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BOARD OF PROFESSIONAL CONDUCT

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

FILED

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In re:
Complaint against

Case No.

BOARD OF PROFESSIONAL CONDUCT

Robert Eugene Searfoss, III, Esq.
(0078906)
112 East Oak Street
Bowling Green, Ohio 43402
Respondent,

COMPLAINT AND CERTIFICATE

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

Wood County Bar Association
PO Box 1133
Bowling Green, Ohio 43402
Relator.

Relator Wood County Bar Association alleges that Respondent Robert Eugene Searfoss, III, an attorney at law admitted to the practice of law in the state of Ohio is guilty of the following misconduct:

1. Respondent was admitted to the practice of law in the state of Ohio on May 9, 2005.
2. As an attorney, Respondent is subject to the Ohio Rules of Professional Conduct and the Supreme Court of Ohio Rules for the Governance of the Bar of Ohio.

Count 1 – James Bodenbender

3. On April 19, 2012, James Bodenbender engaged Respondent's services to pursue a lemon law claim against a car dealership.

4. At the time of the engagement, the parties orally agreed to a \$5,000 retainer, with services to be billed at \$250 per hour. Respondent did not anticipate Mr. Bodenbender needing to pay any further retainer because Respondent believed he would be able to recover attorney fees from the opposing party.

5. Mr. Bodenbender was neither presented with nor signed a written fee agreement.

6. Mr. Bodenbender paid Respondent the \$5,000 retainer, which Respondent deposited in his IOLTA on April 23, 2012.

7. Respondent withdrew \$2,250 of the retainer from his IOLTA on May 5, 2012, \$2,450 on May 29, 2012, and the remaining \$300 on July 2, 2012. He also billed Mr. Bodenbender for an additional \$1,400.

8. Respondent claims that he told Mr. Bodenbender he would conduct "substantial" research on the matter prior to filing suit.

9. Respondent never filed a lawsuit on Mr. Bodenbender's behalf. He did, however, file a consumer complaint with the Ohio Attorney General's office on July 2, 2012.

10. The Attorney General's office investigated Mr. Bodenbender's complaint and determined that it was a factual dispute between Mr. Bodenbender and the dealership and manufacturer; consequently, the Attorney General's office did not take any action against the dealership or the manufacturer.

11. Prior to January 28, 2013, the Attorney General's office informed Respondent that it was not taking action and was closing its file. Respondent forwarded that information to Mr. Bodenbender in a letter dated January 28, 2013.

12. While the Attorney General's investigation was ongoing, Mr. Bodenbender retained another attorney, Stephen Snavelly, to assist him with getting his retainer back from Respondent.

13. Mr. Snavelly contacted Respondent by letter on November 28, 2012. Mr. Snavelly told Respondent that Mr. Bodenbender was terminating Respondent's services, demanded an accounting for the legal services provided and costs charged as of that date, and sought the return of the balance of Mr. Bodenbender's retainer.

14. Respondent replied to Mr. Snavelly's letter on January 3, 2013, stating that he had spent 25.6 hours on the case as of July 2, 2012, but did not have his time sheets. He claimed that his hours worked included "extensive research" and handling the Attorney General complaint. He also claimed that Mr. Bodenbender instructed him to do nothing on the case until further notice.

15. Mr. Snavelly advised Mr. Bodenbender and his son, Michael Bodenbender, who is Mr. Bodenbender's power of attorney, to refer the matter to Disciplinary Counsel.

16. Michael filed a complaint with Disciplinary Counsel on July 30, 2013.

17. On September 9, 2013, Disciplinary Counsel declined to investigate and referred Mr. Bodenbender to Relator for fee arbitration.

18. When Michael contacted Relator, Relator completed an investigation and also concluded that the matter involved a fee dispute.

19. Michael's complaint was forwarded to the Toledo Bar Association's fee dispute arbitration program.

20. Respondent ignored the Toledo Bar Association's correspondence about fee arbitration, and Michael eventually contacted Relator again to inform it that Respondent declined to participate in fee dispute arbitration.

21. Relator elected to reopen its investigation of the Bodenbender complaint and pursued the investigation in conjunction with the Turner grievance that is the subject of Count 2.

22. Respondent provided the investigator with a written response to Michael's grievance on December 13, 2013.

23. During the initial investigation of this claim, Respondent provided Relator's investigator with Mr. Bodenbender's client file. The file contained one printed case, several printed Revised Code sections, and correspondence from Mr. Bodenbender's new counsel and Mr. Bodenbender's son.

24. The investigator for the follow-up investigation also requested Mr. Bodenbender's client file. The file Respondent provided included everything from the first file, plus additional printed cases and Revised Code sections, the vehicle's warranty information, invoices from the car dealership, and information from the consumer complaint Respondent filed with the Ohio Attorney General's office.

25. Respondent lost all time sheets relating to Mr. Bodenbender's case, but claims that he had a handwritten note in his file that he had spent 25.6 hours on the case as of July 2, 2012.

26. Despite requests from Mr. Bodenbender's new counsel and the investigators in this case, Respondent never produced an accounting of the time he spent on Mr. Bodenbender's case.

27. Respondent's conduct violates the following Rules of Professional conduct: Prof.Cond.R. 1.1 (requiring a lawyer to provide competent representation to a client); Prof.Cond.R. 1.3 (requiring a lawyer to act with reasonable diligence and promptness in representing a client); Prof.Cond.R. 1.4(a)(2) (requiring a lawyer reasonably consult with the client about the means used to accomplish the client's objectives); Prof.Cond.R. 1.4(a)(3) (requiring a lawyer to keep the client reasonably informed about the status of a matter); Prof.Cond.R. 1.4(b) (requiring a lawyer to explain a matter to the extent reasonably necessary to allow the client to make informed decisions); Prof.Cond.R. 1.5(a) (prohibiting a lawyer from charging or collecting a clearly excessive fee); Prof.Cond.R. 1.15(a)(2) (requiring a lawyer to maintain records for each client on whose behalf funds are held that sets forth the client's name; the date, amount, and source of all funds received; the date, amount, payee, and purpose of each disbursement; and the client's current balance); Prof.Cond.R. 1.15(a)(5) (requiring a lawyer to perform and retain a monthly reconciliation of funds held for clients); and Prof.Cond.R. 8.4(h) (prohibiting a lawyer from engaging in conduct that adversely reflects on his fitness to practice law).

Count 2 – Elizabeth Turner

28. In January 2014, Elizabeth Turner hired Respondent to handle two stepparent adoption petitions involving her biological children, a daughter and a son.

29. Respondent told Mrs. Turner that he was inexperienced in adoption matters, and claims that he offered to refer her to a lawyer with more adoption experience. Mrs. Turner declined the offer.

30. Respondent agreed to handle the matter for a flat fee of \$2,500, plus \$1,000 in filing fees.

31. Mrs. Turner was neither presented with nor signed a written fee agreement.

32. Mrs. Turner paid Respondent \$3,500 in late January 2014.

33. Respondent deposited \$2,500 of Mrs. Turner's payment directly into his personal checking account on January 22, 2014.

34. Respondent considered the fee earned on the date he deposited it because he contends that he had discussions with and did research for Mrs. Turner before offering to handle the two adoptions for the \$2,500 flat fee.

35. Respondent did not keep any time records of work he performed for Mrs. Turner, either before or after he offered to handle the adoptions for a flat fee. He estimated that he spent over 20 hours on the case before depositing the \$2,500 in his personal checking account.

36. Respondent cashed the checks Mrs. Turner gave him for the \$1,000 in filing fees and expenses and kept the cash in his office safe.

37. Respondent never deposited any of Mrs. Turner's money in his IOLTA.

38. Respondent did nothing on the case until May 2014.

39. Between February and May of 2014, Mrs. Turner contacted Respondent numerous times to determine the status of the case.

40. On May 7, 2014, Mrs. Turner e-mailed Respondent to inquire about the status of her case and whether a court date had been set.

41. On May 9, 2014, at 10:46 a.m., Respondent responded to Mrs. Turner's e-mail and told her, "the juvenile court has not been cooperative, but I believe I've found a way to skip them altogether."

42. Later that same day, at 12:49 p.m., Respondent again e-mailed Mrs. Turner apologizing for the delay in the process and stating that Mrs. Turner was "correct to not expect it to take this long to get going. [The adoption case] is now going and I will keep you posted."

43. On May 9, 2014, at 2:44 p.m., Respondent filed a petition for the adoption of Mrs. Turner's daughter by her husband, but did not file a petition for the adoption of Mrs. Turner's son.

44. Respondent filed the petition in the Common Pleas Court of Wood County, Probate Division. He paid a \$368 deposit to the Probate Court clerk at that time.

45. On May 23, 2014, the Probate judge issued an order stating that the court had attempted to contact Respondent with no response, and that the court needed additional information to proceed with the adoption petition. The court ordered

that Respondent provide the information by June 13, 2014, or the case could be dismissed.

46. Mrs. Turner contacted Respondent by e-mail on June 10, 2014. She inquired about the status of the case and reminded Respondent that the court needed more information. She told Respondent that if he did not provide the information to the court by June 13, she would seek a different lawyer and ask for the refund of her \$3,500. She also stated that she would continue to employ Respondent if he complied with the court's order by June 13.

47. In his response e-mail on June 11, 2014, Respondent told Mrs. Turner that the petition would have to be dismissed and refiled in Lucas County because Mrs. Turner and her children had moved to Toledo.

48. Mrs. Turner and her family moved to Toledo in January or February 2014. Respondent claims that Mrs. Turner never informed him of the move.

49. Respondent's June 11 e-mail also informed Mrs. Turner that he interpreted her June 10 e-mail as a termination of his services. He told her he would file a dismissal of the Wood County petition and send her an unspecified refund and her client file.

50. Respondent filed a voluntary dismissal of the adoption petition on June 12, 2014.

51. Mrs. Turner eventually hired another attorney to file adoption petitions for both of her children. The petitions were filed in, and ultimately granted by, the Lucas County Probate Court. The second attorney charged approximately \$2,300 for both successful adoptions.

52. Respondent sent Mrs. Turner a check for \$1,700 on July 9, 2014.

53. The \$1,700 refund included \$910 of the \$1,000 Mrs. Turner had paid Respondent for filing fees and expenses. The rest of the refund was an amount that Respondent considered, "fair under the circumstances, but [] arbitrarily arrived at."

54. In the letter sent with the refund, Respondent stated, "[b]y accepting this check, you are releasing me from any claim you may have against me. In return, I am releasing you from any claim for money I may have against you."

55. Mrs. Turner was dissatisfied with Respondent's calculation of her refund.

56. Mrs. Turner filed a grievance with Relator on August 11, 2014.

57. In September 2014, after the grievance was filed, but allegedly before Respondent knew about it, Respondent sent Mrs. Turner and her husband a "mutual release" that provided for the refund of an additional \$600 within 60 days. The release also purported to discharge any claims of any type the parties might have against each other.

58. Respondent contacted Relator's investigator on November 30, 2014, asking for a copy of Mrs. Turner's written grievance against him. The investigator provided it on December 1.

59. That same day, Respondent sent the investigator a copy of the signed mutual release. His e-mail referred to Mrs. Turner's grievance as "merely a fee dispute" that was resolved by the mutual release.

60. Also on December 1, 2014, Mrs. Turner contacted Respondent asking why she had not received her additional refund.

61. Respondent replied to Mrs. Turner on December 2, 2014, that he had mailed the check that day. Respondent also mentioned the grievance and stated, "I trust that when you receive this last check for \$600 that you will indicate our dispute was/is resolved."

62. Respondent submitted his written response to Mrs. Turner's grievance on December 16, 2014.

63. Respondent's conduct violates the following Rules of Professional conduct: Prof.Cond.R. 1.1 (requiring a lawyer to provide competent representation to a client); Prof.Cond.R. 1.3 (requiring a lawyer to act with reasonable diligence and promptness in representing a client); Prof.Cond.R. 1.4(a)(2) (requiring a lawyer to reasonably consult with the client about the means used to accomplish the client's objectives); Prof.Cond.R. 1.4(a)(3) (requiring a lawyer to keep the client reasonably informed about a matter); Prof.Cond.R. 1.4(b) (requiring a lawyer to explain a matter to the extent reasonably necessary to allow the client to make informed decisions); Prof.Cond.R. 1.5(a) (prohibiting a lawyer from charging or collecting a clearly excessive fee); Prof.Cond.R. 1.5(d)(3) (prohibiting a lawyer from charging or collecting a fee denominated as "earned upon receipt," "nonrefundable," or in any similar terms, unless the client is simultaneously advised in writing that the client may be entitled to a refund if the lawyer does not complete the representation); Prof.Cond.R. 1.15(a) (requiring a lawyer to hold clients' funds separate from the lawyer's own funds in an interest-bearing trust account); Prof.Cond.R. 1.15(a)(2) (requiring a lawyer to maintain records for each client on whose behalf fund are held that sets forth the client's name; the date, amount, and source of all funds received; the date, amount, payee, and purpose of each

disbursement; and the client's current balance); Prof.Cond.R. 1.15(a)(5) (requiring a lawyer to perform and retain a monthly reconciliation of funds held for clients); Prof.Cond.R. 1.15(c) (requiring a lawyer to deposit legal fees and expenses paid in advance in a client trust account); Prof.Cond.R. 8.4(c) (prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); and Prof.Cond.R. 8.4(h) (prohibiting a lawyer from engaging in conduct that adversely reflects on his fitness to practice law).

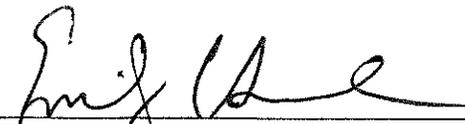
Wherefore, Relator requests that Respondent be found in violation of the cited provisions and an appropriate sanction be imposed.

Respectfully submitted,

Wood County Bar Association, by:



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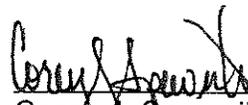
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Bar Counsel for Relator

CERTIFICATE

The undersigned, Corey J. Speweik, chairman of the Wood County Bar Association Certified Grievance Committee, hereby certifies that Thomas A. Matuszak, Emily C. Samlow, and Michael E. Hyrne are authorized to represent Relator in this matter and have accepted the responsibility of prosecuting the complaint to its conclusion. After investigation, Relator believes reasonable cause exists to warrant a hearing on the complaint.

9/8/15

Date



Corey J. Speweik, Chairman
Wood County Bar Association
Certified Grievance Committee

CERTIFICATE OF SERVICE

This is to certify that a copy of the complaint was hand delivered on September 8, 2015, to the Board of Professional Conduct, and sent via certified mail, return receipt requested, on September 8, 2015, to:

Robert Searfoss III, Esq.
112 E. Oak St.
Bowling Green, OH 43402
Respondent

Patrick Cavanaugh, Esq.
Kitch Drutchas Wagner Valitutti & Sherbrook
405 Madison Ave., Ste. 1500
Toledo, OH 43604
Counsel for Respondent


Emily C. Samlow, Esq.
Counsel for Relator