



found that respondent failed to cooperate in Disciplinary Counsel's investigation of his conduct in violation of Prof.Cond. R. 8.1(b) and Gov.Bar R. V[9](G).

4. Respondent was reinstated to the practice of law on May 9, 2013.
5. Respondent is a sole practitioner and practices law as E. Darren McNeal Co., LLC.

**COMPLAINT**  
**(WARREN AND GWENDOLYN LANIER, SR.)**

6. On or about March 12, 2007, Warren and Gwendolyn Lanier, Sr. purchased a newly constructed home on Spring Flower Way in Etna, Ohio from Maronda Homes Inc. of Ohio.
7. Shortly after they moved into the home, the Laniers began to experience problems with the home including an excess accumulation of water in the backyard.
8. The Laniers repeatedly contacted Maronda Homes in search of a solution to the water problem.
9. Engineers from the City of Etna examined the Laniers' yard and determined that the water did not drain properly.
10. In 2009, Maronda Homes regraded the Laniers' yard and installed a new drain but it did not solve the excess water problem.
11. After the new drain was installed, the Laniers obtained a permit for and installed a shed and a patio in their yard.

12. The water problem continued and the Laniers talked to their neighbors about the problem. During one conversation, the Laniers were told that one of their neighbors, a husband and wife, had successfully sued Maronda Homes for damage to their home caused by excess water in their yard. The Laniers asked the wife for the name of the attorney who represented them in the lawsuit against Maronda Homes and she gave the Laniers respondent's name.
13. As explained herein, the Laniers eventually learned that, in fact, it was not respondent who had represented the neighbors in their lawsuit against Maronda Homes.
14. The Laniers met with respondent at respondent's office on August 14, 2014.
15. During the August 14, 2014 meeting with respondent, the Laniers and respondent signed a fee agreement providing that respondent would represent them in a "drainage matter" and that the Laniers would pay "a retainer fee in the amount of \$400.00." The fee agreement further stated that respondent's hourly billing rate was \$250.
16. Respondent's fee agreement promised to "keep [the Laniers] fully informed of time charged for conferences, telephone calls (including calls to and from you), drafting documents, research, court time, and necessary travel time."
17. Respondent's fee agreement stated that he would "make every effort to expedite the handling of your situation promptly and efficiently and in accordance with the highest legal and ethical standards."
18. Under the terms of the fee agreement, respondent also agreed to provide the Laniers with "a Statement for Services Rendered itemizing the time expended and costs advanced" and to provide such statement(s), "usually on a monthly basis."

19. The Laniers paid \$100 of respondent's \$400 retainer fee on August 14, 2014.
20. At no time did respondent tell the Laniers that he was not sufficiently experienced in the relevant areas of law including but not limited to builder negligence, engineer negligence, breach of warranty, breach of contract, fraud, and/or a violation of the Consumer Sales Practices Act.
21. Shortly after the Laniers retained respondent in August 2014, respondent visited the Laniers' home and took pictures of the water drainage problem in their backyard.
22. The Laniers paid the remaining balance of respondent's retainer fee in three payments between October 2014 and January 2015.
23. Two months after the Laniers signed respondent's fee agreement and on October 21, 2014, respondent wrote a short letter to the "Customer Services Manager" at Maronda Homes.
24. Respondent mailed copies of the October 21, 2014 letter to addresses in Hilliard, Ohio, and Westland, Michigan.
25. Respondent's October 21, 2014 letter indicated that he had been retained by the Laniers regarding the "excessive water" accumulations in their yard. Respondent asked that Maronda Homes contact him at the "earliest convenience" to discuss the matter.
26. Respondent did not follow-up with Maronda Homes regarding his October 21, 2014 letter.
27. After respondent visited their property in 2014, the Laniers did not hear anything else from him. In March 2015, the Laniers started trying to contact respondent.

28. Beginning in March 2015, the Laniers called respondent's office on several occasions seeking information regarding their case against Maronda Homes.
29. Beginning in March 2015, the Laniers visited respondent's office unannounced on several occasions with the hope that they could speak to him; however, respondent was not present in the office.
30. After the Laniers hired respondent and during the time they were trying to contact him, they noticed that water was present and mold was growing in their basement as a result of the drainage problem.
31. On April 10, 2015, Warren Lanier sent respondent an email titled, "Mold appearing in basement of our house from outside water drainage." Mr. Lanier's email stated:

We called Danny Rogers a Certified Home Inspector relative to our concerns about a mold appearing on our basement wall today. He confirmed us that the spots appearing on our basement wall is mold showing up due to improper yard drainage. Since you are handling our case relative to improper yard drainage resulting from the builders mistake, we are referring Mr. Rogers to you in association with our case that you're handling, also your phone number 614-224-8400.

Danny Roger's phone number is 614-759-8752 or 614-657-8232. If you have any questions or a current update, please call me.

32. Respondent did not contact the Laniers in response to the April 10, 2015 email.
33. After being unable to contact respondent, the Laniers again spoke to their neighbors. At that time, the Laniers' learned from the husband, that, in fact, it was not respondent who had represented them in their lawsuit against Maronda Homes. The Laniers learned that respondent was either related to or was friends with the wife's sister.

34. On April 25, 2015, the Laniers wrote respondent a letter detailing their efforts to contact

him. The letter stated:

Over the past month, both my wife and I have tried to reach you via telephone to discuss and get an update on the progress of our lawsuit you agreed to take on against the builders of our home that we purchased nine years ago.

We did pay the required deposit for you to take on our case, and it was also our understanding you would keep us posted on the progress of the case.

On record we did have one meeting with you several months ago when you came to the house to take pictures and get a copy of the city engineer's property map. We also gave you a copy of the property map plus his information about the improper grading of our back yard that's the cause of improper drainage in our backyard downhill north of Main Street.

Since your last visit with us, our home inspector informed us some mold spots have come up on our basement wall facing the area where we have the backyard drainage problem. We called your office and left his name and phone number on your answering service. This is another reason we've been on the phone trying to talk to you.

We definitely need to meet and talk!!! Please get back to us immediately.

35. On May 19, 2015, the Laniers sent respondent another letter via email and U.S. Mail.

The letter stated:

We have been trying to communicate with you for quite some time since retaining you to handle our case against Maronda Home Builders.

We have paid you the required deposit to take the case and we have waited patiently to get updates from you relative to the progress of our case. Over the months since you came to our property took some pictures of how the faulty grading and drainage affects our back yard property we haven't heard from you.

We've called you frequently to get a report on the progress you're making with the case and gotten no return call or any form of communication from you at all. We even stopped by your office

recently and asked your secretary to have you call us, and we have not gotten any response or a return call.

In our opinion this is not the way business should be conducted between a lawyer and a client. We need to hear from you immediately or we will seek restitution of our initial retainer payment plus damages and failure on your part to provide services promised in accepting our case.

36. Unable to contact respondent after seven months, the Laniers started calling his office weekly in an attempt to talk to him.
37. The Laniers filed a grievance with relator on June 15, 2015.
38. On June 17, 2015, relator mailed respondent a copy of the Laniers' grievance and asked for a response.
39. On June 24, 2015, respondent wrote a second letter to Maronda Homes. This letter was sent via facsimile and addressed to Maronda Homes in Imperial, Pennsylvania. Respondent concluded the letter by stating that he hoped "to be able to discuss this important matter at your earliest convenience."
40. Respondent did not follow-up with Maronda Homes after sending the June 24, 2015 letter.
41. Having not received a reply to the Laniers' grievance from respondent, relator sent respondent a second letter of inquiry on July 6, 2015. Respondent received the second letter of inquiry on July 9, 2015.
42. On or about July 14, 2015, respondent visited the Laniers' home.
43. After respondent's July 2015 visit, the Laniers obtained another inspection of the property and a repair cost estimate dated July 30, 2015, that included fixing the damage

to their basement and the installation of a new drainage system on the property. The estimated cost was \$28,878.

44. Relator did not receive a response from respondent to its letters of inquiry regarding the Laniers' grievance.

45. Members of relator's investigative subcommittee met with respondent on December 9, 2015. At that time, respondent produced a letter addressed to relator dated July 13, 2015 that he indicated had been mailed to relator's office.

46. On December 9, 2015, respondent provided relator with a photocopy of his file regarding Laniers. In total, the file contained the following:

- a. The Laniers' fee agreement
- b. The October 21, 2014 letter to Maronda Homes
- c. A printed email from the Laniers dated April 10, 2015
- d. A fax coversheet and the June 24, 2015 letter to Maronda Homes
- e. A copy of the July 30, 2015 estimate for repairs to the Laniers' property
- f. Timesheets for services that were allegedly performed for the Laniers on the following dates:
  - i. October 7, 2014 (0.25 hour)
  - ii. February 15, 2015 (0.25 hour)
  - iii. April 30, 2015 (0.25 hour)
  - iv. July 14, 2015 (1.50 hours)
  - v. July 30, 2015 (2.50 hours)
  - vi. August 11, 2015 (0.25 hour)
  - vii. September 2, 2015 (0.25 hour)
  - viii. September 17, 2015 (0.25 hour)
  - ix. September 22, 2015 (0.25 hour)

47. To date, respondent has not produced any notes or research materials indicating what, if any, substantive legal services were performed for the Laniers.

48. Respondent did not perform any legal services for the Laniers between October 2014 and April 30, 2015.
49. Respondent never made contact with anyone at Maronda Homes who had the knowledge and/or the authority to discuss the Laniers' water drainage issues.
50. Respondent never obtained any information or documentation that was relevant to the Laniers' cause of action. For example, respondent never obtained the purchase contract for the home, architect's blueprints, closing documents, a home warranty, surveys, the building or subdivision site plan, the permits for installation of the patio and shed, the contract for installation of the shed and patio, building inspections, engineer's reports regarding the site, and/or copies of other lawsuits against Maronda Homes.
51. Respondent did not draft a complaint on the Laniers' behalf that could or would be filed against Maronda Homes and/or other defendants.
52. Respondent did not discuss the possibility of insurance coverage with the Laniers.
53. Respondent did not send the Laniers any bills or statements reflecting services performed on their behalf.
54. Respondent did not determine the basis for the Laniers' cause of action against Maronda Homes, *i.e.* a contract case, fraud, or a negligence matter.
55. Respondent never determined who the appropriate "defendant" would be or when the statute of limitations for the Laniers' cause of action against Maronda Homes would expire.

56. During the time that he provided legal representation to the Laniers, respondent did not maintain professional liability insurance in the minimum amounts set forth in Prof.Cond.R. 1.4(c).
57. Respondent did not provide the Laniers with notice that he does not maintain professional liability insurance in the minimum amounts set forth in Prof.Cond.R. 1.4(c).
58. Pursuant to Gov.Bar R. V(10)(E)(1)(b), relator alleges that respondent owes restitution to the Laniers; however, relator cannot make a good faith allegation regarding the amount owed without engaging in further discovery.
59. As set forth herein, respondent's conduct in representing Warren and Gwendolyn Lanier violates the Ohio Rules of Professional Conduct:
- a. Prof.Cond. R. 1.1 (A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation);
  - b. Prof.Cond.R. 1.3 (A lawyer shall act with reasonable diligence and promptness in representing a client);
  - c. Prof.Cond.R. 1.4(a)(2) (A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished);
  - d. Prof.Cond.R. 1.4(a)(3) (A lawyer shall keep the client reasonably informed about the status of the matter);
  - e. Prof.Cond.R. 1.4(a)(4) (A lawyer shall comply as soon as practicable with reasonable requests for information from the client); and,

- f. Prof.Cond.R. 1.4(c)(4) (A lawyer who does not maintain professional liability insurance in the requisite amounts shall inform a client of that fact at the time of the client's engagement of the lawyer. The notice provided to the client must be on a separate form as provided and shall be signed and dated by the lawyer and the client).

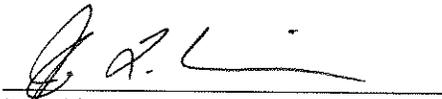
### CONCLUSION

**WHEREFORE**, relator submits that respondent, E. Darren McNeal, should be found in violation of these Ohio Rules of Professional Conduct and be sanctioned appropriately.

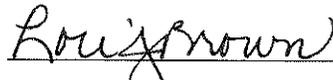
Respectfully submitted,



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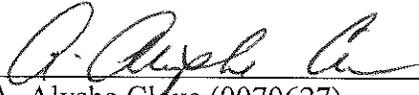


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COUNSEL FOR RELATOR

## CERTIFICATE

The undersigned Chairperson of the Certified Grievance Committee of the Columbus Bar Association hereby certifies that Vicki Jenkins, Esq., Jennifer Wilson, Esq., Lori J. Brown, Esq., and A. Alysha Clous, Esq., are duly authorized to represent Relator in the premises and have accepted the responsibility of prosecuting this complaint to its conclusion. After investigation, Relator believes reasonable cause exists to warrant a hearing on such complaint.

Dated: 4/21/16

Signed: Lisa Pierce Reisz  
Lisa Pierce Reisz, Esq., Chairperson  
Certified Grievance Committee, Columbus  
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