RECEIVED

APR 20 2016

BOARD OF PROFESSIONAL CONDUCT

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

In re:	)	
	)	
Complaint against	)	No. 16 - 013
	)	
GLEN F. BUTTACAVOLI (Reg. No. 0024132) 30 – 1st Street SE Massillon, Ohio 44646	)	COMPLAINT
	)	
RESPONDENT	)	(Rule V of the Supreme Court Rules for the Government of the Bar of Ohio)
	)	
STARK COUNTY BAR ASSOCIATION Suite 400, Courtyard Centre 116 Cleveland Avenue, N.W. Canton, Ohio 44702-1727	)	
	)	
RELATOR	)	

FILED

APR 29 2016

BOARD OF PROFESSIONAL CONDUCT

Now comes the Stark County Bar Association, Relator, and for its complaint, alleges that Respondent Glen F. Buttacavoli (attorney number 0024132) is guilty of misconduct under the Ohio Rules of Professional Conduct and the Supreme Court Rules for the Government of the Bar of Ohio and should be disciplined and further alleges:

FACTS

1. Respondent Glen F. Buttacavoli was admitted to practice law in the state of Ohio on October 29, 1984.

2. On September 25, 2002, The Supreme Court of Ohio suspended Attorney Buttacavoli's license to practice law for six months with the suspension stayed for improperly providing legal and financial services without proper disclosure of the potential

conflict under former Disciplinary Rules 5-101(A)(1) and 5-104(A). (*Stark County Bar Association v. Buttacavoli*, 2002-Ohio-4743.)

3. Respondent holds himself out to the public as an "Elder Law Attorney" and operates a website at "elderlawohio.net".

4. Attorney Buttacavoli's practice is focused on the representation of the elderly. A very significant part of his practice is providing financial planning to the elderly for the purpose of making them Medicaid eligible for long term care.

5. In matters in which Respondent represented clients who applied for Medicaid benefits, generally Respondent would be named as the responsible representative and would personally make representations to the Stark County Department of Job and Family Services concerning the resources available to his clients and other matters required by Job and Family Services.

FIRST COUNT
(Marquerite A. Marchant Matter)

6. On or about August 19, 2011, Respondent Glen F. Buttacavoli undertook the representation of Marquerite A. Marchant for the purpose of advising her on financial planning including future Medicaid eligibility.

7. On or about March 21, 2013, upon the advice and with the assistance of Respondent Buttacavoli, Marquerite A. Marchant signed a quit-claim deed gifting to her children a life estate interest she held in real property for the purpose of avoiding inclusion of the value of the life estate as a resource for the purpose of determining Medicaid eligibility.

8. On or about September 25, 2013, upon the advice and with the assistance of Respondent, Marquerite A. Marchant gifted ownership of a life insurance policy to her

daughter to avoid the inclusion of the value of that life insurance as a resource available for computing Medicaid eligibility.

9. On or about September 25, 2013, upon the advice and with the assistance of Respondent Buttacavoli, Marquerite A. Marchant gifted the ownership of stock to her daughter for the purpose of avoiding inclusion of the value of the stock in a calculation of resources available for Medicaid eligibility.

10. On or about May 1, 2014, Marquerite A. Marchant appointed Respondent as her representative for the purpose of seeking Medicaid assistance.

11. On or about May 1, 2014, Respondent on behalf of Marquerite A. Marchant filed an application for Medicaid assistance with the Ohio Department of Job and Family Services. This application was signed by Respondent.

12. In the application to the Ohio Department of Job and Family Services, Attorney Buttacavoli failed to reveal the prior transfer of the life estate as well as the transfer of stock and a life insurance policy by his client, Marquerite A. Marchant.

13. On June 13, 2014, Respondent appeared at the Stark County Department of Job and Family Services in Canton, Ohio to be interviewed as the representative of the applicant, Marquerite A. Marchant.

14. During this June 13, 2014 interview, Respondent Buttacavoli represented to the Ohio Department of Job and Family Services that no one had "transferred/sold/given away resources in the last five years."

15. These representations were false and known by Respondent to be false.

16. The representation of Respondent Buttacavoli was made to Job and Family Services for the purpose of inducing them to qualify his client, Marquerite A. Marchant for Medicaid benefits.

17. Respondent Buttacavoli was required by law to disclose the existence of the prior transfers to Job and Family Services.

18. At the conclusion of the interview the results of the interview, including the misrepresentation concerning available resources were printed and signed by Respondent Buttacavoli who represented his responses to be truthful. At the time of his signature, Attorney Buttacavoli knew that his responses were not truthful but made them anyway to qualify his client for Medicaid benefits.

19. Upon investigation, Job and Family Services discovered that contrary to the representation of Respondent, a life estate had been transferred by Respondent's client within the prior five years.

20. The finding that this life estate was transferred and would constitute a resource applicable to the eligibility of Marquerite A. Marchant for Medicaid services was confirmed after an appeal by Respondent.

21. Following this ruling, and hiring new counsel, the family of Marquerite A. Marchant notified Job and Family Services that there was stock and a life insurance policy that had also been transferred on the recommendation and with the assistance of Respondent, Buttacavoli.

22. As a result of these disclosures, the client Marquerite A. Marchant was penalized in the amount of $8,640.00 and the Medicaid funds available to her were reduced.

23. Upon notification to the Respondent that the prosecutor was reviewing potential criminal charges, on or about August 15, 2015 Respondent repaid to the Department of Job and Family Services the amount of the penalty, $8,640.00.

24. On September 23, 2015, Glen F. Buttacavoli appeared in the Stark County Common Pleas Court for arraignment on a bill of information charging him with

falsification (Revised Code 2921.13(A)(4)) a misdemeanor of the first degree to which Attorney Buttacavoli pled guilty.

25. Upon his plea of guilty, Respondent was sentenced to 180 days in the Stark County Jail suspended on the condition of one year of good behavior and was further ordered to pay a fine in the amount of $500.00 and the costs of prosecution. The fine and costs have been paid by Respondent.

26. Respondent entered into a written fixed non-refundable fee contract captioned "Medicaid Legal Service Agreement" with Marquerite A. Merchant on April 29, 2015. The fixed fee was in the amount of $4,300.00 for which Respondent was to provide "consultations, preparations of Medicaid application, qualifications, and compilations involving all financial and personal information necessary, to complete the Medicaid interview."

27. The written fee agreement did not advise the client that she would be entitled to a refund of all or a portion of the fee should the lawyer fail to complete the representation. To the contrary, the fee agreement provided that no cash refunds would be made.

28. Upon determination by Job and Family Services that the transfer of the life estate was a resource that should be considered in determining Medicaid eligibility, Respondent charged an additional $2,500 fixed, non-refundable fee for prosecuting an appeal. No written fee agreement was entered into concerning this non-refundable fee and the client was not advised in writing of the right to terminate the representation and receive any refund of the monies paid.

29. Upon learning of Respondent's conduct, the client Marquerite A. Marchant discharged Mr. Buttacavoli from their service and incurred additional expense to retain new counsel. No fees were returned by Respondent as a result of the termination.

30. Respondent's conduct violates:

a. Prof. Cond. R. 1.5(d)(3)(entering into a nonrefundable fee agreement without advising the client in writing that if the lawyer does not complete the representation for any reason, the client may be entitled to a refund of all or part of the fee based upon the value of the representation);

b. Prof. Cond. R. 1.16(e)(failing to refund the unearned portion of the fixed fee);

c. Prof. Cond. R. 3.3(a)(making a false statement of fact to a tribunal - the Stark County Department of Jobs and Family Services);

d. Prof. Cond. R. 8.4(b)(committing an illegal act that reflects adversely on the lawyer's honesty and trustworthiness);

e. Prof. Cond. R. 8.4(c)(engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); and,

f. Prof. Cond. R. 8.4(d)(engaging in conduct that is prejudicial to the administration of justice).

SECOND COUNT
(Sally Daywalt Matter)

31. On or about March 4, 2014, an Application for Medicaid Benefits was submitted to the Stark County Department of Job and Family Services on behalf of Sally Daywalt, by her son, Robert Venables.

32. On or about March 14, 2014, Sally Daywalt retained Respondent to represent her in connection with her Medicaid Application.

33. On March 31, 2014, Sally Daywalt signed power of attorney paperwork notarized by the Respondent and recorded it at the Stark County Recorder's Office on April 4, 2014.

34. On March 31, 2014, Sally Daywalt signed a quit-claim deed gifting her life estate interest in a plot of real estate to her two children, Robert L. Venables, Jr. and Leann M. Booker. Respondent Buttacavoli notarized the quit-claim deed and filed the deed with the recorder's office.

35. On or about April 11, 2014, the Stark County Department of Job and Family Services received from Respondent Buttacavoli's office an authorized representative form naming Respondent Buttacavoli as Sally Daywalt's authorized representative.

36. On May 8, 2014, Respondent Buttacavoli attended and completed a Job and Family Services Medicaid Intake Interview on behalf of Sally Daywalt.

37. When interviewed by the Stark County Department of Job and Family Services, Respondent Buttacavoli was asked if Sally Daywalt had transferred any money, property or other resource in the last five years. Respondent Buttacavoli indicated "no". This response was knowingly false.

38. On May 8, 2014, Respondent Buttacavoli affirmed these representations in writing with the Stark County Department of Job and Family Services.

39. Following the interview with Respondent Buttacavoli, on May 8, 2014 a staff member at Job and Family Services investigated and found that there had been a life estate transferred.

40. As a result of the discovery of this transfer, on May 23, 2014, a determination was made by Job and Family Services that the value of the life estate ($36,034.82) should restrict coverage for Sally Daywalt.

41. On or about May 5, 2014, Respondent received a fixed, nonrefundable fee of $5,500.00 from Sally Daywalt to represent her in the pending Medicaid application process.

42. No written fee agreement was entered into concerning this non-refundable fee and the client was not advised in writing of the right to terminate the representation and receive a refund of monies paid.

43. Upon learning of Respondent's conduct, Sally Daywalt, through her son Robert Venables, repeatedly and unsuccessfully attempted to contact Respondent. Respondent then terminated Respondent as counsel. Respondent has not returned any fees as a result of the termination.

44. Respondent's conduct violates:

a. Prof. Cond. R.1.4(a)(failure to communicate with client);

b. Prof. Cond. R. 1.5(d)(3)(entering into a nonrefundable fee agreement without advising the client in writing that if the lawyer does not complete the representation for any reason, the client may be entitled to a refund of all or part of the fee based upon the value of the representation);

c. Prof. Cond. R. 1.15(a)(1)(failing to maintain a copy of any fee agreement);

d. Prof. Cond. R. 1.16(e)(failing to refund the unearned portion of the fixed fee);

e. Prof. Cond. R. 3.3(a)(making a false statement of fact to a tribunal - the Stark County Department of Jobs and Family Services);

f. Prof. Cond. R. 8.4(b)(committing an illegal act that reflects adversely on the lawyer's honesty and trustworthiness);

g. Prof. Cond. R. 8.4(c)(engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); and,

h. Prof. Cond. R. 8.4(d)(engaging in conduct that is prejudicial to the administration of justice).

THIRD COUNT
(Frew Matter)

45. Sometime in 1998, Respondent, Glen F. Buttacavoli began to represent Phyllis E. and Jack F. Frew, husband and wife in connection with financial planning matters.

46. On or about June 28, 2010, Respondent Buttacavoli prepared and Jack F. Frew signed a new Will in which Jack Frew intentionally disinherited his wife, Phyllis E. Frew "but not from lack of love and affection." The purpose of the new Will was to assist Phyllis Frew to remain Medicaid eligible.

47. On August 6, 2010, Respondent was paid $5,500 as a fixed, nonrefundable fee for the representation of the Frews before Job and Family Services.

48. On August 30, 2010, Respondent Buttacavoli as representative of Phyllis and Jack Frew applied for long term care Medicaid benefits.

49. On September 29, 2010, Respondent Buttacavoli completed an intake interview with Job and Family Services on behalf of Phyllis (the applicant) and Jack Frew (the community spouse).

50. On November 12, 2010, a resource assessment of the Frew application by the Stark County Department of Job and Family Services was completed and approved effective September 1, 2010.

51. On March 22, 2011, the Stark County Department of Job and Family Services became aware that Jack Frew passed away on February 1, 2011.

52. As a result of the passing of Jack Frew, Job and Family Services mailed a pre-termination letter to Respondent Buttacavoli requesting updated asset information for Phyllis Frew.

53. Having heard no response, the Stark County Department of Job and Family Services closed the case of Phyllis Frew effective April 30, 2011.

54. On or about May 25, 2011, Respondent Buttacavoli provided documentation to Job and Family Services of the filing of Jack Frew's Will with the Stark County Probate Court showing that the Will intentionally excluded Phyllis Frew.

55. On March 1, 2011, Respondent Buttacavoli filed with the Stark County Probate Court a form entitled "Election of Surviving Spouse to Take Under the Will".

56. The "Election of Surviving Spouse to Take Under the Will" form was prepared by Respondent and on his advice was signed by his client on February 21, 2011.

57. By the filing of this document with the Probate Court, Phyllis Frew elected not to receive $70,507.14 in assets from the Estate of Jack Frew.

58. On July 15, 2011 Job and Family Services determined that Phyllis Frew improperly transferred assets to her children by not electing to take against the Will and her Medicaid benefits would be thereby restricted.

59. An appeal taken by Respondent Buttacavoli on behalf of Phyllis Frew was denied on December 3, 2011 with a state hearing decision upholding the determination of restricted Medicaid benefits due to the improper transfer of assets.

60. Respondent's conduct violates:

a. Prof. Cond. R. 1.5(d)(3)(entering into a nonrefundable fee agreement without advising the client in writing that if the lawyer does not complete the representation for any reason, the client may be entitled to a refund of all or part of the fee based upon the value of the representation);

b. Prof. Cond. R. 1.15(a)(1)(failing to maintain a copy of any fee agreement);

c. Prof. Cond. R. 3.3(a)(making a false statement of fact to a tribunal - the Stark County Department of Jobs and Family Services);

d. Prof. Cond. R. 8.4(b)(committing an illegal act that reflects adversely on the lawyer's honesty and trustworthiness);

e. Prof. Cond. R. 8.4(c)(engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); and,

f. Prof. Cond. R. 8.4(d)(engaging in conduct that is prejudicial to the administration of justice).

CONCLUSION

For the foregoing reasons, the Stark County Bar Association demands that discipline be imposed upon Attorney Glen F. Buttacavoli consistent with Ohio law.

Richard S. Milligan (#0016385)
Bar Counsel
Stark County Bar Association
4684 Douglas Circle NW
Canton, Ohio 44735-5459
PHONE: (330) 526-0764
FAX: (330) 409-0249
email: rmilligan@milliganpusateri.com

James M. Conley (#0008071)
Two James Duncan Plaza
Massillon, Ohio 44646
PHONE: (330) 830-2688
email: jconley5@neo.rr.com

CERTIFICATE

The undersigned Chairman of the Grievance Committee of the Stark County Bar Association hereby certifies that James M. Conley and Richard S. Milligan 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 19, 2016

Kevin R. L'Hommedieu

4819-8620-2670, v. 1