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APR 27 2015

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

BOARD OF PROFESSIONAL CONDUCT

In re:

Complaint against

Lynn Ann Lape, Esq.
6024 Squirrelwood Court
Cincinnati, Ohio 45239

FILED

MAY 04 2015

BOARD OF PROFESSIONAL CONDUCT
No. _____

15 - 032

Attorney Registration No. 0068728

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

Relator.

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

1. Respondent, Lynn Ann Lape, was admitted to the practice of law in the state of Ohio on November 10, 1997.
2. Respondent is subject to the Rules of Professional Conduct and the Supreme Court Rules for the Government of the Bar of Ohio.
3. Respondent has a prior disciplinary record as follows:
 - (a) On November 3, 2009, respondent was suspended from the practice of law as a result of her failure to register for the 2009/2011 attorney-registration biennium. *In re Attorney Registration Suspension of Lape*, 123 Ohio St.3d 1475, 2009-Ohio-5786. Respondent was subsequently reinstated to practice on December 15, 2009. *In re Reinstatement of Lape*, 126 Ohio St.3d 1603, 2010-Ohio-4979.

(b) Effective November 10, 2011, the Supreme Court suspended respondent from the practice of law for a period of six months with the entire period of suspension stayed on the conditions that she complete at least six hours of CLE in law-office management and that she commit no further misconduct. *Disciplinary Counsel v. Lape*, 130 Ohio St.3d 273, 2011-Ohio-5757. In its order filed November 10, 2011 in Supreme Court Case No. 11-1024, the Court also ordered respondent to pay the costs of the disciplinary proceeding.

(c) Respondent failed to pay costs as ordered by the Court. Therefore, on February 15, 2013, the Supreme Court issued a show cause order for her failure to pay board and publication costs. Respondent did not file a response to the show cause order. As a result, by order filed April 18, 2013 in Case No. 11-1024, the Court found respondent in contempt of its November 10, 2011 order, revoked the previously imposed stay of the six-month suspension and suspended respondent from the practice of law until respondent pays all costs and accrued interest in full, has applied for reinstatement and has been granted reinstatement by the Court. Respondent has remained suspended from the practice of law in Ohio at all times since April 18, 2013.

4. As part of its suspension order filed April 18, 2013 in Case No. 11-1024, the Supreme Court specifically ordered respondent, among other things, to *immediately* take the following actions:

(a) Notify all clients being represented in pending matters and any co-counsel of respondent's suspension and consequent disqualification to act as an attorney after the effective date of this order and, in the absence of co-counsel, also notify the clients to seek legal service elsewhere, calling attention to any urgency in seeking the substitution of another attorney in respondent's place;

- (b) Regardless of any fees or expenses due respondent, deliver to all clients being represented in pending matters any papers or other property pertaining to the client, or notify the client or co-counsel, if any, of a suitable time and place where the papers or other property may be obtained, calling attention to any urgency for obtaining such papers or property;
- (c) Refund any part of any fees or expenses paid in advance which are unearned or not paid, and account for any trust money or property in the possession or control of respondent;
- (d) Notify opposing counsel in pending litigation or, in the absence of counsel, the adverse parties, 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;
- (e) Send all notices required by this order by certified mail with a return address where communications may thereafter be directed to respondent;
- (f) File with the clerk of this court and the disciplinary counsel of the Supreme Court an affidavit showing compliance with this order, showing proof of service of notices required herein, and setting forth the address where the respondent may receive communications; and
- (g) Retain and maintain a record of the various steps taken by respondent pursuant to this order.

5. In a letter to respondent dated February 27, 2014, relator noted that, in its April 18, 2013 order in Case No. 11-1024, the Supreme Court had directed respondent, among other things, to perform the acts referenced in paragraph 4(f) above and to retain and maintain the documentation referenced in paragraph 4(g) above. Relator asked respondent whether she had filed the affidavit required by the Supreme Court's April 18, 2013 order with the Clerk of the Supreme Court and with relator. In its letter, relator further requested, if respondent had prepared the required affidavit, that she provide a copy of the affidavit to relator. In addition, relator stated that, if respondent had not prepared and filed the affidavit required by the Supreme Court's April 18, 2013 order, that she provide

relator with an affidavit attesting to whether or not she had complied with the notification requirements set forth in paragraph 4(a) through (e) above.

6. By letter dated March 12, 2014, respondent replied to relator's February 27, 2014 letter. In her letter, respondent stated in part, as follows: "I am unable to find the Affidavit I mailed to the Supreme Court so I have re-executed it and have enclosed a copy. I did not send the original Affidavit by certified mail and apparently you are advising me it was not received. The original of this re-executed Affidavit was mailed concurrently with this one to the Supreme Court." In an Affidavit signed by respondent and notarized on March 13, 2014 in Arapahoe County, Colorado, which respondent enclosed with her March 12, 2014 letter, respondent claimed, among other things, that she (a) notified all active clients of her suspension by registered mail; (b) returned all unearned fees and files to clients or provided them to subsequent counsel at the clients' direction; and (c) maintained a record of the notices, amounts and dates unearned fees were returned.
7. Thereafter, by letter dated March 21, 2014, relator sent a letter to respondent acknowledging receipt of respondent's March 12, 2014 letter and requesting additional information. The information sought by relator from respondent included clarification of whether it was respondent's contention that she had mailed her original affidavit of compliance to the Supreme Court of Ohio in April or May 2013 and whether she served relator with a copy of that affidavit at the same time. Additionally, in light of respondent's assertion in her March 2014 affidavit that she had maintained "[a] record of the notices, amounts and dates unearned fees were returned", relator asked respondent to provide (a) the names and contact information for all clients to whom she sent registered letters; (b) the date(s) on which each of the registered letters was mailed to her clients;

- and (c) the name and contact number for each client to whom respondent refunded unearned fees, the amount of the unearned fees that were refunded, the date(s) upon which the refunds were made, and the method of payment of the refunds.
8. Respondent did not respond to relator's letter, either by the requested due date of April 4, 2014 or at any time thereafter, and did not provide the records requested by relator.
 9. On May 28, 2014, relator wrote to notify respondent of her failure to respond to relator's March 21, 2014 letter and again asking respondent to provide the information requested by relator in its March 21, 2014 letter. Relator also reminded respondent of her duty to cooperate with relator's investigation and to provide information requested in connection with that investigation.
 10. Respondent did not file the Affidavit required by the Supreme Court's April 18, 2013 order in Case No. 11-1024, either by May 20, 2013 (i.e., thirty days after the date of the Court's order) or at any time thereafter. Likewise, respondent did not file with relator a copy of the Affidavit required by the Supreme Court's order filed April 18, 2013.
 11. On March 31, 2014, the Supreme Court filed an Order to Show Cause why respondent should not be found in contempt for her failure to fully comply with the Court's April 18, 2013 order, in particular, her failure to file an affidavit of compliance on or before May 20, 2013. The copies of the OSC served upon respondent by the Supreme Court were returned as undeliverable or unclaimed. Respondent did not file any response to the Supreme Court's OSC.
 12. Michael Fritzsche was a client of respondent in a Chapter 13 bankruptcy matter whom respondent was representing on and before April 18, 2013. Mr. Fritzsche did not receive any written notice from respondent, either by certified mail or by first-class mail,

notifying him of respondent's suspension and did not receive any refund from respondent even though he had paid respondent's entire \$1,100 attorney fee in advance prior to April 18, 2013. The only notice that Mr. Fritzsche received of respondent's suspension was a telephone message from respondent in the first week of May 2013 in which respondent stated that she had been suspended for failing to send in a check and that someone would be calling him about taking over his bankruptcy case.

13. Catherine Petroze was a client of respondent in a Chapter 13 bankruptcy proceeding whom respondent was representing on and before April 18, 2013. Ms. Petroze did not get any written notification from respondent regarding her suspension from the practice of law, either by first-class mail or by certified mail, and did not get a refund from respondent of any portion of the \$1,200 in advanced attorney fees she had paid to respondent prior to April 18, 2013. The only notice that Ms. Petroze received of respondent's suspension was a telephone message from respondent in which respondent stated that she had been suspended for failing to pay a fee and that Ms. Petroze's case would be transferred to another attorney, Cynthia Daugherty.
14. Richard and Linda White were clients of respondent in a Chapter 13 bankruptcy proceeding whom respondent was representing on and before April 18, 2013. Mr. and Mrs. White did not get any written notification from respondent regarding her suspension from the practice of law, either by first-class mail, by certified mail, or by e-mail, and did not receive from respondent any portion of the \$3,800 in attorney fees that they had paid to respondent. The only notice that Mr. and Mrs. White received from respondent was a telephone message stating that respondent was retiring from the practice of law and that they should contact Cynthia Daugherty for representation.

15. Julia Miller was a client of respondent in a Chapter 13 bankruptcy matter whom respondent was representing on and before April 18, 2013. Ms. Miller did not receive any written notification from respondent regarding her suspension from the practice of law, either by first-class mail, by certified mail, or by e-mail, and did not receive from respondent a refund of any portion of the \$1,250 in attorney fees that she had paid to respondent. Ms. Miller learned of respondent's unavailability to continue with her representation when she telephoned respondent's law office in late April 2013 and listened to a recording on respondent's voicemail that stated that respondent had retired from the practice of law and was closing her office. The message also stated that attorney Cynthia Daugherty was taking over her cases.
16. Joseph and Joyce Maxi were clients of respondent in a Chapter 13 bankruptcy matter whom respondent was representing on and before April 18, 2013. Mr. and Mrs. Maxi did not receive any written notification from respondent regarding her suspension from the practice of law, either by first-class mail, by certified mail, or by e-mail, and did not receive a refund of any portion of the \$3,500 in attorney fees they had paid to respondent. Mr. and Mrs. Maxi learned of respondent's unavailability to continue with her representation when they got a message from respondent stating that she could no longer handle their case and that they should pick up their file from attorney Cynthia Daugherty.
17. Michelle Henley and her husband were clients of respondent in a Chapter 13 bankruptcy matter whom respondent was representing on and before April 18, 2013. Neither Ms. Henley nor her husband received written notification from respondent regarding her suspension from the practice of law, either by first-class mail or by certified mail. However, on or about April 21, 2013, the Henleys received an email from respondent in

which respondent stated that she was suspended from practice for six months. When Mr. Henley went to respondent's law office to retrieve their file, there was a note from respondent on the door stating that she was no longer in practice and that clients should call attorney Cynthia Daugherty.

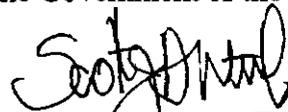
18. Christy Martinez was a client of respondent in a Chapter 13 bankruptcy matter whom respondent was representing on and before April 18, 2013. Ms. Martinez did not receive any written notification from respondent regarding her suspension from the practice of law, either by first-class mail, by certified mail, or by e-mail, and did not receive a refund of any portion of the \$1,658 in attorney fees she had paid to respondent. Ms. Martinez learned of respondent's suspension from the Bankruptcy Trustee in either late August or early September 2013.
19. Craig Cowles met with respondent on March 13, 2013, signed a retainer agreement and retained respondent to represent him in a Chapter 13 bankruptcy matter, paying an initial retainer fee of \$150 to respondent. Mr. Cowles subsequently provided respondent with all of the necessary paperwork and paid him an additional \$1,281 in advanced attorney fees. Respondent told Mr. Cowles that his bankruptcy petition would be filed on April 18, 2013. Respondent never notified Mr. Cowles of her suspension from practice, either in writing or orally. Nevertheless, Mr. Cowles learned of the suspension a few days after it became effective. Mr. Cowles further learned that respondent had erroneously filed his bankruptcy petition as a Chapter 7 proceeding rather than as a Chapter 13 proceeding and that it had been filed under attorney Cynthia Daugherty's name, without the knowledge or permission of either Mr. Cowles or Ms. Daugherty. Attorney Daugherty was required to convert Mr. Cowles' bankruptcy from a Chapter 7 to a Chapter 13 proceeding and has

represented Mr. Cowles since that time. Respondent did not refund any portion of the advanced fee to Mr. Cowles and did not forward any portion of the unearned fees to Attorney Daugherty.

20. Respondent's conduct herein violates the following provisions of the Ohio Rules of Professional Conduct and the Supreme Court Rules for the Government of the Bar of Ohio: (a) Prof. Cond. R. 3.3(a)(1) [a lawyer shall not make a false statement of fact or law to a tribunal]; (b) Prof. Cond. R. 3.4(c) [a lawyer shall not knowingly disobey an obligation under the rules of a tribunal]; (c) Prof. Cond. R. 8.1(a) [in connection with a disciplinary matter, a lawyer shall not knowingly make a false statement of material fact]; (d) Prof. Cond. R. 8.4(c) [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation]; (e) Prof. Cond. R. 8.4(d) [a lawyer shall not engage in conduct that is prejudicial to the administration of justice]; and (f) Gov. Bar R. V(9)(G) and former Gov. Bar R. V(4)(G) [a lawyer shall not neglect or refuse to assist or testify in an investigation or proceeding].

CONCLUSION

Wherefore, pursuant to Gov. Bar R. V 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.

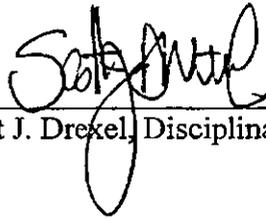


Scott J. Drexel (0091467)
Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411
614.461.0256
614.461.7205 – fax
scott.drexel@sc.ohio.gov

CERTIFICATE

The undersigned, Scott J. Drexel, Disciplinary Counsel, of the Office of Disciplinary Counsel of the Supreme Court of Ohio hereby certifies that I am 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: April 27, 2015



Scott J. Drexel, Disciplinary Counsel