BEFORE THE BOARD OF COMMISSIONERS
ON GRIEVANCES AND DISCIPLINE OF
THE SUPREME COURT OF OHIO

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BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

In re:	)	
COMPLAINT AGAINST	)	**CASE NO.** 14-080
DENNIS A. DIMARTINO Atty Reg. No. 0039270 839 Southwestern Run, Suite 1 Youngstown, Ohio 44514	)	**COMPLAINT**
Respondent	)	
MAHONING COUNTY BAR ASSOCIATION, 114 E. Front Street Suite 100 Youngstown, Ohio 44503	)	(Rule V, Section 4 of the Supreme Court Rules for the Government of the Bar of Ohio)
Relator	)	

FILED
OCT 29 2014
BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

Relator, Mahoning County Bar Association, states for its cause of action against Respondent, Dennis Armand DiMartino:

I. Parties

1. Relator is a local bar association which maintains a certified grievance committee pursuant to Gov. Bar R. V, Section 3.

2. Respondent is an attorney-at-law and is licensed to practice law in the State of Ohio.

3. Respondent's bar registration status with the Supreme Court of Ohio is "Active" and his bar registration number is 0039270.

4. Respondent's last known address is 839 Southwestern Run, Suite 1, Youngstown, Ohio 44514.

II. Factual Background

5. At all times relevant to the Complaint, Respondent was a sole practitioner whose office was located in the City of Youngstown, Mahoning County, Ohio.

6. Ember Herrington was involved in a motor vehicle accident on or about May 17, 2003.

7. The tortfeasor had insurance coverage of $12,500.00 for liability and approximately $6,500.00 for property damage.

8. The liability claim against the tortfeasor was settled. Ember Herrington received approximately $6,500.00 for property damage.

9. On March 4, 2005, a deposit was made to Respondent's IOLTA account in the amount of $12,500.00.

10. On March 15, 2005, check number 2014 was issued in the amount of $4,344.93 from these settlement monies.

11. On March 17, 2005, check number 2013 in the amount of $8,155.07 was paid from these settlement monies.

12. Ember Herrington does not remember receiving more than approximately $6,500.00 for the property damage and no more than $1,200.00 related to the above personal injury claim.

13. Ember Herrington does not remember signing a contingency fee agreement.

14. Ember Herrington does not remember signing a closing statement relative to these monies.

15. Subsequently, a lawsuit was filed in Mahoning County Common Pleas Court for an underinsured motorist claim against Rita Chegar's (Ember Herrington's mother)

insurance company, American Family Insurance Company. That case was styled *Ember Herrington et al. v. American Family Insurance Company*, Mahoning County Common Pleas Court, Case No.: 2008 CV 1786.

16. Mahoning County Common Pleas Court Case No. 2008 CV 1786 was settled on or about January 6, 2010, for $15,000.00. Those monies were deposited in Respondent's IOLTA account in January, 2010.

17. Respondent's IOLTA account reflects that on January 13, 2010, a check was issued to Respondent in the amount of $5,000.00.

18. Respondent's IOLTA account reflects that on January 14, 2010, a check was made payable to Ember Herrington in the amount of $5,400.00.

19. Respondent's IOLTA account does not reflect what happened to the balance of $4,600.00.

20. As a result of the above motor vehicle accident, Medical Mutual of Ohio asserted a subrogation lien against Rita Chegar in the amount of $11,018.00.

21. Respondent negotiated the subrogation lien owed to a reduced amount.

22. Respondent agreed to pay the subrogation lien reduction from the settlement proceeds to Medical Mutual of Ohio.

23. On March 14, 2013, ACS Recovery Services mailed a notice regarding Medical Mutual of Ohio's subrogation lien to Rita Chegar indicating the lien monies were still owed.

24. The next day, Rita Chegar called Respondent and asked him why the subrogation lien had not been paid.

25. Respondent told Rita Chegar that he mailed a check to Medical Mutual of Ohio to satisfy the subrogation lien from his IOLTA account. However, he indicated that the check did not "clear".

26. Respondent told Rita Chegar that he would correct the problem.

27. A few weeks later, Rita Chegar encountered Respondent in the Mahoning County Court house (Rita Chegar is a court reporter for the Mahoning County Court of Common Pleas). At that time, Respondent indicated that the check from his IOLTA account payable to Medical Mutual of Ohio with regard to the subrogation lien, had not been negotiated. He again assured Rita Chegar that this problem would be corrected.

28. On June 13, 2013, Rita Chegar received a letter from ACS Recovery Service's staff attorney, Michael J. Jerva, informing her that she had 30 days to pay the subrogation lien.

29. Rita Chegar placed approximately 4 telephone calls to Respondent. Respondent failed to return her calls.

30. The ACS Recovery Services claim remains pending and unresolved.

31. On June 28, 2013, Rita Chegar filed a grievance against Respondent with the Mahoning County Bar Association's Certified Grievance Committee.

32. Thomas Infante, a member of the Mahoning County Bar Association's Certified Grievance Committee, was assigned to investigate Rita Chegar's complaint against Respondent.

33. On July 15, 2013, Investigator Infante sent a letter to Respondent explaining that he was the investigator with regard to the Chegar grievance. He attached a copy of the grievance. He asked Respondent to contact him.

34. Respondent never replied to Investigator Infante's inquiry.

35. In September, 2013, Investigator Infante encountered Respondent at the Mahoning County Courthouse. Respondent acknowledged that he had received the Investigator's letter. Respondent indicated he would provide a response no later than the next day.

36. Respondent never replied to Investigator Infante's inquires.

37. On October 3, 2013, Investigator Infante sent a certified letter to Respondent again asking him to respond. Investigator Infante reminded Respondent of their meeting in the Courthouse.

38. On October 9, 2013, Investigator Infante encountered Respondent in the Youngstown Municipal Court. Respondent apologized for failing to reply. He promised a response by the next day.

39. To date, Respondent has failed to reply to the grievance investigation.

40. Subsequently, Bar Counsel wrote to Respondent on January 30, 2014. Bar Counsel asked for a complete copy of Respondent's files relating to Rita Chegar and Ember Herrington. Bar Counsel asked for an identification of all relevant IOLTA accounts.

41. Respondent never replied.

42. Bar Counsel also wrote to Respondent on July 24, 2014, outlining information that was secured from Respondent's IOLTA account by way of a subpoena and asking for an explanation of various unresolved factual issues.

43. Again, Respondent failed to reply.

III. Prior Disciplinary History

44. Respondent was suspended from the practice of law for six (6) months, with the suspension stayed on the condition that no disciplinary complaints against Respondent were certified to the Board by a probable cause panel during this time, for violating DR 1-102(A)(6) by failing to: (1) timely respond to his client's inquiries, (2) provide his client with a settlement statement, and (3) promptly forwarding his client's portion of the settlement proceeds. See *Mahoning County Bar Association v. DiMartino* 71 Ohio St.3d 95 (Ohio 1994), 1994-Ohio-281.

45. Respondent was suspended from the practice of law in Ohio for one (1) year, with the suspension stayed, on the conditions that Respondent commit no further conduct and that he serve a one-year probation pursuant to Gov.Bar R. V(9) for violating DR 6-101(A)(3) prohibiting the neglect of an entrusted legal matter and 7-101(A)(2) prohibiting a lawyer from intentionally failing to carry out a contract of professional employment. See *Mahoning County Bar Association v. DiMartino*, 114 Ohio St.3d 174, 2007-Ohio-3605.

46. Respondent was suspended for six (6) months for violating Prof.Cond.R. 8.4(c) engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation with the additional penalty of lifting the stay and the reinstating the one year suspension from practicing law imposed in *Mahoning County Bar Association v. DiMartino*, 114 Ohio St.3d 174, 2007-Ohio-3605. See *Mahoning County Bar Association v. DiMartino*, 124 Ohio St.3d 360, 2010-Ohio-247.

IV. Disciplinary Violations

47. Respondent's conduct described above constitutes a violation of the following Rules of Professional Conduct:

a. Rule 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client;

b. Rule 1.4(a)(1) - for failing to promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required by these rules;

c. Rule 1.4(a)(2) - for failing to reasonably consult with a client about the means by which the client's objectives are to be accomplished;

d. Rule 1.4(a)(3) - for failing to keep the client reasonably informed about the status of the matter;

e. Rule 1.4(a)(4) - for failing to comply as soon as practical with reasonable request for information from the client;

f. Rule 1.5(a) – a lawyer shall not make an agreement for, charge, or collect an illegal or clearly excessive fee;

g. Rule 1.5(b) – the nature and scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, within a reasonable time after commencing the representation;

h. Rule 1.5(c) – for not providing a written contingent fee agreement and/or a closing statement (R.C. 4705.15(B) and (C));

i. Rule 8.4(c) – for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation relative to the status of the client's case;

j. Rule 1.15(a) – a lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with the representation separate from the lawyer's own property;

k. Gov. Bar R. V, Section 4(G) - for failure to cooperate in the investigation of this matter with the Certified Grievance Committee and Bar Counsel.

WHEREFORE, Relator respectfully requests that Respondent be appropriately disciplined for his misconduct.

MAHONING COUNTY BAR ASSOCIATION

By: _____

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CERTIFICATE

The undersigned Eric C. Johnson, Chairperson
(President, Secretary, Chairman of the Grievance Committee or Disciplinary Counsel)
of the Mahoning County Bar Association

hereby certifies that David C. Comstock, Jr., Esq.

_____, is *duly authorized to*
(is or are)
represent Relator in the premises and has *accepted the responsibility of*
(has or have)
prosecuting the complaint to its conclusion. After investigation, Relator believes reasonable cause exists to warrant a hearing on such complaint.

Dated _____, 20____

Chairperson, Certified Grievance Committee
(Title)

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

Section (4)

(4) (I) (8) *The Complaint; Where Filed; By Whom Signed.* A complaint shall mean a formal written complaint alleging misconduct or mental illness of one who shall be designated as the Respondent. Six (6) copies of all such complaints shall be filed in the office of the Secretary of the Board. Complaints filed by a Certified Grievance Committee shall not be accepted for filing unless signed by one or more members of the Bar of Ohio in good standing, who shall be counsel for the Relator, and supported by a certificate in writing signed by the President, Secretary or Chairman of the Certified Grievance Committee, which Certified Grievance Committee shall be deemed the Relator, certifying that said counsel are duly authorized to represent said Relator in the premises and have accepted the responsibility of prosecuting the complaint to conclusion. It shall constitute the authorization of such counsel to represent said Relator in the premises as fully and completely as if designated and appointed by order of the Supreme Court of Ohio with all the privileges and immunities of an officer of such Court. The complaint may also, but need not, be signed by the person aggrieved.

Complaints filed by the Disciplinary Counsel shall be filed in the name of Disciplinary Counsel as Relator.

Upon the filing of a complaint with the Secretary of the Board, Relator shall forward a copy thereof to Disciplinary Counsel, to the Certified Grievance Committee of the Ohio State Bar Association, to the local bar association and to any Certified Grievance Committee serving the county or counties in which the Respondent resides and maintains his office and for the county from which the complaint arose.

CERTIFICATE

The undersigned Eric C. Johnson, Esq. Chairperson
(President, Secretary, Chairman of the Grievance Committee or Disciplinary Counsel)
of the Mahoning County Bar Association
hereby certifies that Ronald E. Slipski, Esq.
_____, is (is or are) *duly authorized to represent Relator in the premises and* has (has or 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 _____, 20 ____

Chairperson, Certified Grievance Committee
(Title)

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

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