FILED

NOV 06 2015

BOARD OF PROFESSIONAL CONDUCT

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

IN RE: COMPLAINT AGAINST: EDWARD J. HEBEN, JR. (OHIO BAR NO. 0029052) HEBEN LAW LLC 3740 EUCLID AVENUE CLEVELAND, OHIO 44115, Respondent, *v.* CLEVELAND METROPOLITAN BAR ASSOCIATION, 1375 EAST NINTH STREET, FLOOR 2 CLEVELAND, OH 44114-1785, Relator.	)	CASE NO. 15-0613 **COMPLAINT**

RECEIVED

OCT 23 2015

BOARD OF PROFESSIONAL CONDUCT

Relator Cleveland Metropolitan Bar Association ("Relator"), by and through undersigned counsel, for its Complaint against Respondent Edward J. Heben, Jr. ("Respondent"), states as follows upon information and belief:

INTRODUCTION

1. This action arises out of Respondent's conduct in connection with two short-lived representations of separate clients, both of whom were in the midst of difficult personal, economic and legal circumstances. In both cases, Respondent ignored his clients' express directions and instead performed or purported to perform disproportionate amounts of work that

resulted in exorbitant fees accrued in very short periods of time. Additionally, in one instance, Respondent unjustifiably and gratuitously revealed confidential and privileged information relating to his representation of a client in a publicly-filed affidavit.

2. Respondent's actions in both representations violated the Ohio Rules of Professional Conduct. As a result of Respondent's misconduct, Relator requests that the Board discipline Respondent in a manner that is fair and just, up to and including the possible sanction of disbarment, in accordance with the Ohio Rules of Professional Conduct and the Rules of the Government of the Bar of Ohio.

BACKGROUND FACTS

3. Respondent received a juris doctorate from Cleveland State University School of Law.

4. The Supreme Court of Ohio admitted Respondent to the practice of law in 1975 by examination.

5. Respondent's Attorney Registration Number is 0029052.

6. Respondent currently works for Heben Law LLC.

7. Heben Law LLC markets itself as "Attorneys and Counselors at Law."

COUNT ONE
VIOLATION OF THE OHIO RULES OF PROFESSIONAL CONDUCT RELATED TO REPRESENTATION OF MS. CECCHINI

A. Respondent's Misconduct During His Representation of Jennifer Cecchini

8. On or around September 13, 2013, Jennifer Cecchini ("Ms. Cecchini") contacted Respondent by telephone regarding her complicated divorce proceeding. At the time Ms. Cecchini contacted Respondent, the Stark County Court of Common Pleas was scheduled to hear Ms. Cecchini's motion to set aside an auction of marital residences related to the divorce.

9. During the September 13, 2013 telephone call, Ms. Cecchini informed Respondent that, while she did not want to terminate her relationship with her then-current attorney, Susan Pritchard, she wanted a second opinion on Ms. Pritchard's planned course of action regarding the auctioned residences. Specifically, Ms. Cecchini wished for Respondent to attend the forthcoming court hearing regarding her pending motion to set aside the auction.

10. Ms. Cecchini further informed Respondent that she had only $3,000 to spend on Respondent's attendance at the hearing and the second opinion she had requested. Ms. Cecchini also informed Respondent that she was unwilling to spend more than $3,000 per month on any additional work that Respondent might perform on her behalf.

11. On or around September 13, 2013, by e-mail Respondent provided Ms. Cecchini with an agreement seeking a $3,000 retainer.

12. Later that day, Ms. Cecchini e-mailed Respondent to inform him that "[she] had no internet until an hour ago, since [their] phone conversation, so [she] was not aware of the email and retention agreement [he] sent [her] at 5:30pm. In the interim, [she] had sent [him] pertinent documents related to [her] current dilemma. As mentioned in [their] phone conversation, [her] finances are at present severely constrained, and [she] was looking for some type of an agreement on at least partial contingency basis."

13. On or around September 14, 2013, Respondent responded to Ms. Cecchini, stating, *inter alia*, that (underlining and emphases in original):

- **"You are in a war and are obviously losing most of the battles so far as you relate [sic] to me."**
- **"Being penny wise and pound foolish in reference to retaining me to evaluate your multi-million dollar case is not a good strategy at all. If you want me to be involved, i [sic] need the retainer agreement signed and paid – because it will take at least that much time to complete the**

evaluation of the your case."

- **"You are in a mess and should have been protected from being there by your attorneys ...."**
- **"I can help you, but you must but [sic] your complete trust in me to fight on your behalf and guide you through this morass."**

14. On Sunday, September 15, 2013, Respondent appeared at Ms. Cecchini's home to discuss the potential representation. Based in part on Respondent's claimed expertise in real estate law, Ms. Cecchini agreed to have Respondent represent her at the upcoming court hearing regarding the auction.

15. Respondent proffered a retainer agreement, but Ms. Cecchini did not sign it. Instead, she agreed to have Respondent attend the hearing, and she provided Respondent with $3,000 for this limited engagement.

16. During the weekend of September 13-15, 2013, Respondent requested that Ms. Cecchini provide him with numerous documents related to the divorce proceedings, which documents Ms. Cecchini provided.

17. On or around September 16, 2013, Respondent appeared on behalf of Ms. Cecchini at the Stark County Court of Common Pleas hearing regarding the auction issues.

18. Following this hearing, Respondent entered his appearance in all of Ms. Cecchini's pending matters. Such actions were undertaken without her knowledge or consent.

19. During this same period, Respondent continued to request a substantial number of additional documents from Ms. Cecchini, which additional documents Ms. Cecchini also provided.

20. Because Respondent's requests raised concerns that he might be exceeding the

express limitations that she had placed on the representation, Ms. Cecchini asked Respondent to provide an itemized billing statement.

21. On or around September 23, 2013, Respondent provided Ms. Cecchini with a statement for $29,665 for his work in 2013, also including an additional $16,733 related to work Respondent allegedly performed for Ms. Cecchini in 2008,[1] together with $10,566 in interest on the allegedly unpaid 2008 balance. Because Respondent offered to waive the interest payment, Respondent's statement totaled $46,441.

22. Shocked by the amount of the statement, Ms. Cecchini e-mailed Respondent on or around September 29, 2013, terminating his services, requesting that he withdraw from all her cases, instructing him to return her case files, and asking him not to contact her personally but directing him to speak instead with her attorney, Ms. Pritchard.

23. During or around this time, Respondent telephoned Ms. Cecchini and threatened to reveal alleged—yet untrue, according to Ms. Cecchini—unethical or illegal actions by Ms. Cecchini in her divorce proceedings.

24. On October 11, 2013, Respondent sent Ms. Cecchini another billing statement, indicating that Ms. Cecchini owed Respondent $79,013 based upon additional work purportedly performed by Respondent, by his associate and by his legal assistant between September 23 and September 29, 2013, including, for example, reviewing additional documents, drafting

---

[1] In or around 2008, Ms. Cecchini had interviewed Respondent because she had been considering hiring an additional attorney to assist in her divorce. When Ms. Cecchini hired a different attorney, Respondent sent her a bill for $15,000, despite the fact that she had never signed an engagement agreement or received any indication from Respondent that she would be charged during or for this vetting process. Although she did not believe any payment was justified under the circumstances, Ms. Cecchini attempted to resolve this dispute by sending Respondent a check for $5,000, expressly representing that such check was for payment in full. Respondent did not cash the check and never contacted Ms. Cecchini regarding the dispute until he presented her with his billing statement in the 2013 matter.

memoranda, preparing subpoenas and reviewing arbitration transcripts.

25. On or around that same date, Respondent filed in Ms. Cecchini's divorce proceedings a Notice of Withdrawal. Appended to that notice was a publicly available, six-page, signed affidavit disclosing the substantive content of numerous confidential and privileged discussions (or purported discussions) between Respondent and Ms. Cecchini. In addition, Respondent's affidavit expressly stated—falsely, according to Ms. Cecchini—that she had previously committed unethical or illegal acts in the course of her divorce proceeding.

26. Upon Ms. Cecchini's motion, the court found Respondent's affidavit improper and struck it from the record.

B. Respondent's Actions Violated the Ohio Rules of Professional Conduct

27. Respondent's repeated failure to consult with Ms. Cecchini regarding the substance of his representation violated Rule 1.4(a)(2) & 1.4(a)(3) of the Ohio Rules of Professional Conduct. *Id.* ("A lawyer shall do all of the following ... (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter[.]").

28. Respondent's billing statements, in which he sought from Ms. Cecchini nearly 10 times the amount to which she had expressly limited the representation, violated Rule. 1.5(a) of the Ohio Rules of Professional Conduct. *Id.* ("A lawyer shall not make an agreement for, charge, or collect an illegal or clearly excessive fee.").

29. Respondent's gratuitous and humiliating publicly filed affidavit revealed client confidences and privileged discussions (or purported discussions), violating Rule 1.6(a) of the Ohio Rules of Professional Conduct. *Id.* ("A lawyer shall not reveal information relating to the representation of a client, including information protected by the attorney-client privilege under

applicable law ....").

COUNT TWO
VIOLATION OF THE OHIO RULES OF PROFESSIONAL CONDUCT RELATED TO REPRESENTATION OF MR. STULTS

A. Respondent's Misconduct During His Representation of Thomas Stults

30. During or around mid-2012, Thomas Stults ("Mr. Stults") contacted Respondent by telephone regarding the impending foreclosure of his family home.

31. During that telephone conversation, Respondent invited Mr. Stults to meet him for a free consultation. Respondent also asked Mr. Stults to bring $3,000 for a retainer.

32. Mr. Stults drove from Toledo to Cleveland with his son to consult with Respondent. At the meeting, Mr. Stults informed Respondent that he was already represented by a *pro bono* attorney who had advised him that imminent foreclosure could only be prevented by filing for bankruptcy. Accordingly, and also because of the severity of his financial straits, Mr. Stults told Respondent that he was only interested in engaging Respondent if Respondent could devise another way to halt the foreclosure and broker an agreement with his lenders.

33. After printing off and briefly examining information from the foreclosure case's docket, Respondent informed Mr. Stults that, because he was an excellent lawyer who could find solutions in foreclosure situations that other attorneys could not, Respondent could resolve Mr. Stults's foreclosure problem without recourse to bankruptcy.

34. Relying upon Respondent's assurances, Mr. Stults provided the requested $3,000 retainer, which Mr. Stults had borrowed from his children.

35. Respondent then hand-wrote a one-page document that he described to Mr. Stults as a "receipt" for the retainer, requiring Mr. Stults to sign the document. Respondent did not provide Mr. Stults with either the original or a copy of this document.

36. Shortly after the initial consultation, and following a few brief telephone conversations in which Respondent asked Mr. Stults to obtain additional information regarding the real property at issue, Respondent informed Mr. Stults that he could only prevent foreclosure by filing for bankruptcy.

37. Respondent subsequently did not return any portion of the $3,000 retainer, did not provide Mr. Stults with a written billing statement, and refused to answer or return Mr. Stults's telephone calls.

B. Respondent's Actions Violated the Ohio Rules of Professional Conduct

38. Respondent's failure to communicate with Mr. Stults violated Rule 1.4(a) of the Ohio Rules of Professional Conduct. *Id.* ("A lawyer shall do all of the following ... comply as soon as practicable with reasonable requests for information from the client[.]").

39. Respondent's charge of $3,000 to perform limited work on Mr. Stults' behalf violated Rule 1.5(a) of the Ohio Rules of Professional Conduct. *Id.* ("A lawyer shall not make an agreement for, charge, or collect an illegal or clearly excessive fee.").

40. Respondent's assurances to Mr. Stults that he could prevent foreclosure because of his unique expertise in resolving foreclosures violated Rule 7.1 of the Ohio Rules of Professional Conduct. *Id.* ("A lawyer shall not make or use a false, misleading, or nonverifiable communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law or omits a fact necessary to make the statement considered as a whole not materially misleading.").

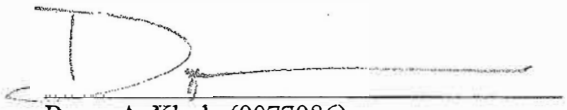
PRAYER FOR RELIEF

WHEREFORE, Relator requests that the Board order Respondent to pay restitution of $3,000 to Mr. Stults and discipline Respondent in a manner that is fair and just, up to and

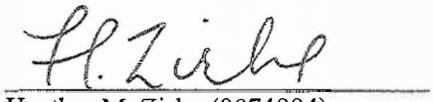
including the possible sanction of disbarment, in accordance with the Ohio Rules of Professional Conduct and the Rules of the Government of the Bar of Ohio.

Dated: October 22, 2015

Respectfully submitted,



Bruce A. Khula (0077086)
Dante A. Marinucci (0089402)
SQUIRE PATTON BOGGS (US) LLP
4900 Key Tower
127 Public Square
Cleveland, OH 44114
Tel: +1.216.479.8500
Fax: +1.216.479.8780
E-mail: bruce.khula@squirepb.com
dante.marinucci@squirepb.com



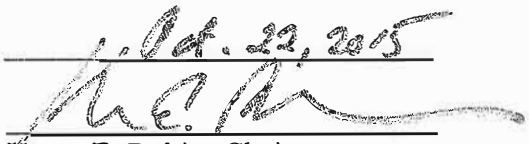
Heather M. Zirke (0074994)
Assistant Counsel
CLEVELAND METROPOLITAN BAR ASSOCIATION
1375 East Ninth Street, Floor 2
Cleveland, OH 44114-1785
Tel: 216.696.3525
Fax: 216.696.2413
Email: hzirke@clemetrobar.org

Attorneys for Relator Cleveland Metropolitan Bar Association

CERTIFICATE

The undersigned, **KAREN E. RUBIN, CHAIRPERSON,** of the **CLEVELAND METROPOLITAN BAR ASSOCIATION'S CERTIFIED GRIEVANCE COMMITTEE,** hereby certifies that **BRUCE A. KHULA** and **DANTE A. MARINUCCI** 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: Oct. 22, 2015



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.