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APR 04 2016

BOARD OF PROFESSIONAL CONDUCT

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

In re:	:	
LORAIN COUNTY BAR ASSOCIATION: LEGAL ETHICS AND GRIEVANCE COMMITTEE	:	**CASE NO.** 16 - 010
c/o Lorain County Bar Association		**CERTIFIED COMPLAINT**
The Lawyer's Loft	:	
627 W. Broad Street		
Elyria, Ohio 44035	:	
Relator,	:	
-v-	:	
KENNETH A. NELSON, ESQ.	:	
175 Inwood Boulevard		
Avon Lake, Ohio 44012	:	
Registration No. 0075834		
	:	
Respondent.		

FILED

APR 11 2016

BOARD OF PROFESSIONAL CONDUCT

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NOW COMES Relator, Lorain County Bar Association Legal Ethics and Grievance Committee, by and through the undersigned Bar Counsel, and alleges that Respondent, Kenneth A. Nelson (Registration No. 0075834) Attorney at Law, duly admitted and in good-standing to practice law in the State of Ohio, is guilty of the misconduct more fully described below.

INTRODUCTION

1. That Respondent, Kenneth A. Nelson ("Respondent"), was admitted to the practice of law in the State of Ohio on April 11, 2003.

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 on October 22, 2015 Respondent was publicly reprimanded by the Supreme Court of Ohio for committing multiple ethical violations in the representation of a single client, including neglect of a client matter and failure to communicate, in the matter of *Lorain Cty. Bar Assn v. Nelson*, Slip Opinion No. 2015-Ohio-4337.

4. That Respondent's status as an attorney in the State of Ohio is currently "In Good Standing."

5. That on August 17, 2015 a Grievance ("The Grievance") was filed with the Disciplinary Counsel for the Supreme Court of Ohio ("Disciplinary Counsel.")

6. That The Grievance was also filed with the Cleveland Metropolitan Bar Association and was received by the Lorain County Bar Association ("LCBA") on September 8, 2015.

7. That The Grievance was filed by one Linda Sanchez ("Sanchez") on behalf of Efren Vega ("Vega.")

8. That LCBA, by and through its Certified Legal Ethics and Grievance Committee ("The Committee"), opened an investigation and assigned The Grievance to Attorney Leslie A. Gentile ("Attorney Gentile"), a member of The Committee, for investigation.

9. That on or around September 10, 2015 Attorney Gentile sent Respondent notice of The Grievance via certified mail and requested that he respond within twenty (20) days from the date of the correspondence.

10. That Respondent failed to respond to The Grievance within twenty (20) days or by September 30, 2015.

11. That as a result of Respondent's failure to timely respond to The Grievance, on September 30, 2015 Attorney Gentile sent Respondent an email requesting that he advise as to when he would respond.

12. That Respondent failed to reply to Attorney Gentile's September 30, 2015 email or further provide a response to The Grievance.

13. That on October 5, 2015 Attorney Gentile sent a further correspondence to Respondent via both regular and electronic mail in which she enclosed her initial letter of September 10, 2015 and her email of September 30, 2015 and inquired as to why she had not received any communication from Respondent in response to her previous inquiries.

14. That on October 6, 2015 Respondent contacted Attorney Gentile via telephone and indicated that he had received The Grievance and would provide his written response by October 9, 2015.

15. That on the same date, Attorney Gentile confirmed with Respondent via email his agreement to provide his response to The Grievance by October 9, 2015.

16. That Respondent failed to respond to The Grievance by October 9, 2015.

17. That on October 12, 2015 Attorney Gentile again advised Respondent via email that he had failed to reply to The Grievance despite his commitment to provide his reply by October 9, 2015.

18. That on October 26, 2015 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.

19. That the matter was assigned to Attorney D. Chris Cook, Bar Counsel to LCBA, for prosecution.

20. That on February 11, 2016 a Notice of Intent to File with a copy of the Certified Complaint was served upon Respondent by Bar Counsel.

21. 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 regularly scheduled meeting of The Committee to address the Certified Complaint and allegations contained therein.

22. That on March 17, 2016 Respondent refunded to Ms. Sanchez $9,000.00 of the initial $10,000.00 fee received on behalf of Efren Vega.

23. That on March 17, 2016 Respondent sent Ms. Sanchez his trust check No. 1054 in the sum of $9,000.00.

24. That on March 18, 2018 Respondent filed a formal reply to The Grievance with Attorney Gentile, Bar Counsel and The Committee.

25. That on March 21, 2016 Respondent appeared, with counsel, at a regularly scheduled meeting of The Committee to address the issues, concerns and allegations raised in the Certified Complaint.

26. That Respondent's appearance before The Committee did not alter The Committee's position on probable cause or the filing of the Certified Complaint.

FACTUAL ALLEGATIONS

27. Relator incorporates and realleges the allegations contained in paragraphs 1-26 above as if fully rewritten herein.

28. That on or about May 28, 2015 Vega was charged with Conspiracy to Possess with Intent to Distribute Heroin in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A) & 846 by way of a Complaint filed in the United States District Court for the Northern District of Ohio. *U.S. v. Vega*, N.D. Ohio, 1:15 MJ 3104.

29. That Vega instructed Sanchez, Vega's fiancé, to retain Respondent to defend the federal charges pending against him due to the passing of his previous attorney, Edward Heffernan.

30. That on or about May 29, 2015 Sanchez met with Respondent for the first time in Cleveland, Ohio and retained him on behalf of Vega for the sum of $10,000.00.

31. That Sanchez paid Respondent in cash and did not receive a receipt for the $10,000.00 payment.

32. That upon information and belief, Respondent did not deposit the $10,000.00 fee into a client trust account but instead, deposited the fee directly into his operating account.

33. That Respondent did not present Sanchez with nor did Sanchez or Vega execute a written fee agreement for Respondent's services.

34. That Respondent failed to advise Vega and/or Sanchez that if Respondent did not complete the representation for any reason that they may be entitled to a refund of some or all of the fee.

35. The Respondent failed to advise Vega and/or Sanchez in writing that Respondent did not maintain professional liability insurance.

36. That on or about May 29, 2015 Respondent entered his appearance as retained counsel on behalf of Vega in his criminal case pending in the United States District Court for the Northern District of Ohio.

37. That on or about June 1, 2015 Respondent filed a Motion for Continuance requesting that the court continue the Preliminary/Detention Hearing scheduled for June 2, 2015 until June 5, 2015.

38. That on June 3, 2015 Respondent visited with Vega while he was detained.

39. That on or about June 5, 2015 Respondent filed a Waiver of Preliminary Hearing; a Waiver of Detention Hearing; and a Waiver of Thirty Day Indictment.

40. That on the same date, the Court approved each Waiver.

41. That on June 11, 2015 Respondent visited with Vega for a second time.

42. That upon information and belief, Respondent obtained Vega's wallet from an FBI agent on or about June 11, 2015.

43. That shortly thereafter, Vega terminated Respondent's services and requested that Sanchez seek a refund of $9,000.00 of the $10,000.00 funds paid to Respondent and the return of his wallet.

44. That Vega did not believe that Respondent's fee was justified based on the minimal amount services he had provided and lack of favorable results he had obtained.

45. That Sanchez also personally met with Respondent to terminate his services based on her and Vega's dissatisfaction with Respondent's representation.

46. That on or about June 12, 2015 Sanchez sent Respondent a text message requesting that he return Vega's wallet and money because Vega felt the money he spent on Respondent was "more than [his] services."

47. That Respondent replied to Sanchez's text message and assured her that he would get "it to [her]" as soon as he prepared the bill.

48. That on or about June 15, 2015 Sanchez sent Respondent another text message in which she requested an update on the status of the invoice.

49. That Respondent replied to Sanchez's text message and advised that he was "working on" the bill and would get it done "asap."

50. That on June 24, 2015 Respondent filed a Motion for Withdrawal as Attorney of Record for Vega.

51. That on July 7, 2015 Respondent advised Sanchez via text message that the hearing on his Motion to Withdraw was set for the following day.

52. That Respondent further advised that if the Court granted his Motion to Withdraw, he would finalize the bill for his services and would meet with Sanchez.

53. That on July 8, 2015 Respondent's Motion to Withdraw as counsel for Vega was granted following a hearing.

54. That despite his promise to Sanchez, Respondent failed to finalize and forward an invoice to Sanchez for his services or provide a refund for the funds advanced.

55. That as a result, on August 12, 2015 Sanchez sent Respondent correspondence advising that she was pursuing disciplinary action for his failure to refund $9,000.00 of the $10,000 he was paid on May 29, 2015.

56. That upon information and belief, Respondent remains in possession of Vega's wallet and never provided an accounting or invoice to Vega or Sanchez.

57. That on March 17, 2016 Respondent refunded to Ms. Sanchez $9,000.00 of the initial $10,000.00 fee received on behalf of Efren Vega.

58. That on March 17, 2016 Respondent sent Ms. Sanchez his trust check No. 1054 in the sum of $9,000.00.

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

59. Relator incorporates and realleges the allegations contained in paragraphs 1-58 above as if fully rewritten herein.

60. That as alleged above, on or about May 29, 2015 Respondent charged and collected a fee of $10,000.00 to represent Vega in a criminal matter pending in the United States District Court for the Northern District of Ohio.

61. That on the same date, Respondent entered his appearance as retained counsel on behalf of Vega in the criminal matter.

62. That Respondent filed several pleadings on Vega's behalf and visited with Vega on two occasions between June 1, 2015 and June 11, 2015.

63. That approximately two (2) weeks later, on June 11, 2015 Vega terminated Respondent as he was dissatisfied with Respondent's representation and felt the money he spent on Respondent was more than [his] services.

64. That on June 24, 2015 Respondent filed a Motion for Withdrawal as Attorney of Record for Vega which was granted following a hearing on July 8, 2015.

65. That following his withdrawal as counsel and despite demand for a refund and an itemized invoice for his services, Respondent failed and refused to provide either to Sanchez or Vega until after the initiation of disciplinary proceedings.

66. That the fee Respondent charged to Vega was clearly excessive given, in part, the time and labor Respondent expended on Vega's case; the amount of work and results Respondent obtained for Vega, and the nature and length of the professional relationship with Vega.

67. That Respondent's charge and collection of $10,000.00 in fees from his client constitutes a clearly excessive fee in violation of ORPC 1.5(a).

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

68. Relator incorporates and realleges the allegations contained in paragraphs 1-67 above as if fully rewritten herein.

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

70. That on May 29, 2015 Respondent accepted a $10,000.00 fee to represent Vega.

71. That upon information and belief, Respondent failed to deposit this payment into his trust or IOLTA account and instead, took the entire fee and deposited it into his operating account.

72. That when Respondent took the $10,000.00 fee he had not yet earned the fees or incurred expenses to justify paying himself.

73. 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)

74. Relator incorporates and realleges the allegations contained in paragraphs 1-73 above as if fully rewritten herein.

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

76. That Respondent's failure to maintain a copy of a fee agreement, records, bank accounts and statements, and monthly reconciliations for his client, Vega, 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) – *FEES AND EXPENSES:* REFUND)

77. Relator incorporates and realleges the allegations contained in paragraphs 1-76 above as if fully rewritten herein.

78. That Respondent charged, and was paid by Sanchez, a sum of $10,000.00 as a "flat fee," "earned upon receipt" fee, or "nonrefundable" fee on behalf of Vega.

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

80. That Respondent's failure to advise Sanchez, in writing, that Vega 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 1.4(c) – *COMMUNICATION:* INSURANCE)

81. Relator incorporates and realleges the allegations contained in paragraphs 1-80 above as if fully rewritten herein.

82. That at all times relevant hereto, Respondent was required by the Ohio Rules of Professional Conduct to either maintain professional liability insurance or to inform his client in writing that he did not.

83. That during the entire course of Respondent's representation of Vega, Respondent failed to either maintain professional liability insurance or inform his client in writing that he did not.

84. That Respondent's failure to either maintain professional liability insurance or inform his client in writing that he did not constitutes a violation of ORPC 1.4(c).

COUNT SIX
(ORPC 1.16(d) – *DECLINING OR TERMINATING REPRESENTATION*: RETURN OF CLIENT PAPERS AND PROPERTY)

85. Relator incorporates and realleges the allegations contained in paragraphs 1-84 above as if fully rewritten herein.

86. That Respondent visited with Vega on two occasions, to wit; June 3, 2015 and June 11, 2015, while Vega was detained.

87. That upon information and belief, Respondent obtained Vega's wallet from an FBI agent on or about June 11, 2015.

88. That shortly thereafter, Vega terminated Respondent's services and requested that Sanchez seek a refund of $9,000.00 of the $10,000.00 funds paid to Respondent and the return of his wallet.

89. That on June 24, 2015 Respondent filed a Motion for Withdrawal as Attorney of Record for Vega which was granted following a hearing on July 8, 2015.

90. That Respondent failed to return Vega's wallet despite being specifically requested by Sanchez to do so.

91. That upon information and belief, Respondent remains in possession of Vega's wallet.

92. That Respondent's failure to return Vega, his client's, wallet upon termination of representation constitutes a violation of ORPC 1.16(d).

COUNT SEVEN
(ORPC 1.16(e) – *DECLINING OR TERMINATING REPRESENTATION*: REFUND OF UNEARNED FEE)

93. Relator incorporates and realleges the allegations contained in paragraphs 1-92 above as if fully rewritten herein.

94. That all as alleged above, on or about May 29, 2015 Respondent charged and collected a fee of $10,000.00 to represent Vega in a criminal matter pending in the United States District Court for the Northern District of Ohio.

95. That on the same date, Respondent entered his appearance as retained counsel on behalf of Vega in the criminal matter.

96. That Respondent filed several pleadings on Vega's behalf and visited with Vega on two occasions between June 1, 2015 and June 11, 2015.

97. That on or about June 11, 2015 Vega terminated Respondent as he was dissatisfied with Respondent's representation and felt the funds he expended on Respondent were unjustified based on the minimal amount of services provided and the lack of favorable results obtained by Respondent.

98. That on June 24, 2015 Respondent filed a Motion for Withdrawal as Attorney of Record for Vega which was granted following a hearing on July 8, 2015.

99. That following his withdrawal as counsel and despite demand for a refund and an itemized invoice for his services, Respondent failed and refused to provide either to Sanchez or Vega until after the initiation of disciplinary proceedings.

100. That a portion of the fee Respondent collected in advance of his withdrawal was unearned.

101. That Respondent's untimely refund of a portion of his client's fee which was paid in advance yet unearned upon termination of representation constitutes a violation of ORPC 1.16(e).

COUNT EIGHT
(ORPC 8.1(b) & GOV. BAR R V§9(G) – *DUTY TO COOPERATE*)

102. Relator incorporates and realleges the allegations contained in paragraphs 1-101 above as if fully rewritten herein.

103. That Respondent failed on multiple occasions to cooperate with the investigation by The Committee.

104. That examples of Respondent's failure to cooperate include, but are not limited to:

A. Respondent failed to timely respond in writing by September 30, 2015;

B. Respondent failed to respond to Attorney Gentile's September 30, 2015 email;

C. Respondent failed to provide his response by October 9, 2015 despite receiving an extension of time to do so;

D. Respondent failed to respond to Attorney Gentile's follow-up email of October 12, 2015;

E. Respondent did not provide a written response to The Grievance until March 18, 2016.

105. That Respondent's failure to cooperate in a disciplinary investigation constitutes violations of ORPC 8.1(b) and Gov. Bar R V§9(G).

WHEREFORE, pursuant to Gov. Bar R V, Relator alleges that Respondent, Attorney Kenneth A. Nelson, 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,

D. CHRIS COOK, #0061073
Attorney for Relator & Bar Counsel
Lorain County Bar Association
Legal Ethics and Grievance Committee
The Commons
520 Broadway, Third Floor
Lorain, OH 44052
PH: (440) 246-2665
FX: (440) 246-2670
Email: cooklaw@centurytel.net

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:* KENNETH A. NELSON

Dated: March 29, 2016.

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 Regular U.S. Mail this 1 day of April, 2016:

Richard Dove, Esq.
Secretary of the Board of Commissioners
on Grievance and Discipline
65 S. Front Street, 5th Floor
Columbus, OH 43215-3431

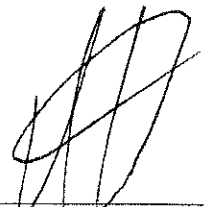
Scott Drexel, Esq.
Supreme Court of Ohio
Office of Disciplinary Counsel
250 Civic Center Drive, #325
Columbus, OH 43215-7411

Ohio State Bar Association
c/o Eugene P. Whetzel, Esq.
Certified Grievance Committee
1700 Lakeshore
Columbus, OH 43204

Lorain County Bar Association
627 W. Broad Street
Elyria, OH 44035

Kenneth A. Nelson, Esq.
175 Inwood Boulevard
Avon Lake, OH 44012

Daniel G. Wightman, Esq.
158-A Lear Road
Avon Lake, OH 44012
Attorney for Respondent



D. CHRIS COOK
Attorney for Relator & Bar Counsel
Lorain County Bar Association
Legal Ethics and Grievance Committee

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BOARD OF PROFESSIONAL CONDUCT

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THE SUPREME COURT OF OHIO

In re:	:	
LORAIN COUNTY BAR ASSOCIATION: LEGAL ETHICS AND GRIEVANCE COMMITTEE	:	**CASE NO.**
c/o Lorain County Bar Association		**NOTICE OF WAIVER OF**
The Lawyer's Loft	:	**PROBABLE CAUSE REVIEW**
627 W. Broad Street		
Elyria, Ohio 44035	:	
Relator,	:	
-v-	:	
KENNETH A. NELSON, ESQ.	:	
175 Inwood Boulevard		
Avon Lake, Ohio 44012	:	
Registration No. 0075834		
	:	
Respondent.		

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NOW COMES Respondent, Kenneth A. Nelson, Esq., by and through counsel, and pursuant to Gov. Bar R. V §11(B), hereby expressly waives probable cause review of the Certified Complaint to be filed with the Board of Professional Conduct and consents to certification by The Board, having read and reviewed the Certified Complaint *in toto*.

READ & APPROVED:

KENNETH A. NELSON, ESQ.
Registration No. 0075834
Respondent

DANIEL G. WIGHTMAN, ESQ.
Registration No. 0008790
Attorney for Respondent

Respectfully submitted,

D. CHRIS COOK, #0061073
Attorney for Relator & Bar Counsel
Lorain County Bar Association
Legal Ethics and Grievance Committee
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