

RECEIVED

JUN 01 2015

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

BOARD OF PROFESSIONAL CONDUCT

In re:

Complaint against

Justin Fernandez, Esq.
917 Main Street – Third Floor
Cincinnati, OH 45202

15 - 039

No. _____

Attorney Registration No. (0062974)

COMPLAINT AND CERTIFICATE

Respondent,

(Rule V of the Supreme Court Rules for
the Government of the Bar of Ohio.)

CINCINNATI BAR ASSOCIATION
225 East Sixth St., 2nd Floor
Cincinnati, OH 45202

FILED

JUN 12 2015

Relator.

BOARD OF PROFESSIONAL CONDUCT

Now comes Relator and alleges that Justin Fernandez, an Attorney at Law duly admitted to the practice of law in the State of Ohio on May 16, 1994, is guilty of the following misconduct:

1. Respondent has a business relationship with Morgan Drexen Inc. ("MD").
2. MD is a California company that describes itself as providing integrated support systems to attorneys with a focus on back-office paralegal and paraprofessional services.
3. MD also assisted Respondent with what MD has classified as "non-formal debt resolution."
4. In February 2014, Respondent undertook representation of Madelyn Harvey to assist Ms. Harvey in settlement of her outstanding debts.

5. In February 2014, Ms. Harvey received a packet of materials bearing Respondent's name titled "Non-Formal Debt Resolution Instructions." The second page of this packet was a letter to Ms. Harvey on Respondent's letterhead, over Respondent's typewritten signature. The letterhead did include Respondent's former home address and telephone number in Cincinnati, but also directed Ms. Harvey to reply to an address belonging to MD in Costa Mesa, California. The telephone number for MD was also provided on this letter.
6. Ms. Harvey signed an "Attorney/Client Fee Agreement Debt Resolution Representation" agreement sent to her by MD with the other materials referenced in paragraph 5 of this Complaint. In a section set apart by a text box, the agreement states: "Debt Resolution is an alternative to Bankruptcy which does not include the filing of any bankruptcy petition in a Bankruptcy Court and does not provide the same protections set forth in the Bankruptcy Code." The agreement also provides that Ms. Harvey is required to arbitrate any claims she may have against Respondent or MD, though MD is not a party to the agreement.
7. Ms. Harvey also completed a "Disclosure Statement" that was among the documents sent to her by MD. One of these required disclosures stated as follows: "I/We understand the difference between secured and unsecured debts. . . ."
8. Respondent personally took no actions to ensure that Ms. Harvey actually had such an understanding about the different types of debt referenced in paragraph 7 of this Complaint.
9. After Ms. Harvey returned the paperwork referenced in paragraphs 6 and 7 of the Complaint, MD sent letters to Ms. Harvey's creditors on Respondent's letterhead, over

Respondent's electronic signature. These letters advised the creditors that Ms. Harvey was represented "with respect to the attempted negotiation and resolution of his/her/their unsecured debts" and requested that no further direct communications be made to Ms. Harvey.

10. The letters referenced in paragraph 9 of this Complaint directed that all communications be sent to "Justin Fernandez Attorney at Law; c/o MORGAN DREXEN: Integrated Legal Systems; 675 Anton Blvd.; Costa Mesa, CA 92626.
11. The letters referenced in paragraphs 9 and 10 of this Complaint also provided a contact telephone number of 1-800-868-1581, which is a telephone number for MD's Costa Mesa, California office.
12. The letters to Ms. Harvey's creditors referenced in paragraphs 9 through 11 of this Complaint raised the possibility of a bankruptcy petition by Ms. Harvey.
13. Respondent has testified that he was unaware if any bankruptcy petition had actually been prepared on Ms. Harvey's behalf.
14. Ms. Harvey became unhappy with the services of Respondent and MD when she contacted several of her creditors directly and was told that no further communication had been made since the letters described in paragraphs 9 through 12 of this Complaint.
15. Ms. Harvey did not first speak to Respondent until several months after the representation of Ms. Harvey began, when she became dissatisfied with the services being provided to her regarding her debts.
16. After several unsuccessful attempts to contact Respondent directly, Ms. Harvey contacted "Call for Action," an international nonprofit network of consumer hotlines working in partnership with The Cincinnati Enquirer.

17. Following Ms. Harvey's contact to "Call for Action", Respondent contacted Ms. Harvey and offered to refund 90% of the fees she had paid to date.
18. A Legal Assistant at MD sent Ms. Harvey a letter (on MD letterhead) dated July 7, 2014 enclosing a check from Howard Law PC to Ms. Harvey in the amount of \$1,342.80, which is 90% of the \$1,492.00 that Ms. Harvey paid for Respondent's representation.
19. The address listed on the check from Howard Law referenced in paragraph 18 of the Complaint is the same 675 Anton Blvd. address listed for MD itself.
20. Ms. Harvey has no explanation as to why the refund referenced in paragraphs 18 and 19 of this Complaint were issued by Howard Law.
21. At no point did Ms. Harvey meet with Respondent in person.
22. Respondent has been physically present at MD's California office only three times and none of these visits occurred at any time during the representation of Ms. Harvey.
23. By reason of the foregoing, Respondent has violated his oath of office and the Rules of Professional Conduct, specifically:
 - Rule 1.3, by failing to act with reasonable diligence and promptness in his representation of Ms. Harvey;
 - Rule 1.4(a)(2), by failing to reasonably consult with Ms. Harvey about the means by which Ms. Harvey's objectives were to be accomplished;
 - Rule 1.4(b), by failing to explain the matters surrounding his representation of Ms. Harvey to an extent reasonably necessary to permit Ms. Harvey to make informed decisions regarding the representation;
 - Rule 2.1, by failing to exercise independent professional judgment and render candid advice to Ms. Harvey; and

- Rule 5.3(b), by failing to make reasonable efforts to ensure that the conduct of nonlawyers employed by, retained by, and/or associated with Respondent are compatible with the professional obligations of Respondent.

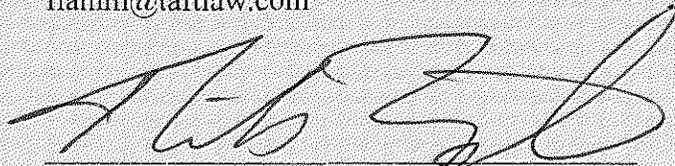
WHEREFORE, Relator alleges the Respondent is chargeable with misconduct as an attorney at law, which misconduct has brought disrepute to the legal profession, and, by reason thereof, Relator requests that Respondent be disciplined pursuant to Rule V of the Rules for the Government of the Bar of Ohio.

Respectfully submitted,

CINCINNATI BAR ASSOCIATION



Justin Flamm
425 Walnut Street, Suite 1800
Cincinnati, Ohio 45202-3957
Tel: 513.381.2838
flamm@taftlaw.com



Nicholas A. Zingarelli (OH-0079110)
632 Vine Street - Suite 305
Cincinnati, OH 45202
513-381-2047
nick@zingarellilaw.com



Edwin W. Patterson, III (0019701)
General Counsel
Cincinnati Bar Association
225 East Sixth St., 2nd Floor
Cincinnati, OH 45202
513-699-1403
ewpatterson@cincybar.org

CERTIFICATE

The undersigned, Chairman of the Grievance Committee of the Cincinnati Bar Association, hereby certifies that Justin Flamm, Nicholas Zingarelli, and Edwin W. Patterson, III 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: May 29, 2015


Grievance Committee Chair

Gov. Bar R. V, Section 10 *Requirements for Filing a Complaint.*

(1) Definition. "Complaint" means a formal written allegation of misconduct or mental illness of a person designated as the respondent.

* * *

(7) Complaint filed by Certified Grievance Committee. Six copies of all complaints shall be filed with the Director of the Board. Complaints filed by a Certified Grievance Committee shall be filed in the name of the committee as relator. The complaint shall not be accepted for filing unless signed by one or more attorneys admitted to the practice of law in Ohio, who shall be counsel for the relator. The complaint shall be accompanied by a written certification, signed by the president, secretary, 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. The complaint also may be signed by the grievant.

(8) Complaint filed by Disciplinary Counsel. Six copies of all complaints shall be filed with the Director of the Board. Complaints filed by the Disciplinary Counsel shall be filed in the name of the Disciplinary Counsel as relator.

(9) Service. Upon the filing of a complaint with the Director of the Board, the relator shall forward a copy of the complaint to the Disciplinary Counsel, the Certified Grievance Committee of the Ohio State Bar Association, the local bar association, and any Certified Grievance Committee serving the county or counties in which the respondent resides and maintains an office and for the county from which the complaint arose.