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

In Re: Complaint Against: Marvin Hermann Schiff (Bar No. 0000681) 1303 Croyden Road Cleveland, OH 44124, Respondent, v. Cleveland Metropolitan Bar Association 1301 East Ninth Street, Second Level Cleveland, OH 44114, Relator.	)	CASE NO. 14-070 **COMPLAINT AND CERTIFICATE** (Pursuant to Rule V of the Supreme Court Rules for the Government of the Bar of Ohio) FILED OCT 06 2014 BOARD OF COMMISSIONERS ON GRIEVANCES & DISCIPLINE

Relator Cleveland Metropolitan Bar Association ("Relator"), by and through counsel, for its Complaint against Respondent Marvin Hermann Schiff ("Respondent"), states as follows:

INTRODUCTION

1. This action arises out of a pattern of misconduct by Respondent that includes his repeated failure to act with reasonable diligence and communicate with clients despite their requests for information, his settlement of a lawsuit without client authority, and his failure to maintain complete and accurate records of a client's funds. In light of the number and gravity of Respondent's disciplinary violations, his history before this Board, and the other aggravating factors detailed below, Respondent should be appropriately disciplined for the misconduct described herein up to and including the sanction of indefinite suspension.

ALLEGATIONS

2. Respondent received a juris doctorate from the Case Western Reserve University School of Law.

3. The Supreme Court of Ohio (the "Supreme Court") admitted Respondent to the practice of law on October 29, 1984.

4. Respondent's Attorney Registration Number is 0000681.

5. Respondent has been actively engaged in the practice of law in Ohio since October 29, 1984.

6. Respondent primarily practices personal injury law.

7. Respondent's law office is currently located at 1303 Croyden Road, Cleveland, Ohio 44124. At all times relevant to this Complaint, Respondent's law office was located at 5910 Landerbrook Drive, Suite 200, Cleveland, Ohio 44124.

8. On or about February 4, 2005, Respondent formed Schiff Law Offices, L.L.C.

9. Respondent was the subject of a prior disciplinary complaint in an action styled *Cleveland Metropolitan Bar Association v. Marvin Hermann Schiff*, Ohio Supreme Court Case No. 2013-1251.

10. That complaint addressed a pattern of misconduct committed by Respondent in his representation of multiple clients that included executing Contingent Fee Contracts falsely suggesting that Bryan Scott Freeman (a now disbarred lawyer) was a member of his firm and would act as his co-counsel. In fact, Respondent intended only to keep a portion of the fee while referring the case to Mr. Freeman, who was not a member of his firm and was the attorney who maintained possession of each client's file.

11. On June 18, 2014, the Supreme Court issued an opinion finding Respondent committed misconduct in his representation of numerous clients and suspending Respondent from the practice of law in Ohio for two years, with the entire suspension stayed on the conditions that he commit no further misconduct and that he complete 12 hours of continuing legal education on the topic of law-firm management within two years of the date of the order.

See Cleveland Metro. Bar Assn. v. Schiff, 139 Ohio St.3d 456, 2014-Ohio-2573..

COUNT ONE – TAMMY STEWART

A. Respondent's misconduct.

12. Relator incorporates by reference the allegations contained in Paragraphs 1 through 15 of the Complaint as if fully rewritten herein.

13. In early December 2010, Tammy Stewart ("Ms. Stewart") met with Respondent for over an hour at the Starbucks Coffee Company in Brooklyn, Ohio to discuss an action that she desired to bring against former tenants who had broken their lease and damaged Ms. Stewart's property.

14. During this early December 2010 meeting, Ms. Stewart provided Respondent with her current address and phone number.

15. On December 15, 2010, Ms. Stewart met with Respondent a second time at the Starbucks Coffee Company in Brooklyn, Ohio.

16. Ms. Stewart brought her only copies of the relevant lease, the former tenants' rental application, and photographs of the property damage to this December 15, 2010 meeting and gave them to Respondent.

17. Ms. Stewart also gave Respondent a check for the filing fee for her case, which Respondent accepted.

18. Respondent did not bring a retainer agreement to the December 15, 2010 meeting, but he told Ms. Stewart that his fee would be 33% of any money obtained on her behalf.

19. Respondent told Ms. Stewart that he would try to file her case by the end of the month.

20. Ms. Stewart attempted to reach Respondent throughout January 2011 and left messages at his office and on his cell phone.

21. Respondent did not return Ms. Stewart's calls until February 2011, at which time he indicated that he had been sick during the previous month, but would file her case immediately.

22. Despite numerous attempts, Ms. Stewart was unable to reach anyone at Respondent's office again until on or about June 3, 2011 when she spoke with Respondent's paralegal, Donna J. Stohlmann.

23. Ms. Stohlmann apologized for the delay and told Ms. Stewart that her case would be filed that day.

24. Ms. Stewart told Ms. Stohlmann that she no longer wanted Respondent to represent her and requested that her check and documents be returned immediately so that she could find new counsel.

25. Rather than return Ms. Stewart's check and documents to her current address – which Ms. Stewart had provided to Respondent at their meeting in early December 2010 – Ms. Stewart's check and documents were sent to a different location where she no longer resided.

26. Ms. Stewart has been unable to recover the documents incorrectly sent to her prior address.

27. Ms. Stewart attempted to find other representation for her lawsuit, but the other attorneys with whom she spoke stated that they could not file a case on her behalf without the documents that were never properly returned to her.

B. <u>Respondent's Conduct Violated the Rules of Professional Conduct.</u>

28. Respondent's conduct in failing to perform work on Ms. Stewart's behalf after accepting a check from Ms. Stewart, accepting several documents related to her case, and telling her that he would file her complaint violated Rule of Professional Conduct 1.3.

29. Respondent's failure to respond to Ms. Stewart's repeated requests for updates on

the status of her case violated Rules of Professional Conduct 1.4(a)(3) and (4).

30. Respondent's agreement to represent Ms. Stewart on a contingent fee basis without executing a written contingent fee agreement violated Rule of Professional Conduct 1.5(c).

31. Respondent's conduct in failing to return to Ms. Stewart the documents that Ms. Stewart had provided to Respondent violated Rule of Professional Conduct 1.16(d).

COUNT TWO – JOSEPH PRIORE, JR.

A. Respondent's misconduct.

32. Relator incorporates by reference the allegations contained in Paragraphs 1 through 35 of the Complaint as if fully rewritten herein.

33. In early December 2010, Joseph Priore, Jr. ("Mr. Priore") met with Respondent for over an hour at the Starbucks Coffee Company in Brooklyn, Ohio to discuss an action that Mr. Priore desired to bring against a former tenant who had damaged Mr. Priore's property.

34. On December 15, 2010, Mr. Priore met with Respondent a second time at the Starbucks Coffee Company in Brooklyn, Ohio.

35. Mr. Priore brought copies of the lease agreement, the tenant's rental application, the tenant's rent checks, a land contract related to the property, handwritten notes, and photographs of the property damage to this December 15, 2010 meeting. Mr. Priore gave these documents to Respondent, which included Mr. Priore's only copy of the lease agreement.

36. Mr. Priore also gave Respondent a check for the filing fee for his case, which Respondent accepted.

37. Respondent did not bring a retainer agreement to the December 15, 2010 meeting, but he told Mr. Priore that his fee would be 33% of any money obtained on his behalf.

38. Respondent told Mr. Priore that he would try to file his case by the end of the

month.

39. During the December 15, 2010 meeting at Starbucks Coffee Company in Brooklyn, Ohio, Mr. Priore also asked Respondent to help him with his landlord, who was requesting that he move equipment from a property he was leasing.

40. Respondent called the landlord's office while at Starbucks Coffee Company and asked to speak with someone regarding the issue. No one was available, and no further work was performed on the matter.

41. Respondent charged Mr. Priore $100.00 for the phone call.

42. Mr. Priore attempted to reach Respondent throughout January 2011 and left messages at his office and on his cell phone.

43. Respondent did not return Mr. Priore's calls until February 2011, at which time he indicated that he had been sick during the previous month, but would file his case immediately.

44. Despite numerous attempts, Mr. Priore was unable to reach anyone at Respondent's office again until on or about June 3, 2011 when he spoke with Respondent's paralegal, Donna J. Stohlmann.

45. Ms. Stohlmann apologized for the delay and told Mr. Priore that his case would be filed that day.

46. Mr. Priore told Ms. Stohlmann that he no longer wanted Respondent to represent him and requested that his check and documents to be returned immediately so that he could find new counsel.

47. Rather than return Mr. Priore's check and documents to him, Mr. Priore's check and documents were sent to a prior address of Ms. Stewart.

48. Mr. Priore has been unable to recover the documents incorrectly sent to Ms. Stewart's prior address, including his only copy of the lease agreement.

49. Mr. Priore attempted to find other representation for his lawsuit, but the other attorneys with whom he spoke stated that they could not file a case on his behalf without the documents that were never properly returned to him.

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

50. Respondent's conduct in failing to perform work on Mr. Priore's behalf after accepting a check from Mr. Priore, accepting several documents related to his case, and telling him that he would file his complaint violated Rule of Professional Conduct 1.3.

51. Respondent's failure to respond to Mr. Priore's repeated requests for updates on the status of his case violated Rules of Professional Conduct 1.4(a)(3) and (4).

52. Respondent's collection of a clearly excessive fee for performing "legal work" that amounted to nothing more than placing a phone call that went unanswered violated Rule of Professional Conduct 1.5(a).

53. Respondent's agreement to represent Mr. Priore on a contingent fee basis without executing a written contingent fee agreement violated Rule of Professional Conduct 1.5(c).

54. Respondent's conduct in failing to return to Mr. Priore the documents that Mr. Priore had provided to Respondent violated Rule of Professional Conduct 1.16(d).

COUNT THREE – LYN CRAIG

A. Respondent's misconduct.

55. Relator incorporates by reference the allegations contained in Paragraphs 1 through 57 of the Complaint as if fully rewritten herein.

56. Lyn Craig ("Mr. Craig") signed a Contingent Fee Contract with Respondent on December 1, 2010.

57. The Contingent Fee Contract listed attorney Bruce Bogart as co-counsel with Respondent.

58. Mr. Bogart was to receive one-third of any fee earned as a result of Mr. Craig's lawsuit.

59. On December 11, 2012, Respondent went to Mr. Craig's home with the settlement documents for his lawsuit, including the Closing Statement.

60. Mr. Craig and Respondent executed the Closing Statement, but Mr. Bogart did not.

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

61. Respondent failed to obtain Mr. Bogart's signature on the Closing Statement in violation of Rule of Professional Conduct 1.5(e)(3).

COUNT FOUR – FAILURE TO COOPERATE (LYN CRAIG)

A. Respondent's misconduct.

62. Relator incorporates by reference the allegations contained in Paragraphs 1 through 64 of the Complaint as if fully rewritten herein.

63. On March 27, 2013, Robert J. Vecchio ("Mr. Vecchio") called Respondent on behalf of Relator to investigate Mr. Craig's grievance against Respondent.

64. Mr. Vecchio reached Respondent's voicemail, but Respondent's voicemail was full. Mr. Vecchio was unable to leave a message.

65. After being unable to reach Respondent by phone, Mr. Vecchio wrote a letter to Respondent on March 27, 2013 requesting that Respondent contact Mr. Vecchio and forward Mr. Craig's file by April 5, 2013.

66. Respondent called Mr. Vecchio on April 5, 2013 and stated that he was out of the office. Respondent stated that he would provide Mr. Craig's file to Mr. Vecchio and call Mr. Vecchio the week of April 15, 2013.

67. Respondent did not call Mr. Vecchio the week of April 15, 2013.

68. Mr. Vecchio did not receive Mr. Craig's file until April 23, 2013.

69. On April 30, 2013, Mr. Vecchio faxed a letter to Respondent since Respondent had not contacted Mr. Vecchio as promised. In this letter, Mr. Vecchio requested a copy of the fully executed Contingent Fee Contract and Closing Statement, as well as evidence of Respondent's malpractice insurance.

70. Respondent did not respond to Mr. Vecchio's April 30, 2013 letter, so Mr. Vecchio mailed and faxed another letter to Respondent on May 9, 2013.

71. Respondent failed to respond to the May 9, 2013 letter as well.

72. On May 24, 2013, since Respondent still had not replied to Mr. Vecchio's April 30, 2013 and May 9, 2013 letters, Mr. Vecchio called Respondent again. As before, Respondent's voicemail was full, so Mr. Vecchio was unable to leave a message.

73. On May 28, 2013, Mr. Vecchio sent Respondent a letter by certified mail urging Respondent to contact Mr. Vecchio and reminding Respondent of his duty to cooperate with Mr. Vecchio's investigation.

74. The certified mail letter was signed for on May 29, 2013.

75. On June 11, 2013, Heather Zirke ("Ms. Zirke") attempted to serve a subpoena on Respondent requesting documents on behalf of Relator.

76. Ms. Zirke was able to reach Respondent by phone on June 11, 2013 and sent him a letter by certified mail that included the subpoena.

77. The subpoena gave Respondent until June 28, 2013 to provide the requested documents.

78. On June 27, 2013, Respondent provided to Mr. Vecchio proof of Respondent's malpractice coverage as well as copies of the Contingent Fee Contract and Closing Statement that Respondent had previously sent.

79. The Closing Statement was not fully executed. Mr. Vecchio never received a fully executed copy of the Closing Statement.

80. On July 15, 2013, Mr. Vecchio called Respondent and again reached Respondent's voicemail. This time, Mr. Vecchio was able to leave a message and asked that Respondent return Mr. Vecchio's call by July 19, 2013.

81. Respondent did not return Mr. Vecchio's call until August 8, 2013. Mr. Vecchio was away from his office at the time, but he returned Respondent's call and spoke with him on August 12, 2013.

82. It was not until this August 12, 2013 call – nearly five months after Mr. Vecchio first contacted Respondent – that Mr. Vecchio was able to discuss the Craig grievance with Respondent.

83. During the August 12, 2013 call, Mr. Vecchio expressed his concern regarding Respondent's delays, lack of communication, and general office practices. Respondent had no answer for why he failed to respond to Mr. Vecchio's March 27, 2013 and April 30, 2013 letters.

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

84. Respondent's conduct in failing to cooperate with and unjustifiably delaying the investigation of Mr. Craig's grievance violated Rule for the Government of the Bar V, § 4(G).

COUNT FIVE – MARYANN GIMMELLI

A. Respondent's misconduct.

85. Relator incorporates by reference the allegations contained in Paragraphs 1 through 86 of the Complaint as if fully rewritten herein.

86. Maryann Gimmelli ("Ms. Gimmelli") retained Respondent in November 2009 to represent her in a personal injury matter.

87. Despite multiple attempts, Ms. Gimmelli was unable to reach Respondent from

June 2010 to June 2012.

88. Mediation was scheduled in Ms. Gimmelli's case for March 13, 2013.

89. Ms. Gimmelli did not agree to settle her claims at the March 13, 2013 mediation; rather, she left the mediation after Respondent recommended that she accept an amount that she did not find acceptable.

90. Despite lacking Ms. Gimmelli's consent, Respondent settled her case and filed a stipulation of dismissal with the Cuyahoga County Court of Common Pleas.

91. After the March 13, 2013 mediation, Ms. Gimmelli continued to attempt to reach Respondent for an update regarding the status of her case, but remained unable to do so.

92. Ms. Gimmelli learned that Respondent had settled and dismissed her case only in January 2014 after contacting another attorney, Geoffrey Shapiro.

93. Attorney Shapiro and Ms. Gimmelli's new counsel, Mitchell Weisman, obtained relief from the previous dismissal on March 24, 2014. In its order on Ms. Gimmelli's Motion for Rule 60 Relief from Judgment, the Court stated:

> The Court was previously notified that the instant case was settled and dismissed and an entry signed by counsel was submitted to and signed by the Court. Apparently, Plaintiff's prior counsel did not have authority to settle the case and failed to submit the necessary releases and other documents to effectuate the settlement. As a consequence, settlement funds were never processed. Plaintiff's prior counsel thereafter failed to communicate with his client or with defense counsel. All attempts to reach Plaintiff's prior counsel have proved futile.

B. <u>Respondent's Conduct Violated the Rules of Professional Conduct.</u>

94. Respondent's conduct in failing to abide by Ms. Gimmelli's decision not to settle her case and then stipulating to the dismissal of her case after falsely stating that she had agreed to settle her case violated Rules of Professional Conduct 1.2(a), 1.4(a)(1), 4.1(a), 8.4(c), and 8.4(h).

95. Respondent's failure to respond to Ms. Gimmelli's repeated requests for updates on the status of her case violated Rules of Professional Conduct 1.4(a)(3) and (4).

COUNT SIX – RISE MILLER-DIMICHELE AND MARTIN DIMICHELLE

A. Respondent's misconduct.

96. Relator incorporates by reference the allegations contained in Paragraphs 1 through 97 of the Complaint as if fully rewritten herein.

97. Rise Miller-DiMichele ("Ms. Miller-DiMichele") and Martin DiMichele ("Mr. DiMichele") retained Respondent to represent them in a personal injury action captioned *Rise Miller-DiMichele et al. v. Westlake Bd. of Education, et al.*, Cuyahoga County Court of Common Pleas No. CV-11-759361 (the "DiMichele Action").

98. The parties mediated the DiMichele Action on October 20, 2012 and reached a settlement. A part of that settlement was Respondent's agreement to negotiate a resolution of a lien held by the Post Office for medical bills paid on Ms. Miller-DiMichele's behalf. Resolution of this lien was a condition of payment of the settlement funds.

99. A stipulation of dismissal was filed and the DiMichele Action was dismissed with prejudice on November 5, 2012.

100. The settlement was never funded, however, because Respondent failed to resolve the lien held by the Post Office in the twenty-one months since the October 20, 2012 mediation.

101. During those twenty-one months, Respondent failed to answer repeated calls from Ms. Miller-DiMichele and Mr. DiMichele regarding lien resolution and the settlement.

102. Ms. Miller-DiMichele's referring co-counsel, attorney Geoffrey Shapiro, also contacted Respondent in an attempt to resolve the lien and fund the settlement, but Respondent similarly refused to contact Attorney Shapiro.

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

103. Respondent's failure to resolve the lien related to the settlement in the twenty-one months that followed the October 20, 2012 mediation violated Rule of Professional Conduct 1.3.

104. Respondent's failure to respond to Ms. Miller-DiMichele's, Mr. DiMichele's, and Attorney Shapiro's repeated requests for updates on the status of the settlement violated Rules of Professional Conduct 1.3, 1.4(a)(3), and 1.4(a)(4).

COUNT SEVEN – PATRICIA MURRAY

A. Respondent's misconduct.

105. Relator incorporates by reference the allegations contained in Paragraphs 1 through 106 of the Complaint as if fully rewritten herein.

106. Patricia Murray ("Ms. Murray") retained Respondent on January 30, 2011 to represent her in a personal injury matter.

107. Shortly after being retained by Ms. Murray, Respondent opened a medical payments claim with her insurance company.

108. Ms. Murray's medical bills would be submitted to her insurer, who would then send checks to Respondent. Respondent would then forward those checks to Ms. Murray, who would endorse the checks and return them to Respondent. Respondent would deposit the checks in his IOLTA account, from which he would make payments to Ms. Murray's medical providers.

109. Ms. Murray terminated Respondent's representation on October 24, 2013.

110. When Ms. Murray terminated Respondent's representation, she requested in writing that Respondent provide her with a record of all disbursements made on her behalf.

111. Ms. Murray did not receive the requested information, so she wrote Respondent again on November 15, 2013 asking for a record of all funds received on her behalf, as well as a check for any unused funds. Ms. Murray requested that Respondent deliver those items to her by November 30, 2013, but she did not receive them.

112. Following Ms. Murray's unsuccessful requests for information from Respondent, her new counsel, Stevin J. Groth, Esq. made several attempts to obtain the same. Respondent did not provide the information to Attorney Groth, either.

113. Mr. Vecchio contacted Respondent on behalf of Relator to investigate Ms. Murray's grievance against Respondent on May 28, 2014 and June 3, 2014.

114. Mr. Vecchio requested Respondent's IOLTA ledger with respect to Ms. Murray on both occasions, but never received it.

115. On June 24, 2014, Respondent sent Attorney Groth a check in the amount of $7,960.00. Respondent represented that this was the total amount of trust funds being held for Ms. Murray. Respondent's failure to produce his IOLTA ledger regarding Ms. Murray makes it impossible to know whether this amount is accurate or complete, or which medical bills (if any) remain unpaid.

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

116. Respondent's failure to maintain a record for Ms. Murray that sets forth: (a) the date, amount, and source of all funds received on her behalf; (b) the date, amount, payee, and purpose of each disbursement made on her behalf; and (c) the current balance for Ms. Murray violated Rule of Professional Conduct 1.15(a)(2).

PRAYER FOR RELIEF

WHEREFORE, Relator prays that the Respondent be appropriately disciplined for the alleged misconduct described herein up to and including the sanction of indefinite suspension.

Dated: Sept. 16, 2014

Respectfully submitted,

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CERTIFICATE

The undersigned, **COLIN R. JENNINGS, CHAIRPERSON,** of the **CLEVELAND METROPOLITAN BAR ASSOCIATION'S CERTIFIED GRIEVANCE COMMITTEE,** hereby certifies that **BENJAMIN C. SASSÉ** and **JONATHAN F. FECZKO** 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: 9/16/14

COLIN R. JENNINGS, CHAIRPERSON
Certified Grievance Committee

(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.