

45. That on April 17, 2008 Respondent filed a *Motion to Reconsider Bond; Request for Hearing* and also filed a *Request for Discovery* and *Motion for Bill of Particulars*

46. That on April 21, 2008, after a bond hearing at which Respondent appeared, Gonzalez' bond was reduced to \$100,000.00.

47. That on April 21, 2008 Gonzalez posted various property bonds and was released from the Lorain County Jail.

48. That on April 21, 2008, the same date of Gonzalez' release from the Lorain County Jail on bond, Gonzalez, Gonzalez, Jr. and Gonzalez' other son, Nathan Gonzalez, met with Respondent at his office.

49. That during this meeting, Respondent advised Gonzalez that "this is going to cost you an extra \$50,000.00."

50. That Gonzalez was "shocked" and could not believe he had to pay additional money to Respondent.

51. That Respondent advised Gonzalez that the additional \$50,000.00 fee was required because this was a "big case" which had caused embarrassment to the Amherst Police Department.

52. That Respondent then asked Gonzalez' son, Nathan, to exit the room in order to discuss the matter further with Gonzalez and Gonzalez, Jr.

53. That Respondent reiterated to Gonzalez that this was a "big case" and that he could see him "walking away without serving any prison time" but that it would be "costly."

54. That Respondent also indicated to Gonzalez that the entire portion of the \$75,000.00 would not be paid solely for Respondent's services.

55. That Respondent told Gonzalez that he planned on giving Judge Zaleski a donation of \$25,000.00 out of the \$75,000.00.

56. That Respondent also told Gonzalez that he planned on giving the Amherst Police Chief, Lonnie Dillon, a donation of \$10,000.00 so that he would not push the court for prison time.

57. That Gonzalez asked Respondent "isn't this bribery?"

58. That Respondent responded by advising Gonzalez that "we do this with big cases and it's called a 'donation.'"

59. That Respondent later asked Gonzalez "when do you think you will be getting that money from Ford for the bonus."

60. That Gonzalez advised Respondent that it was going to take 30 to 45 days to get the money.

61. That Respondent advised Gonzalez that he wanted to give the money to Judge Zaleski as soon as possible and that he would meet the judge at the horse races.

62. That Respondent told Gonzalez that "he would walk away from this without any prison time."

63. That thereafter, Respondent called Gonzalez back to meet with him at his office.

64. That Gonzalez took his wife to this meeting and at which point Respondent again inquired as to whether Gonzalez had the additional \$50,000.00.

65. That Respondent inquired as to whether Gonzalez would cash in some of his Ford stock but Gonzalez advised that he was unwilling to do so.

66. That Respondent once again told Gonzalez that he could see him walking away from his case without serving jail time but that he needed to provide him the additional \$50,000.00.

67. That Respondent subsequently called Gonzalez back to meet with him at his office for a third time where he again discussed the need to get the \$50,000.00 into the office.

68. That every time Respondent discussed the extra \$50,000.00 with Gonzalez, Respondent excused Attorney Robinson from the meeting.

69. That on June 3, 2008 Gonzalez paid Respondent \$40,000.00 which was the entire amount he received from his Ford retirement bonus after taxes.

70. That the next time Gonzalez went to Respondent's office he met with Attorney Robinson who advised Gonzalez that he expected that Gonzalez would receive five years prison time due to the firearm specifications contained in the indictment.

71. That Gonzalez reported his conversation with Attorney Robinson to Respondent who advised Gonzalez not to worry because Attorney Robinson did not know what was "going on behind closed doors" with the Judge.

72. That Respondent further advised Gonzalez not to tell Attorney Robinson anything and requested that he just try to get him the additional \$10,000.00.

73. That Gonzalez made additional payments to Respondent over the course of the next year, resulting in a total amount of \$70,000.00 paid to Respondent.

74. That Respondent ultimately decided the best course of action for Gonzalez was to plead guilty to the entire indictment.

75. That on December 15, 2008 Gonzalez plead guilty to the entire indictment (except for the charge of Violation a Protection Order which was dismissed.).

76. That the Court ordered a pre-sentence evaluation of Gonzalez.

77. That while Gonzalez was awaiting sentencing, Respondent advised Gonzalez that he needed an additional \$5,000.00 in order to give gifts to some important people so that they would talk to Lorain County Prosecutor, Dennis Will, to help Gonzalez receive a lower sentence of eighteen (18) months.

78. That Gonzalez advised Respondent he did not have any additional money to provide.

79. That Respondent also advised Gonzalez prior to his sentencing that he would file for Clemency since Gonzalez had union ties and the Governor was a Democrat.

80. That on March 20, 2009 Gonzalez was sentenced and received two years on the kidnapping charge with a three-year consecutive sentence for the firearm specification.

81. That Gonzalez' sentence made him eligible for judicial release in three and one-half years.

82. That Gonzalez was imprisoned on March 26, 2009.

83. That on September 18, 2012 Respondent filed a Motion for Judicial Release on Gonzalez' behalf.

84. That on October 15, 2012 Judge Zaleski withdrew from Gonzalez' case and the matter was transferred to the docket of the Judge James Burge.

85. That Gonzalez was granted judicial release on November 16, 2012.

86. That sometime after Gonzalez' release, Respondent's office contacted Gonzalez regarding his unpaid balance of \$5,000.00.

87. That on February 29, 2014 Gonzalez received an invoice from Respondent for a balance due and owing of \$5,000.00.

88. That Gonzalez did not write to Respondent or call him to complain about his sentence because Gonzalez knew that his mail could be read and calls recorded and he was afraid that he could be charged with bribery.

89. That Gonzalez wrote Respondent a complimentary letter from prison to motivate Respondent to file for judicial release on his behalf.

COUNT ONE
(ORPC 1.5(a) – *FEES AND EXPENSES: CLEARLY EXCESSIVE FEE*)

90. Relator incorporates and realleges the allegations contained in paragraphs 1-89 above as if fully rewritten herein.

91. That as alleged above, on or about March 13, 2008 Respondent charged an original fee of \$25,000.00 to represent Gonzalez on a criminal matter pending in the Oberlin Municipal Court.

92. That after Gonzalez was indicted in the Lorain County Court of Common Pleas, Respondent increased his fee by \$50,000.00 to \$75,000.00.

93. That Respondent indicated to Gonzalez that the entire portion of the \$75,000.00 in fees would not be paid for Respondent's services alone.

94. That Respondent told Gonzalez that he planned on giving Judge Zaleski a donation of \$25,000.00.

95. That Respondent told Gonzalez that he also planned on giving Amherst Police Chief, Lonnie Dillon, a donation of \$10,000.00 so that he would not push the court for prison time.

96. That Gonzalez made payments to Respondent over the course of his representation in a total amount of \$70,000.00.

97. That the fee Respondent charged to Gonzalez was clearly excessive and collected for the purpose of implying Respondent's ability to improperly influence government officials.

98. That Respondent's charge of \$75,000.00 in fees and collection of \$70,000.00 from his client all while implying an ability to improperly influence government officials constitutes a clearly excessive fee in violation of ORPC 1.5(a).

99. That even if the trier of fact disregards the sworn statements of Gonzalez and Gonzalez, Jr., the \$75,000.00 fee Respondent charged Gonzalez was excessive and violative of ORPC 1.5(a).

COUNT TWO

(ORPC 1.15(c) – *SAFEKEEPING CLIENT FUNDS AND PROPERTY: TRUST ACCOUNT-UNEARNED "FLAT-FEE"*)

100. Relator incorporates and realleges the allegations contained in paragraphs 1-99 above as if fully rewritten herein.

101. That Respondent failed to maintain his client, Gonzalez', funds in a trust or IOLTA account and failed to provide an accounting of their expenditure.

102. That Respondent accepted \$10,000.00 on March 14, 2008 and \$15,000.00 four (4) days later on March 18, 2008 for a total of \$25,000.00.

103. That Respondent failed to deposit any of these payments into his trust or IOLTA account and instead, took the entire fee and deposited it into his operating account.

104. That when Respondent took the two fees (\$25,000.00) he had not yet earned the fees or incurred expenses to justify paying himself.

105. That Respondent's failure to maintain his client's funds in a trust or IOLTA account; failure to provide an accounting of their expenditure; and payment to himself of an unearned fee, constitute violations of ORPC 1.15(c).

COUNT THREE

(ORPC 1.15(a)(1-5) – *SAFEKEEPING FUNDS AND PROPERTY: RECORDS*)

106. Relator incorporates and realleges the allegations contained in paragraphs 1-105 above as if fully rewritten herein.

107. That Respondent failed to maintain a copy of a fee agreement, records, bank accounts and statements, and monthly reconciliations for his client, Gonzalez, evidencing the method, manner, and mode in which he maintained, expended, and/or handled his funds.

108. That Respondent's failure to maintain a copy of a fee agreement, records, bank accounts and statements, and monthly reconciliations for his client, Gonzalez, evidencing the method, manner, and mode in which he maintained, expended, and/or handled his funds constitutes a violation of ORPC 1.15(a)(1-5).

COUNT FOUR

(ORPC 1.5(d)(3) – *FEEES AND EXPENSES: REFUND*)

109. Relator incorporates and realleges the allegations contained in paragraphs 1-108 above as if fully rewritten herein.

110. That Respondent charged, and was paid by Gonzalez', an original retainer of \$25,000.00 as a "flat fee," "earned upon receipt" fee, or "nonrefundable" fee.

111. That Respondent failed to advise Gonzalez in writing that if the entire fee paid was not earned Gonzalez might be entitled to a refund of all or some of the retainer.

112. That Respondent collected an additional \$45,000.00 from Gonzalez over the course of his representation.

113. That as to this second payment, Respondent failed to advise Gonzalez in writing that if the entire fee paid was not earned Gonzalez might be entitled to a refund of all or some of the retainer.

114. That Respondent's failure to advise Gonzalez, in writing, that he may be entitled to a refund of all or some of his retainer if his entire fee paid was not earned constitutes a violation of ORPC 1.5(d)(3).

COUNT FIVE
(ORPC 8.4(c) – *MISCONDUCT: DISHONESTY, FRAUD, DECEIT, OR MISREPRESENTATION*)

115. Relator incorporates and realleges the allegations contained in paragraphs 1-114 above as if fully rewritten herein.

116. That as alleged above, Respondent told Gonzalez that his was a "big case" and that he could see him "walking away without serving any prison time" but that it would be costly whereby he increased his initial fee for representation from \$25,000.00 to \$75,000.00.

117. That Respondent indicated to Gonzalez that the entire portion of the \$75,000.00 in fees would not be paid for Respondent's services alone.

118. That Respondent told Gonzalez that he planned on giving Judge Zaleski a donation of \$25,000.00.

119. That Respondent told Gonzalez that he also planned on giving Amherst Police Chief, Lonnie Dillon, a donation of \$10,000.00 so that he would not push the court for prison time.

120. That Respondent advised Gonzalez not to worry [about prison time] because Attorney Robinson did not know what was "going on behind closed doors" with the Judge.

121. That as alleged above, Respondent accepted \$70,000.00 in fees from Gonzalez all while implying he had an ability to improperly influence government officials to achieve a positive result in his case by fraud and deceit.

122. That in addition, Respondent misrepresented the true purpose of the "flat fee" triple increase as it was not to influence public officials but to increase his fee three-fold.

123. That Respondent's dishonesty, fraud, deceit, and misrepresentation constitute violations of ORPC 8.4(c).

COUNT SIX
(ORPC 8.4(d) – *MISCONDUCT*: CONDUCT PREJUDICIAL TO THE
ADMINISTRATION OF JUSTICE)

124. Relator incorporates and realleges the allegations contained in paragraphs 1-1234 above as if fully rewritten herein.

125. That all as alleged above, Respondent stated and/or implied to Gonzalez on multiple occasions that he had the ability to influence government officials to allow him "to walk away" without prison time as long as Gonzalez provided him the funds to do so.

126. That Respondent told Gonzalez that he planned on giving Judge Zaleski a donation of \$25,000.00 and that he also planned on giving Amherst Police Chief, Lonnie Dillon, a donation of \$10,000.00 so that he would not push the court for prison time.

127. That Respondent advised Gonzalez not to worry [about prison time] because Attorney Robinson did not know what was “going on behind closed doors” with the Judge.

128. That Respondent’s statements and/or implications that he had the ability to influence improperly government officials for the purpose to significantly increase his “flat fee” is conduct prejudicial to the administration of justice and constitutes a violation of ORPC 8.4(d).

COUNT SEVEN

(ORPC 8.4(e) – *MISCONDUCT: STATE AN ABILITY TO IMPROPERLY INFLUENCE GOVERNMENT OFFICIALS*)

129. Relator incorporates and realleges the allegations contained in paragraphs 1-128 above as if fully rewritten herein.

130. That all as alleged above, Respondent stated and/or implied to Gonzalez on multiple occasions that he had the ability to improperly influence government officials to allow him “to walk away” without prison time as long as Gonzalez provided him the funds to do so.

131. That Respondent told Gonzalez that he planned on giving Judge Zaleski a donation of \$25,000.00 and that he also planned on giving Amherst Police Chief, Lonnie Dillon, a donation of \$10,000.00 so that he would not push the court for prison time.

132. That Respondent advised Gonzalez not to worry [about prison time] because Attorney Robinson did not know what was “going on behind closed doors” with the Judge.

133. That Respondent’s statements and/or implications that he had the ability to influence improperly government officials constitute a violation of ORPC 8.4(e).

COUNT EIGHT
(ORPC 8.4(h) – *MISCONDUCT*: ENGAGE IN CONDUCT THAT
ADVERSELY REFLECTS ON THE LAWYER’S FITNESS TO PRACTICE LAW)

134. Relator incorporates and realleges the allegations contained in paragraphs 1-133 above as if fully rewritten herein.

135. That all as alleged above, Respondent stated and/or implied to Gonzalez on multiple occasions that he had the ability to influence government officials to allow him “to walk away” without prison time as long as Gonzalez provided him the funds to do so.

136. That Respondent initially charged Gonzalez a “flat fee” of \$25,000:00 but increased it to \$75,000.00 when respondent learned that Gonzalez was going to receive \$50,000.00 from his employer, Ford Motor Company.

137. That in order to justify the triple-fee increase, Respondent told Gonzalez that he planned on giving Judge Zaleski a donation of \$25,000.00 and that he also planned on giving Amherst Police Chief, Lonnie Dillon, a donation of \$10,000.00 so that he would not push the court for prison time.

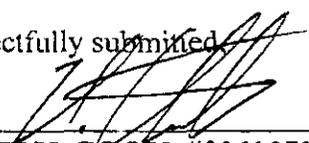
138. That Respondent advised Gonzalez not to worry [about prison time] because Attorney Robinson did not know what was “going on behind closed doors” with the Judge.

139. That Respondent would triple a "flat fee" after learning that his client was soon to receive a financial windfall and justify the fee increase by stating he could influence the judge and other public officials reflects adversely on his fitness to practice law and constitutes a violation of ORPC 8.4(h).

WHEREFORE, pursuant to Gov. Bar R. V. Relator alleges that Respondent, Attorney Gerald M. Smith, has violated the Ohio Rules of Professional Conduct and the Ohio Rules for the Government of the Bar.

As such, Relator respectfully requests that the Board proceed accordingly; certify this matter for prosecution: and allow this matter to progress forthwith.

Respectfully submitted,



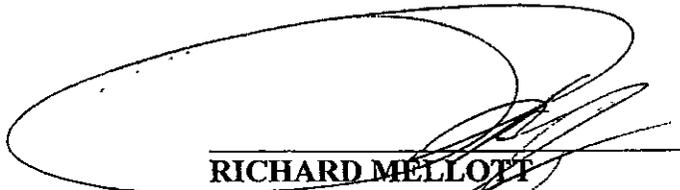
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CHAIRMAN'S AUTHORIZATION

The undersigned, Richard Mellott, Chairman of the Lorain County Bar Association Legal Ethics and Grievance Committee, hereby certifies that Attorney D. Chris Cook, Bar Counsel, is duly authorized to represent Relator in the premises and has accepted the responsibility of prosecuting this complaint to its conclusion.

After investigation, Relator believes reasonable cause exists to warrant a hearing on such complaint *in re*: GERALD M. SMITH

Dated: January 13th, 2015.


RICHARD MELLOTT
Chairman, LCBA Legal Ethics
and Grievance Committee

PROOF OF SERVICE

The undersigned represents that a copy of the foregoing Complaint was served upon the following via Hand-Delivery and/or Fed-Ex this 27th day of April, 2015.

Richard Dove, Esq.
Director – Board of Professional Conduct
65 S. Front Street, 5th Floor
Columbus, OH 43215-3431

Scott Drexel, Esq.
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