

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

RECEIVED

APR 19 2016

In re:)
)
Complaint against:)
)
Joseph E. Feighan, III (0066256))
)
14516 Detroit Avenue)
)
Lakewood, Ohio 44107)
)
Respondent,)
)
Cleveland Metropolitan Bar Association)
)
1375 E. Ninth Street, Floor 2)
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Cleveland, Ohio 44114)
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Relator.)
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BOARD OF PROFESSIONAL CONDUCT

No. 16 - 012

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

FILED

APR 29 2016

BOARD OF PROFESSIONAL CONDUCT

Relator alleges that Joseph E. Feighan, III, an attorney-at-law, duly admitted to the practice of law in the state of Ohio, is guilty of the following misconduct:

1. Respondent, Joseph E. Feighan, III, Ohio Supreme Court Attorney Registration Number 0066256 (hereinafter, "Respondent"), was admitted to the practice of law in the state of Ohio on September 12, 1996. Respondent is subject to the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

2. Respondent has been previously disciplined. On November 1, 2013, Respondent was suspended from the practice of law for noncompliance with Gov.Bar R. VI, which requires

attorneys to file a certificate of registration and pay applicable fees for the 2013/2015 attorney-registration biennium on or before September 1, 2013. Respondent subsequently complied and was reinstated to the practice of law on November 7, 2013.

BACKGROUND

3. In 2014, Gordon Bennett (“Bennett”) hired Respondent to commence a replevin action against King James South Condominium No. B Unit Owners Association, Inc. (“King James”).

4. At the time of Bennett’s engagement of Respondent, Respondent had no malpractice insurance, and Respondent failed to inform Bennett that he did not have malpractice insurance.

5. On December 18, 2014, Respondent filed a replevin action on behalf of Bennett against King James in *Gordon L. Bennett, Trustee of the Gordan L. Bennett Trust v. King James South Condominium No. B Unit Owners Association*, Cuyahoga County Court of Common Pleas, Case No. CV-14-837691 (the “Lawsuit”).

6. On December 30, 2014, Respondent’s checks for court costs in the amount of \$250, which were owed in connection with the filing of the Lawsuit, were returned for nonsufficient funds. The checks were attempted to be drawn on Respondent’s law office business account. At the time of the events in question, Respondent did not maintain an Interest On Lawyers’ Trust Account (“IOLTA”) account.

7. On March 6, 2015, Respondent filed an Amended Complaint for Replevin and Punitive Damages against King James and paid the court fees that were previously returned for nonsufficient funds.

8. At a Replevin Hearing on March 26, 2015, King James failed to appear despite being served notice. Respondent informed the Court at this hearing that King James's counsel would be entering an appearance later that day and that Respondent would not object to a continuance of the hearing so that King James could respond.

9. On April 6, 2015, King James filed a Motion to Dismiss the Amended Complaint (the "Motion to Dismiss"). Pursuant to Local Rule 11(c) of the Cuyahoga County Court of Common Pleas, Bennett's response to the Motion to Dismiss was due April 13, 2015.

10. Respondent failed to file a response to King James's Motion to Dismiss on April 13, 2015, nor did he file any response in opposition to the Motion to Dismiss at all.

11. On April 21, 2015, the Court granted the Motion to Dismiss.

12. Respondent filed a Motion for Reconsideration and Leave to File a Motion for an Extension to Respond to Defendant's 12(b)(6) Motion on April 22, 2015 (the "Motion for Reconsideration"). Respondent sought relief pursuant to Rule 60(B)(1) of the Ohio Rules of Civil Procedure for the reason of mistake, inadvertence, surprise, or excusable neglect.

13. Respondent attached an affidavit to the Motion for Reconsideration stating he required an extension of time to respond to the Motion to Dismiss due to time constraints, including an April 20, 2015 deadline to file an appeal brief in the Eighth District Court of Appeals and trial preparation for criminal cases. Respondent also stated in his affidavit that "I am diagnosed with chronic medical conditions which became aggravated during the approach of said deadlines adding to the necessity for an extension of time . . . [s]aid medical conditions are Narcolepsy, Obstructive Sleep Apnea and Central Sleep Apnea—the symptoms of which challenge sustained concentration and the ability to manage work scheduling.

14. On May 4, 2015, the Court denied the Motion for Reconsideration, finding that the requirements for relief under Rule 60(B)(1) were not met.

15. During the course of representation of Bennett, Bennett claims that Respondent did not adequately communicate with him regarding his case.

16. On September 17, 2015, the Certified Grievance Committee Investigator (the "Investigator") assigned to Bennett's grievance placed a telephone call to Respondent and left a voicemail explaining that he was assigned to investigate the grievance. Not receiving a return call, the Investigator left another voicemail with Respondent on September 22, 2015. When he again did not receive a return call, the Investigator sent Respondent a letter on September 29, 2015 and left another voicemail that same day stating that he would like to schedule a meeting for October 2, 2015.

17. Respondent did not respond to the Investigator until October 1, 2015, at which time he stated that he could not meet on October 2, 2015.

18. On November 6, 2015, the Investigator interviewed Respondent regarding the events that led to the grievance.

19. When the Investigator asked Respondent about his failure to file a timely responsive brief on behalf of Bennett, Respondent admitted his neglect. Respondent further stated that he is under a physician's care for narcolepsy and sleep apnea and that these conditions limit his ability to do litigation work. He indicated to the Investigator that he has difficulty staying awake during the day and maintaining attentiveness.

20. On November 29, 2015, in an email to the Investigator, Respondent stated that he was opening an IOLTA and intended to maintain malpractice insurance.

21. During the course of the investigation, Respondent stated that “commencing January 1st, 2016, I intend to narrow the scope of my practice to basic estate planning . . . [i]n light of my medical condition I am voluntarily refraining from civil cases requiring litigation, as well as criminal litigation following disposal of the few current cases now underway.”

22. On December 21, 2015, Respondent filed the case captioned *Morgu v. Lakewood City School District Board of Education*, Cuyahoga County Court of Common Pleas, Case No. CV-15-856093. Respondent is still an attorney of record in this case.

COUNT I – VIOLATION OF PROFESSIONAL CONDUCT RULE 1.16(a)(2)

23. Relator hereby adopts and incorporates by reference, as if fully stated herein, the allegations set forth in paragraphs 1 through 27 of the Complaint.

24. In Respondent’s written statement and during his discussions with the Investigator, Respondent stated that he is diagnosed with the chronic medical conditions of narcolepsy, obstructive sleep apnea, and central sleep apnea and that these conditions affected his ability to work on Bennett’s case and challenged his concentration and ability to manage work scheduling.

25. By failing to withdraw from the representation of Bennett when Respondent believed his medical condition was impairing his ability to represent him, Respondent violated the Ohio Rules of Professional Conduct, specifically Prof. Cond. Rule 1.16(a)(2), which provides that:

A lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if...the lawyer’s physical or mental condition materially impairs the lawyer’s ability to represent the client.

COUNT II – VIOLATION OF PROFESSIONAL CONDUCT RULE 1.3

26. Relator hereby adopts and incorporates by reference, as if fully stated herein, the allegations set forth in paragraphs 1 through 30 of the Complaint.

27. In April 2015, Respondent failed to file a response to the Motion to Dismiss in Bennett's case against King James in the Cuyahoga County Court of Common Pleas. The failure to file a response resulted in the Court granting the Motion to Dismiss.

28. Respondent's failure to file a response which resulted in dismissal of Bennett's case constitutes conduct in violation of the Ohio Rules of Professional Conduct, which at Prof. Cond. Rule 1.3 provides that:

A lawyer shall act with reasonable diligence and promptness in representing a client.

COUNT III – VIOLATION OF PROFESSIONAL CONDUCT RULE 1.15(a)

29. Relator hereby adopts and incorporates by reference, as if fully stated herein, the allegations set forth in paragraphs 1 through 33 of the Complaint.

30. In December 2014, the checks that Respondent deposited with the Cuyahoga County Court of Common Pleas to pay for filing costs on behalf of Bennett were returned to Respondent for nonsufficient funds. These checks were attempted to be drawn on Respondent's law firm business account, not an IOLTA account, because Respondent did not maintain an IOLTA account at this time.

31. Respondent's failure to maintain an IOLTA violates the Ohio Rules of Professional Conduct, which at Prof. Cond. Rule 1.15(a) provides that:

A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate interest-bearing account in a financial institution authorized to do business in Ohio and maintained in the state where the lawyer's office is situated. The account

shall be designated as a "client trust account," "IOLTA account," or with a clearly identifiable fiduciary title.

COUNT IV - VIOLATION OF PROFESSIONAL CONDUCT RULE 1.4(c)

32. Relator hereby adopts and incorporates by reference, as if fully stated herein, the allegations set forth in paragraphs 1 through 36 of the Complaint.

33. At the time of his undertaking of representation of Bennett, Respondent did not maintain professional liability insurance and failed to inform Bennett at the time of the engagement or any time during the representation that Respondent did not maintain professional liability insurance.

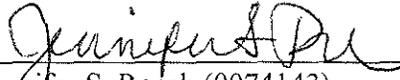
34. Respondent failed to inform Bennett that he did not maintain professional liability insurance in violation of the Ohio Rules of Professional Conduct, which at Prof. Cond. Rule 1.4(c) provides that:

A lawyer shall inform a client at the time of the client's engagement of the lawyer or at any time subsequent to the engagement if the lawyer does not maintain professional liability insurance... The notice shall be provided to the client on a separate form set forth following this rule and shall be signed by the client.

CONCLUSION

Wherefore, pursuant to Gov. Bar R. V, and Rules of Professional Conduct, Relator alleges that Respondent is chargeable with misconduct; therefore, Relator prays that Respondent be disciplined pursuant to Rule V of the Rules of the Government of the Bar of Ohio

Respectfully submitted,



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CERTIFICATE

The undersigned, **KAREN E. RUBIN, CHAIRPERSON**, of the **CLEVELAND METROPOLITAN BAR ASSOCIATION'S CERTIFIED GRIEVANCE COMMITTEE**, hereby certifies that **JENNIFER S. ROACH** and **HOLLY H. LITTLE** 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: April 14, 2016


Karen E. Rubin, Chairperson
Certified Grievance Committee

Rule V of the Supreme Court Rules for the Government of the Bar of Ohio, Section (10)

(E)(1) Content of the Complaint. A complaint filed with the Board shall be filed in the name of either disciplinary counsel or the bar association that sponsors the certified grievance committee, as relator. The complaint shall include all of the following:

- (a) Allegations of specific misconduct including citations to the rules allegedly violated by the respondent, provided that neither the panel nor the Board shall be limited to the citation to the disciplinary rule in finding violations based on all the evidence if the respondent has fair notice of the charged misconduct;
- (b) If applicable, an allegation of the nature and amount of restitution that may be owed by the respondent or a statement that the relator cannot make a good faith allegation without engaging in further discovery;
- (c) A list of any discipline or suspensions previously imposed against the respondent and the nature of the prior discipline or suspension;
- (d) The respondent's attorney registration number and his or her last known address;
- (e) The signatures of one or more attorneys admitted to the practice of law in Ohio, who shall be counsel for the relator and, where applicable, by bar counsel;
- (f) A written certification, signed by disciplinary counsel or the president 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.