

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

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In re:

BOARD OF PROFESSIONAL CONDUCT

Complaint against

Guy Darius Rutherford, Esq.
614 West Superior Avenue, NW
Suite #940
Cleveland, OH 44113

No. 15 - 068

Attorney Registration No. (0066032)

COMPLAINT AND CERTIFICATE

Respondent,

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

Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411

FILED

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Relator.

BOARD OF PROFESSIONAL CONDUCT

Now comes the relator and alleges that Guy Darius Rutherford, an Attorney at Law, duly admitted to the practice of law in the state of Ohio, is guilty of the following misconduct:

1. Respondent, Guy Darius Rutherford, was admitted to the practice of law in the state of Ohio on May 13, 1996.
2. Respondent is subject to the Code of Professional Responsibility, the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.
3. Respondent has been suspended from the practice of law in Ohio on numerous occasions. Respondent's prior suspensions from the practice of law are as follows:
 - (a) On March 6, 1998, the Supreme Court suspended respondent from the practice of law for an interim period based on his default on a child support order. *In re Rutherford*,

81 Ohio St.3d 1254, 1998-Ohio-464, 691 N.E.2d 1049 (Mem). Respondent's license was subsequently reinstated two months later, on May 6, 1998;

- (b) On December 2, 2005, the Supreme Court suspended respondent for failing to properly register with the Office of Attorney Services. His license was thereafter reinstated on January 18, 2006;
- (c) On December 3, 2007, the Supreme Court again suspended respondent for failing to properly register with the Office of Attorney Services. On this occasion, respondent's license was reinstated on December 7, 2007. *12/04/2007 Administrative Actions*, 2007-Ohio-6463.
- (d) On December 27, 2006, the Supreme Court suspended respondent for six months but stayed the suspension on the condition that respondent serve a six-month probation. *Cuyahoga Cty. Bar Assn. v. Rutherford*, 112 Ohio St.3d 159, 2006-Ohio-6526, 858 N.E.2d 417. However, effective July 10, 2008, respondent's stayed suspension was revoked for failing to cooperate with probation. The Supreme Court subsequently reinstated respondent's license to practice law on May 13, 2009.

COUNT I – THE JONES MATTER

- 4. LaQuenta Jones (Jones) paid respondent \$4,000 on January 4, 2013 to represent her nephew, Demario Eberhardt (Eberhardt), who was incarcerated pending criminal charges in the state of West Virginia.
- 5. Respondent told Jones that he would obtain pro hac vice status in West Virginia in order to represent her nephew.

6. Jones paid respondent \$4,000 for his representation of Eberhardt through the jury trial phase of his pending criminal charges, if necessary, including all required travel and lodging.
7. Respondent did not deposit the advance payment of \$4,000 for legal services from Jones into his IOLTA.
8. Although respondent visited with Eberhardt in jail on two occasions in January 2013 to discuss his case and told Jones that he filed a motion for pro hac vice and motion for a bond reduction on behalf of Eberhardt, respondent failed to file the proper paperwork with the Court and was never granted pro hac vice status by the West Virginia Court.
9. Despite being paid \$4,000 in legal fees, respondent failed to perform any legal work of value on behalf of his client, Demario Eberhardt.
10. From January 4, 2013 through February 25, 2013, respondent failed to return numerous calls, texts, and emails from Jones and her sister, Eberhardt's mother.
11. On February 25, 2013, Jones terminated respondent's legal representation and requested a full refund of the \$4,000 that she had paid to him.
12. On March 19, 2013, respondent agreed to refund Jones the flat fee of \$4,000, minus \$500 for his travel expenses to meet with Eberhardt in a West Virginia jail; however, respondent told Jones that he was not in a financial position to immediately refund the full amount.
13. Although Jones disagreed with respondent and requested a refund of the entire \$4,000, respondent promised to refund \$3,500 to Jones pursuant to a "repayment plan" of \$1,000 by March 25, 2013, \$1,000 by April 15, 2013 and \$1,500 by May 6, 2013.
14. Respondent did not honor his promised "repayment plan."

15. On August 17, 2013, respondent paid \$750 to Jones as a partial refund of his unearned legal fees.
16. To date, respondent still owes Jones a refund of unearned fees in the amount of \$3,250.
17. Respondent's conduct, as reflected in Count I, violates the Ohio Rules of Professional Conduct, specifically Prof. Cond. R. 1.3 [A lawyer shall act with reasonable diligence and promptness in representing a client]; Prof. Cond. R. 1.4(a)(4) [a lawyer shall comply as soon as practicable with reasonable requests for information from the client]; Prof. Cond. R. 1.5(a) [A lawyer shall not make an agreement for, charge, or collect an illegal or clearly excessive fee]; Prof. Cond. R. 1.16(e) [A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned]; Prof. Cond. R. 1.15(c) [A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance]; and, Prof. Cond. R. 8.4(d) [a lawyer shall not engage in conduct that is prejudicial to the administration of justice].

COUNT II – THE JORDAN MATTER

18. Marvalyn Jordan (Jordan) paid respondent \$875 on November 7, 2012 to handle her divorce proceedings.
19. Respondent did not deposit Jordan's advance payment of \$875 for legal services and costs into his IOLTA.
20. On April 17, 2013, respondent filed a Complaint for Divorce on behalf of Jordan in the Cuyahoga County Court of Common Pleas/Domestic Relations Division entitled *Turner v. Jordan*, Case No. DR13-346686.

21. On September 9, 2013, the Court issued a Notice to respondent stating that Jordan's "divorce case would be dismissed for failure to prosecute on September 25, 2013, unless service was perfected upon Jordan's husband prior to said date."
22. Despite the fact that Jordan obtained her husband's signature on a waiver of service and provided the waiver to respondent on September 17, 2013, one week prior to the court's deadline, respondent failed to file the waiver with the Court prior to the Court's deadline.
23. Because respondent failed to file the waiver of service in a timely manner, the Court dismissed *without prejudice* Jordan's complaint for divorce.
24. Jordan filed a grievance against respondent in November 2013.
25. Respondent failed to perform any legal work of value on behalf of Jordan.
26. In response to the disciplinary investigation, respondent agreed to provide Jordan with a full refund of the \$875 that she paid to him.
27. It took respondent until July 2014 to provide any refund of the unearned legal fees or court costs to Jordan. At that time, respondent provided only a partial refund in the amount of \$500.
28. In October 2014, respondent provided Jordan with another partial refund in the amount of \$300.
29. As of December 2014, respondent had finally provided Jordan with a full refund of the unearned legal fees paid to him by Jordan in November 2012. Respondent took more than one year after the Court dismissed Jordan's case to provide the refund.
30. Respondent's conduct, as reflected in Count II, violates the Ohio Rules of Professional Conduct, specifically Prof. Cond. R. 1.3 [A lawyer shall act with reasonable diligence and promptness in representing a client]; Prof. Cond. R. 1.16(e) [A lawyer who

withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned]; Prof. Cond. R. 1.15(c) [A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance]; and, Prof. Cond. R. 8.4(d) [a lawyer shall not engage in conduct that is prejudicial to the administration of justice].

COUNT III – THE NORRIS MATTER

31. Tashalee Norris (Norris) paid respondent \$1,500 on February 12, 2015 to handle her divorce, to appear on her behalf at a final hearing in a child custody matter, and to file for “back pay” relating to a child support matter.
32. On March 12, 2015, respondent attended the final hearing on the child custody matter with Norris but the case was continued until May 18, 2015. However, while at court, Norris provided respondent the paperwork that he requested in order to file for her divorce.
33. On May 18, 2015, respondent attended the final hearing on behalf of Norris in the child custody matter.
34. At the hearing on May 18, 2015, respondent told Norris that he had already filed the complaint for divorce on her behalf and that she should soon be receiving a court date in the mail. Subsequently, Norris found out that respondent had not filed any of the paperwork that he told her he filed.
35. Despite Norris’ repeated attempts to contact respondent by sending him text messages and leaving voicemail messages, she has not heard from respondent since the hearing of May 18, 2015.

36. To date, although Norris paid respondent \$1,500 in advance for his legal services, other than his court appearances on March 12, 2015 and May 18, 2015, he has not filed a complaint for divorce, or take any other legal action, on Norris' behalf.
37. Respondent's conduct, as reflected in Count III, violates the Ohio Rules of Professional Conduct, specifically Prof. Conduct R. 1.3 [A lawyer shall act with reasonable diligence and promptness in representing a client]; Prof. Cond. R. 1.4(a)(4) [a lawyer shall comply as soon as practicable with reasonable requests for information from the client]; Prof. Cond. R. 1.5(a) [A lawyer shall not make an agreement for, charge, or collect an illegal or clearly excessive fee]; and, Prof. Cond. R. 8.4(c) [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation].

**COUNT IV - FAILURE TO INFORM CLIENTS OF
LACK OF PROFESSIONAL LIABILITY INSURANCE**

38. Relator incorporates the allegations contained in paragraphs 1-37 as if restated herein.
39. Since at least 2008, respondent has failed to maintain professional liability insurance.
40. From 2008 to the present, respondent has failed to provide the notice required by Prof. Cond. R. 1.4(c) to any of his clients, including but not limited to, Demarion Eberhardt, Marvalyn Jordan and Tashalee Norris, regarding his lack of professional liability insurance and has failed to have this notice signed by his clients.
41. Respondent's conduct, as reflected in Count IV, violates the Ohio Rules of Professional Conduct, specifically Prof. Cond. R. 1.4(c) [requiring a lawyer to provide notice to clients that he does not maintain professional liability insurance and requiring clients to sign the notice].

COUNT V – FAILURE TO COOPERATE

42. Relator incorporates the allegations contained in paragraphs 1-41 as if restated herein.

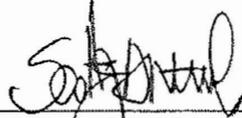
43. In further of its investigation of the Jones and Jordan matters in Counts I and II of this complaint, relator took respondent's deposition on December 11, 2014.
44. In his sworn deposition, respondent testified that he recognized his duty to cooperate with relator's investigations and assured relator that it would receive "nothing but his greatest cooperation" from that time forward.
45. In addition to his business address, respondent testified at his deposition that he could also be contacted through his email address or telephone number.
46. On August 27, 2015, relator received a brief letter from respondent, enclosing a personal check from respondent's bank account at PNC Bank in the amount of \$2,100, seemingly in response to his attempted refund of unearned fees in the Jones matter.
47. However, the check contained multiple errors made by respondent, i.e., it was made payable to "Laquenta Harris" rather than "LaQuenta Jones", and the amount of the check was \$2,100, although respondent wrote "two-thousand" dollars.
48. On August 28, 2015 and September 2, 2015, relator sent emails to respondent identifying the erroneous check and requesting that respondent contact relator immediately to remedy his errors. Respondent failed to respond to relator's emails.
49. On September 2, 2015, relator called respondent at the telephone number he provided to relator during his deposition. Although relator left a voice mail message, respondent failed to contact relator.
50. To date, respondent has failed to "re-issue" a valid check for the repayment of unearned legal fees to Jones and has failed to respond to relator's multiple inquiries.
51. On July 29, 2015, relator sent a Letter of Inquiry (LOI) to respondent relating to a grievance filed by Tashalee Norris (Norris grievance) by certified mail to respondent's

business address. Although respondent received the letter on August 3, 2015, he failed to respond to the LOI.

52. On August 17, 2015, relator sent a second LOI to respondent relating to the Norris grievance by certified mail to respondent's business address. Although respondent received the letter on August 19, 2015, he failed to reply.
53. On September 3, 2015, relator sent a third LOI to respondent relating to the Norris grievance by first-class mail to respondent's business address and via respondent's email address at guydrutherford@gmail.com. Respondent again failed to reply.
54. On September 16, 2015, relator sent a LOI to respondent relating to a grievance filed by Luis Toledo (Toledo grievance) by certified mail to respondent's business address. Although respondent received the letter on September 23, 2015, he failed to respond to the LOI.
55. On October 2, 2015, relator sent a LOI to respondent relating to a grievance filed by Marangelli Chamorro (Chamorro grievance) by certified mail to respondent's business address. Although respondent received the letter on October 6, 2015, he failed to respond to the LOI.
56. To date, respondent has not provided a response to relator's LOIs relating to the Norris grievance, the Toledo grievance, or the Chamorro grievance. Likewise, respondent has not responded to relator's emails and telephone messages regarding the Jones matter.
57. Respondent's conduct, as reflected in Count V, violates the Ohio Rules of Professional Conduct, specifically Prof. Cond. R. 8.1(b) [a lawyer shall not fail to disclose a material fact or knowingly fail to respond] and Gov. Bar R. V(9)(G) [failure to cooperate with relator's investigation].

CONCLUSION

Wherefore, pursuant to Gov. Bar R. V, the Code of Professional Responsibility and the Rules of Professional Conduct, relator alleges that respondent is chargeable with misconduct; therefore, relator requests that respondent be disciplined pursuant to Rule V of the Rules of the Government of the Bar of Ohio.



Scott J. Drexel (0091467)
Disciplinary Counsel

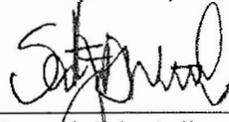


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CERTIFICATE

The undersigned, Scott J. Drexel, Disciplinary Counsel, of the Office of Disciplinary Counsel of the Supreme Court of Ohio hereby certifies that Michelle R. Bowman is duly authorized to represent relator in the premises and has 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: November 24, 2015



Scott J. Drexel, Disciplinary Counsel