

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

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AUG 08 2014

In re:)
)
COMPLAINT AGAINST)
)
DAVID GERCHAK, ESQ.)
Atty Reg. No. 0069060)
P.O. Box 2985)
Youngstown, OH 44511)
)
Respondent)
)
MAHONING COUNTY BAR)
ASSOCIATION)
114 E. Front Street)
Suite 100)
Youngstown, Ohio 44503)
)
Relator)

BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

CASE NO. 14 - 061

COMPLAINT

FILED

SEP 03 2014

BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

(Rule V, Section 4 of the
Supreme Court Rules for the
Government of the Bar of Ohio)

Relator, Mahoning County Bar Association, states for its cause of action against
Respondent, David Gerchak:

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 duly 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 0069060.

4. Respondent's last known address is P.O. Box 2985, Youngstown, Ohio 44511.

II. Factual Background

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

6. On August 15, 2011, Jeff Blanche hired Respondent to pursue a pardon of a prior criminal conviction with the Governor of the State of Ohio.

7. On or about August 15, 2011, Jeff Blanche paid Respondent seven hundred fifty dollars (\$750.00) for purposes of pursuing the pardon described above.

8. No attorney fee agreement was entered into or reduced to writing.

9. With regard to the representation, no time records were kept regarding the representation.

10. The seven hundred fifty dollar (\$750.00) payment to secure a pardon from the Governor described above was never deposited in Respondent's IOLTA account.

11. Respondent took no steps to secure the pardon from the Governor described above.

12. Jeff Blanche was arrested for OVI on November 25, 2012.

13. On or about November 25, 2012, Jeff Blanche retained Respondent to represent him with regard to the OVI charges.

14. Respondent and Jeff Blanche agreed that the seven hundred fifty dollars (\$750.00) previously paid for representation with regard to the pardon from the Governor would now be applied to the representation on the arrest for the OVI.

15. Subsequently, Jeff Blanche made additional payments to Respondent for purposes of the representation in the OVI matter, to wit: on December 4, 2012, Jeff Blanche paid Respondent an additional two hundred fifty dollars (\$250.00); on December 6, 2012, Jeff Blanche paid Respondent an additional two hundred dollars

(\$200.00); and on December 21, 2012, Jeff Blanche paid Respondent an additional two hundred dollars (\$200.00).

16. The total payments made to Respondent for the above described representation was fourteen hundred dollars (\$1,400.00).

17. None of the payments described above were deposited in Respondent's IOLTA Account.

18. No fee agreement was entered into with regard to any of the above representation.

19. No contemporaneous time records were kept with regard to the above described representation.

20. Respondent never provided Jeff Blanche with a monthly statement and/or reconciliation detailing the time spent on Jeff Blanche's case, the funds disbursed, or the funds remaining.

21. Respondent has never returned any funds to Jeff Blanche or provided him with a final accounting.

22. Jeff Blanche terminated the services of Respondent on December 21, 2012.

23. To date, no itemized statement has ever been provided to Jeff Blanche.

24. To date, no monies have ever been returned to Jeff Blanche.

25. On December 27, 2012, after Jeff Blanche terminated the services of Respondent, Respondent filed a "Motion for Discovery" with the Court and, on the same date, certified that a copy of the same was "delivered by mail, hand, fax or electronic mail to the Mahoning County Prosecutor."

26. Despite multiple requests, Respondent has failed to produce or otherwise provide to Relator his IOLTA records for the period of January 1, 2011 through January 1, 2014.

27. Although Respondent represented to Relator that he could account for multiple phone calls through his phone records, he has not done so.

III. Prior Disciplinary History

28. Respondent was suspended from the practice of law for a period of one (1) year with the entire suspension stayed on the condition that he successfully complete his 3-year Ohio Lawyer Assistance Program contract. See Ohio Supreme Court Case No. 2011-0700.

29. In the above matter, Respondent was found to have violated Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation] and Prof. Cond. R. 8.4(d) [conduct that is prejudicial to the administration of justice].

IV. Disciplinary Violations

30. Respondent's conduct as 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 1.5(a) [a lawyer shall not make an agreement for, charge, or collect an illegal or clearly excessive fee];
- c. 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

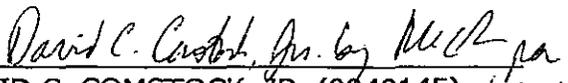
be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation];

- d. Rule 1.15(a) [a lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyers own property];
- e. Rule 1.15(c) [a lawyer shall deposit into a client trust legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred];

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

MAHONING COUNTY BAR ASSOCIATION

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