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

FILED
OCT 20 2014

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| IN RE:<br>COMPLAINT AGAINST<br>JANA BASSINGER DELOACH<br>Registration No. 0071743<br>P.O. BOX 2385<br>Akron, OH 44309 | * | Case No. 14-084 |
| RESPONDENT | * | **COMPLAINT AND CERTIFICATE**<br>(Rule V of The Supreme Court Rules for the Government of The Bar of Ohio) |
| AKRON BAR ASSOCIATION<br>57 South Broadway Street<br>Akron, Ohio 44308 | * | |
| RELATOR | * | |

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BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

* * *

Now comes the Relator, Akron Bar Association, and alleges that Jana Bassinger DeLoach, an Attorney at Law, Registration No. 0071743, duly admitted to the practice of law in the State of Ohio, has been engaged in misconduct in violation of the Ohio Rules of Professional Conduct:

## INTRODUCTION & PARTIES

1. The Akron Bar Association ("Relator") is a Certified Grievance Committee under Gov.Bar R.V(3)(C). Relator has been authorized by the Board of Commissioners on Grievances and Discipline for the Supreme Court of the State of Ohio to investigate allegations of misconduct by attorneys and initiate complaints as a result of investigations under the provisions of the Rules for the Government of the Bar as promulgated in the State of Ohio.
2. Jana Bassinger DeLoach ("Respondent") is an attorney at law licensed to practice in Ohio since November 1999, Registration No. 0071743, with her business address registered with the Supreme Court of Ohio as P.O. Box 2385, Akron, OH 44309.
3. On August 31, 2011, Respondent was suspended from the practice of law for a

period of six months by the Supreme Court of Ohio, with the entire suspension stayed. The Court further ordered that the Respondent serve two years of monitored probation. See *Akron Bar Association v. DeLoach*, Case No. 2011-0353.

4. On April 19, 2012, Respondent received a public reprimand by the Supreme Court of Ohio. See *Akron Bar Association v. DeLoach*, Case No. 2012-0688.

5. A disciplinary matter against Respondent is currently pending before the Supreme Court of Ohio. See *Akron Bar Association v. DeLoach*, Case No. 2014-0547.

6. Marvin A. Burrage ("Burrage") is a former client of Respondent, and an original complaining witness herein. At all times relevant herein, Burrage has been incarcerated by the Ohio Department of Rehabilitation and Corrections.

7. Steven Walker ("Walker") is a former client of Respondent, and an original complaining witness herein. At all times relevant herein, Walker has been incarcerated by the Ohio Department of Rehabilitation and Corrections.

## COUNT I –THE BURRAGE MATTER

Now comes Relator, and for Count I against Respondent states as follows:

8. In 2008, Burrage retained the services of Respondent to obtain a termination of his marriage.

9. Burrage paid Respondent a retainer fee of $750.00 to obtain the divorce, and the $750.00 included court costs.

10. It was understood between Burrage and Respondent that said fee was to be a flat fee to obtain the divorce.

11. Respondent did not provide Burrage with a written fee agreement.

12. Respondent did not deposit any part of said fee into her IOLTA account.

13. In August, 2009, Respondent attempted to file the complaint for divorce in Richland County, Ohio , but was not successful, having been advised by the Richland County Clerk of Court's Office that the complaint must be filed in Cuyahoga County, the county from which Burrage was incarcerated.

14. On December 1, 2011, twenty-eight (28) months after the attempted filing in Richland County, and in excess of thirty-six (36) months from being retained, Respondent did file the complaint for divorce in Cuyahoga County.

15. Along with the complaint for divorce and related pleadings, Respondent filed a poverty affidavit and obtained an order waiving the deposit of a filing fee.

16. Respondent failed to obtain service of the complaint for divorce upon Burrage's Wife.

17. On March 23, 2012, the Cuyahoga County Domestic Relations Court filed and served upon Respondent, an Order scheduling a dismissal hearing for May 31, 2012 due to lack of service.

18. Between March 23, 2012 and May 31, 2012, Respondent did nothing to perfect service of the complaint.

19. Respondent did not advise Burrage of the threatened dismissal.

20. On June 1, 2012, the complaint for divorce was dismissed, and court costs were assessed to Burrage.

21. Respondent did not inform Burrage of the dismissal of the complaint for divorce.

22. From June 1, 2012 until the filing of Burrage's grievance with the Certified Grievance Committee of the Akron Bar Association on January 2, 2014, Respondent did nothing to inform Burrage of the dismissal of the complaint for divorce, nor did she perform any additional services on his behalf.

23. On July 2, 2012, the Cuyahoga County Clerk Of Court's Office assessed court costs of $133.00 to Burrage, on which he has been paying approximately $2.50 per month toward said assessment from his prison account.

24. Respondent is responsible for payment of the court costs and owes restitution to Burrage for court costs he has paid as well as a refund of fees in part for not completing the representation.

25. Respondent did not obtain a divorce for Burrage.

## VIOLATIONS

26. Relator alleges that as a result of the information set forth in Count I, Respondent has violated the following Ohio Rules of Professional Conduct:

Rule 1.1 – Competence – Respondent did not provide competent representation to Burrage.

Rule 1.3 – Diligence – Respondent did not act with reasonable diligence and

promptness in her representation of Burrage.

Rule 1.4 – Communication –

(a)(1) Respondent did not promptly notify Burrage of the dismissal of his divorce complaint.

(a)(2) Respondent did not reasonable consult with Burrage about the means by which to accomplish his objectives.

(a)(3) Respondent did not keep Burrage reasonable informed about the status of the matter.

(a)(4) Respondent did not promptly comply with Burrage's requests for information.

(c) - Respondent did not inform Burrage of her lack of malpractice insurance nor did Respondent obtain Burrage's signature on a separate notice of her lack of malpractice insurance.

Rule 1.5 Fee and Expenses

(d)(3)-Respondent did not advise Burrage in writing that he may be entitled to a refund if the lawyer does not complete the representation.

Rule 1.15 – Safekeeping Funds and Property – Respondent did not deposit any part of Burrage's $750.00 payment for fees into her IOLTA account nor did she maintain any records of the payment or disbursements.

## COUNT II –THE IOLTA MATTER

Now comes Relator, and for Count II against Respondent states as follows:

27. In January 2014, Respondent withdrew $500.00 from her US Bank IOLTA account, resulting in an overdraft of $57.99.

28. During the course of Relator's investigation of the overdraft, the following was discovered:

    a. That Respondent does not have a business operating account.
    b. That Respondent does not have a personal checking account.
    c. That Respondent deposits her own funds into her IOLTA account.
    d. That Respondent does not deposit all legal fees paid in advance into her IOLTA account.

e. That Respondent does not write checks from her IOLTA account.

f. That Respondent's withdrawals from her IOLTA account are cash withdrawals.

g. That Respondent does not keep accurate records of her deposits or withdrawals from her IOLTA account.

h. That Respondent does not perform reconciliations of funds in her IOLTA account.

i. That Respondent pays personal and business expenses out of her IOLTA Account.

## VIOLATIONS

29. Relator alleges that as a result of the information set forth in Count II, Respondent has violated the following Ohio Rules of Professional Conduct:

Rule 1.15 – Safekeeping Funds and Property

(a)(2) – Respondent does not maintain records for each client on whose behalf funds are held in her IOLTA account.

(a)(3) – Respondent does not maintain records of her IOLTA account.

(a)(4) – Respondent does not maintain bank statements, deposit slips, etc for her IOLTA account.

(a)(5) – Respondent does not perform the required monthly reconciliation of her IOLTA account.

(b) – Respondent deposits her own funds into her IOLTA account.

(c) – Respondent does not deposit all legal fees paid in advance into her IOLTA account.

## COUNT III –THE WALKER MATTER

30. On October 31, 2005, Walker was convicted of murder with a firearm specification and was sentenced to fifteen (15) years to life with three (3) years for the firearm specification, resulting in an eighteen (18) years to life sentence.

31. In November of 2013, Respondent was retained by Walker to investigate his case and to file a Motion for a New Trial, based upon new evidence not available at the

time of trial.

32. Respondent and Walker agreed to a fee of $3500.00, $250.00 of which was paid on November 25, 2013 for a visit at Ross Correctional Institution ("RCI").

33. At the time of the consultation at RCI, or any subsequent time, Respondent did not provide Walker with the 1.4(c) Notice that she does not maintain professional liability insurance.

34. Through March 4, 2014, Respondent had received an additional $1,000.00, for a total of $1,250.00, leaving a balance due of $2,250.00.

35. No part of the $1,000.00 was deposited into Respondent's IOLTA Account.

36. There was no written fee agreement between Walker and Respondent; therefore, there is nothing in writing advising Walker that he may be entitled to a refund of all or part of the fee if Respondent does not complete the representation.

37. On or after November 25, 2013, Walker advised Respondent that there was a witness who would supply an affidavit attesting to his innocence.

38. Although Respondent indicates she has tried to contact this witness on several occasions, she had never communicated that to Walker.

39. Respondent has failed to keep Walker reasonably informed about the status of the matter and has failed to comply as soon as practicable with reasonable requests about the status of the matter.

40. Restitution is owed by the Respondent, but Relator cannot make a good faith allegation without engaging in further discovery.

## VIOLATIONS

41. Relator alleges that as a result of the information set forth in Count III, Respondent has violated the following Ohio Rules of Professional Conduct:

Rule 1.3 – Diligence – Respondent did not act with reasonable diligence and promptness in her representation of Walker.

Rule 1.4 – Communication –

(a)(3) Respondent did not keep Walker reasonable informed about the status of the matter.

(a)(4) Respondent did not promptly comply with Walkers's requests for

information.

(c) - Respondent did not inform Walker of her lack of malpractice insurance nor did Respondent obtain Walker's signature on a separate notice of her lack of malpractice insurance.

Rule 1.5 Fee and Expenses

(d)(3)-Respondent did not advise Walker in writing that he may be entitled to a refund if the lawyer does not complete the representation.

Rule 1.15 – Safekeeping Funds and Property – Respondent did not deposit any part of Walkers's $1,250.00 payment for fees into her IOLTA account nor did she maintain any records of the payment or disbursements.

Rule 1.15 – Safekeeping Funds and Property

(a)(1) – Respondent does not maintain a copy of any fee agreement with each client;

(a)(2) – Respondent does not maintain records for each client on whose behalf funds are held in her IOLTA account.

(a)(3) – Respondent does not maintain records of her IOLTA account.

(a)(4) – Respondent does not maintain bank statements, deposit slips, etc for her IOLTA account.

(a)(5) – Respondent does not perform the required monthly reconciliation of her IOLTA account.

(c) – Respondent does not deposit all legal fees paid in advance into her IOLTA account.

## COUNT IV –FAILURE TO COOPERATE

42. With respect to the Walker matter, Respondent has failed to cooperate with the investigation.

43. On July 9, 2014, a letter of inquiry was mailed to Respondent.

44. On July 22, 2014, a copy of the letter and grievance was e-mailed to Respondent, and on the same day, Respondent acknowledged its receipt and advised she would reply soon.

45. On August 1, 2014, Respondent provided a written answer to the grievance, but failed to provide any of the requested documentation.

46. On August 4, 2014, Relator e-mailed Respondent asking her to provide the requested information by August 11, 2014.

47. On August 14, 2014, Respondent e-mailed Relator indicating she had been involved in a huge case in Youngstown. She also indicated she could not locate the Walker file, but hoped to have it by tomorrow (August 15, 2014).

48. As of October 3, 2014, Relator has heard nothing further from Respondent and none of the requested documentation has been provided.

## VIOLATIONS

49. Relator alleges that as a result of the information set forth in Count IV, Respondent has violated the following Ohio Rules of Professional Conduct:

Rule 8.1 – Bar Admissions and Disciplinary Matters

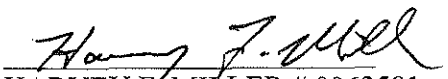
(b) Respondent failed to respond to a demand for information from an admissions or disciplinary authority, failed to disclose a material fact or knowingly fail to respond, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

Gov. Bar R. V(4)(G) – Duty To Cooperate

## REQUEST FOR RELIEF

Relator asks that such discipline be administered to Respondent as may be deemed appropriate following a hearing on the merits.

Respectfully submitted,



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## CERTIFICATE

The undersigned, Thomas P. Kot, Bar Counsel of the Akron Bar Association, hereby certifies that Harvey F. Miller and Sara E. Strattan 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: October 20, 2014

Thomas P. Kot

Thomas P. Kot, Bar Counsel

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the forgoing Complaint and Certificate was sent by Certified & Regular U.S. Mail, postage prepaid, the 20th day of October, 2014 to:

Attorney Jana Bassinger DeLoach
P.O. Box 2385
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