

RECEIVED

APR 27 2015

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

FILED

MAY 04 2015

In re:

Complaint against

Quentin Martin Derryberry, II, Esq.
15 Willipie Street, Suite 220
P. O. Box 2056
Wapakoneta, Ohio 45895-2056

BOARD OF PROFESSIONAL CONDUCT

No. 15 - 033

Attorney Registration No. 0024106

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 Quentin Martin Derryberry, an Attorney at Law, duly admitted to the practice of law in the state of Ohio, is guilty of the following misconduct:

1. Respondent, Quentin Martin Derryberry, was admitted to the practice of law in the state of Ohio on November 7, 1970.
2. Respondent is subject to the Ohio Rules of Professional Conduct and the Supreme Court Rules for the Government of the Bar of Ohio.
3. Respondent has a prior disciplinary record arising out of his criminal conviction for perjury. *United States v. Derryberry*, Case Nos. 87-3458 and 87-3638. By order filed October 17, 1990 in *Disciplinary Counsel v. Quentin M. Derryberry II*, Case No. 1990-

0826, the Supreme Court of Ohio indefinitely suspended respondent from the practice of law, with credit for the period of interim felony suspension that had been imposed by the Court effective August 31, 1987. Respondent was subsequently reinstated to practice effective December 21, 1990.

4. The facts and circumstances giving rise to the grievance and to the Complaint in this matter involve custody proceedings relating to the children of Megan R. Ingle, i.e., Deacon Smith (dob November 19, 2005), Cyrus Smith (dob September 21, 2006), Raine Ingle (dob November 8, 2007) and Carmel Ingle (dob 2011). At the time of the events described herein, Deacon Smith was living with his great grandmother, Linda Moore, in Lima, Ohio, while both Cyrus Smith and Raine Ingle were living with their grandmother, Melissa Sharp, in Wapakoneta, Ohio. Ms. Sharp is the mother of Megan Ingle.
5. In September and October 2013, Ms. Sharp initiated proceedings in the Auglaize County Juvenile Court in order to obtain legal custody of Deacon, Cyrus and Raine. Through her attorney, Matthew Kentner, Ms. Sharp filed a complaint for legal custody of Cyrus Smith on September 6, 2013 (Case No. 2013-CUS-078) and filed a motion to intervene in the parental relationship between Megan Ingle and Michael L. Smith, Jr. for the purpose of seeking custody of Raine Ingle on September 20, 2013 (Case No. 2008-PAT-022). Thereafter, on October 22, 2013, Ms. Sharp filed a motion to intervene for the purpose of seeking custody of Deacon Smith (Case No. 2006-PAT-095).
6. Megan Ingle, who was living in Clinton, Indiana with her youngest child, Carmel, received notice of each of these proceedings shortly after they were filed and immediately informed her grandmother, Linda Moore, of each proceeding.

7. On October 29, 2013, shortly after learning about the initiation of the custody proceeding relating to Deacon, Ms. Moore met with respondent to discuss retaining him to represent her in a proceeding before the Auglaize County Juvenile Court to obtain legal custody of her great grandson, Deacon. Ms. Moore met with respondent for approximately one hour about the matter, during which time she informed respondent that Deacon had lived with her on numerous occasions and that, most recently, he had been living with her since May 2013. Ms. Moore also informed respondent that Deacon's grandmother, Melissa Sharp, had filed petitions with the Auglaize County Juvenile Court seeking custody of both Deacon and two of his siblings, Cyrus Smith and Raine Ingle. As a result, Ms. Moore told respondent that "time was of the essence" in filing the custody petition on her behalf. When Ms. Moore asked respondent about attorney fees for the custody matter, respondent told her that his fee was \$1,000, which Ms. Moore immediately paid by check. At the conclusion of the meeting, respondent asked Ms. Moore to gather information that he would need to prepare the petition for Deacon's legal custody, including the history of Deacon's residences since he was born, his school records reflecting his attendance at school, his grades, and his general performance during the time he had been living with Ms. Moore.

8. Two or three days later, Ms. Moore returned to respondent's office with the requested information and spent approximately one hour reviewing and discussing the information with him. During this meeting, Ms. Moore mentioned that her granddaughter, Megan Ingle, had copies of documents that had been served upon her relating to the custody of her children. At respondent's request, Ms. Moore telephoned Ms. Ingle from respondent's law office and asked her to fax copies of the documents to respondent as

soon as possible. Ms. Ingle promised to do so the following day. At the conclusion of her meeting with respondent, Ms. Moore reiterated to him that the filing of the petition was urgent because Ms. Sharp had already commenced custody proceedings relating to Deacon. Based upon her discussion with respondent, Ms. Moore believed that respondent intended to file the custody petition on her behalf as soon as possible.

9. On or about November 1, 2013, Ms. Ingle faxed to respondent copies of documents and pleadings that she had received over approximately the previous two months relating to the custody of her children. Among the documents faxed by Ms. Ingle to respondent were a Motion to Intervene and an Affidavit of Melissa Sharp that were filed by Ms. Sharp's attorney, Mr. Kentner, on October 22, 2013 in Auglaize County Juvenile Court Case No. 2006 PAT 095, seeking legal custody of Deacon Smith by Ms. Sharp.
10. Ms. Sharp's Motion to Intervene in Case No. 2006-PAT-095 was granted by the court by order filed November 14, 2013. On the same date, on behalf of Ms. Sharp, attorney Kentner filed a motion for reallocation of parental rights and responsibilities and a motion for an order granting temporary custody of Deacon Smith to Ms. Sharp. By order filed December 18, 2013, the court named Ms. Sharp as residential parent and legal custodian for Deacon.
11. In light of the court's December 18, 2013 order naming Ms. Sharp as the residential parent and legal custodian, Deacon was required to leave Ms. Moore's home and go to live with Ms. Sharp sometime shortly after Christmas Day 2013.
12. When Ms. Moore did not hear anything from respondent within the next week or ten days following her second meeting in his office, Ms. Moore began telephoning respondent's office to inquire whether the petition had been filed on her behalf. Ms.

Moore made many telephone calls to respondent's office during the month of November 2013, frequently on a daily basis. On all but two occasions, no one answered the telephone and the calls went to voicemail. On each of these occasions, Ms. Moore left a message on respondent's voicemail stating her name and telephone number and asking respondent to return her call to inform her about the status of the custody petition.

Respondent did not respond to any of Ms. Moore's telephone messages.

13. On two of the occasions when Ms. Moore telephoned respondent's office during November 2013, the telephone was answered by respondent's secretary. On these two occasions, Ms. Moore asked to speak with respondent but was told by his secretary that respondent was not in the office. Ms. Moore asked respondent's secretary for information about the status of her custody petition but respondent's secretary replied that she didn't know the status and that she would have respondent return Ms. Moore's calls. Respondent did not return either of these calls from Ms. Moore.
14. On December 2, 2013, Ms. Moore and Ms. Ingle went to Auglaize County Juvenile Court to attend a pretrial hearing that had been scheduled with respect to the custody proceeding involving Ms. Ingle's son, Cyrus L. Smith, in Case No. 2013-CUS-078. While they were at the courthouse, Ms. Moore spoke with Ms. Sharp's attorney, Matthew Kentner. Ms. Moore asked Mr. Kentner whether he had spoken with respondent or had received anything from him regarding the custody of her great grandson, Deacon. Mr. Kentner told Ms. Moore that he had neither spoken with respondent nor received anything from him regarding Deacon's custody.
15. After speaking with Mr. Kentner, Ms. Moore went to the Auglaize County Juvenile Court Clerk's Office and inquired whether respondent had filed a petition or any other

- document on her behalf relating to the custody of her great grandson, Deacon Smith. The clerk informed Ms. Moore that respondent had not filed anything on her behalf.
16. Respondent never filed any petition, pleading or other document on behalf of Ms. Moore in the custody proceeding relating to Deacon (Case No. 2006-PAT-095).
 17. Immediately after leaving the Clerk's Office, Ms. Moore went to respondent's law office. Respondent's secretary informed Ms. Moore that respondent was not in the office. Ms. Moore told respondent's secretary that she was terminating respondent's services effective immediately and that she wanted her file and a refund of the \$1,000 fee that she had paid to respondent. Respondent's secretary promised to relay the information to respondent.
 18. Respondent did not contact Ms. Moore and did not return her file or refund any portion of the \$1,000 fee that Ms. Moore had paid to him. Therefore, in early or mid-January 2014, Ms. Moore telephoned respondent's office. No one answered the telephone, but Ms. Moore left a voicemail message stating that, if she did not receive a full refund from respondent, she would file a grievance against him.
 19. On or about February 13, 2014, respondent sent Ms. Moore an invoice for his legal services in which he represented that he had expended 3.5 hours on behalf of Ms. Moore at an hourly rate of \$200, for a total fee of \$700. Respondent enclosed a check payable to Ms. Moore in the amount of \$300, representing a refund of the unearned portion of the \$1,000 fee that Ms. Moore had paid to respondent on October 29, 2013.
 20. Ms. Moore subsequently filed a grievance against respondent with the Certified Grievance Committee of the Allen County Bar Association on or about March 19, 2014,

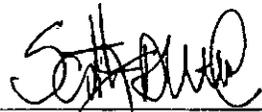
- but the grievance was subsequently transferred to relator because the Allen County Bar Association did not have jurisdiction.
21. In his July 2, 2014 response to relator's Letter of Inquiry, respondent stated, among other things, that (a) "there was no action involving reallocation of rights concerning Deacon"; (b) that Ms. Moore frequently dropped by respondent's office "to discuss the ever changing situation of the custody of the children"; and (c) that Ms. Moore frequently spoke with respondent's legal assistant on many occasions both in person and on the telephone. Contrary to the claims made by respondent in his July 2, 2014 letter, at the time Ms. Moore retained respondent, there was already a pending proceeding relating to Deacon Smith's custody. Additionally, contrary to respondent's claims, Ms. Moore only came to respondent's office on three occasions (i.e., October 29, 2013, on or about October 31, 2013 and December 2, 2013) and only spoke on the telephone with respondent's assistant on two occasions.
 22. Additionally, in an August 25, 2014 letter responding to additional questions from relator, respondent stated, among other things, that Ms. Moore telephoned respondent's law office on or about December 9, 2013 and informed respondent's assistant, Sally Ziegler, that the custody matter involving Deacon had been worked out among the parties and that respondent's "work on the matter was complete." Ms. Moore did not have the conversation with Ms. Ziegler alleged by respondent, either on December 9, 2013, or on any other date.
 23. On February 26, 2015, respondent sent an email to relator in which he represented that he had a telephone conversation with Matthew Kentner, the attorney for Melissa Sharp, in early November 2013 to "help garner an overall understanding of a very complex multi-

family situation in which each involved party seemed to have a very contemptuous attitude towards the other.” In both his conversation with Ms. Moore at the courthouse on December 2, 2013 and in a letter to relator dated January 24, 2015, Mr. Kentner denied that he had any verbal or written communications with respondent regarding the custody of Deacon Smith.

24. Respondent’s conduct herein violates the following provisions of the Ohio Rules of Professional Conduct: 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]; Prof. Cond. R 1.5(a) [a lawyer shall not charge or collect a clearly excessive fee]; and Prof. Cond. R. 8.1(a) [in connection with a disciplinary matter, a lawyer shall not knowingly make a false statement of material fact].

CONCLUSION

Wherefore, pursuant to Gov. Bar R. V, and the Oho 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.

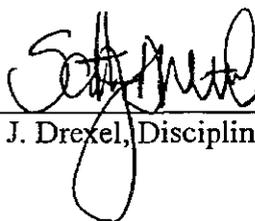


Scott J. Drexel (0091467)
Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411
614.461.0256
614.461.7205 – fax
scott.drexel@sc.ohio.gov

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 that reasonable cause exists to warrant a hearing on such complaint.

Dated: April 27, 2015



Scott J. Drexel, Disciplinary Counsel