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

BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

In re:)
)
 COMPLAINT AGAINST)
)
 ROGER BAUER)
 Atty Reg. No. 0015998)
 244 Seneca Ave.)
 Warren, Ohio 44481-1228)
)
 Respondent)
)
 MAHONING COUNTY BAR)
 ASSOCIATION)
 114 E. Front Street)
 Suite 100)
 Youngstown, Ohio 44503)
)
 Relator)

CASE NO. 14 - 056 - 1st

COMPLAINT

FILED

JUL 07 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, Roger Bauer:

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. His Bar Registration Number is 0015998.

3. Respondent's last known business address is 244 Seneca Ave., Warren, Ohio 44481.

II Factual Background

4. Debra Cobb gave birth to her daughter, Haley Cobb, at Trumbull Memorial Hospital on January 4, 2000.

5. Debra Cobb is married to Okey Cobb, Jr., the father of Haley Cobb.

6. Haley Cobb was born in a compromised state. She required resuscitation. After her birth she was transferred to Tod Children's Hospital where she remained a patient for several weeks. During Haley's hospitalization at Tod Children's Hospital, Debra Cobb and Okey Cobb, Jr. learned that Haley may have suffered brain damage. At that time, they did not know whether the brain damage was the result of natural causes or negligence.

7. Thereafter, Debra and Okey Cobb, Jr. decided to consult with a lawyer to investigate a potential claim for medical negligence.

8. William Dye II is the brother of Debra Cobb. Sometime in 2000, Debra Cobb asked William Dye II if he knew of any lawyers who handled medical negligence cases.

9. At that time, William Dye II was a friend of Respondent, Roger Bauer. Sometime in 2000, William Dye II telephoned Respondent to ask if he knew any attorneys who handled medical negligence cases.

10. Respondent recommended Attorney Martin White.

11. During their telephone conversation, Respondent asked William Dye II to obtain some information from his sister, Debra Cobb, to forward to Attorney Martin White. He requested William Dye II's sister's full name and address, her husband's full name and address, their dates of birth, and their social security numbers.

12. William Dye II called Debra Cobb and obtained the requested information. Dye subsequently called Respondent and provided the requested information to Respondent.

13. William Dye II gave the name of Attorney Martin White to Debra Cobb.

14. Subsequently, Debra Cobb, along with her sister, Denise Sherman, who was a nurse at Trumbull Memorial Hospital, scheduled an appointment to meet with Attorney Martin White.

15. Sometime in the interim, Respondent relayed the Cobb information to Attorney Martin White.

16. Debra Cobb and Denise Sherman met with Attorney Martin White and Wanda Burns, R.N., a nurse employed by Attorney White.

17. Debra Cobb and Okey Cobb, Jr. hired Attorney Martin White to investigate a potential claim for medical negligence with regard to Haley Cobb's brain injury.

18. Debra and Okey Cobb, Jr. signed a written fee agreement. (Exhibit 1).

19. On December 9, 2003, Attorney Martin White filed a complaint in the Court of Common Pleas, Trumbull County, Ohio, on behalf of Haley Nicole Cobb, a minor, Debra R. Cobb, and Okey F. Cobb, Jr. The complaint was assigned case number 03 CV 2921.

20. Based upon the call from Respondent in which he provided basic information about the Cobbs, Attorney White assumed that Debra Cobb and Okey Cobb, Jr. were clients of Attorney Roger Bauer. They were not.

21. The Cobb complaint in case number 03 CV 2921 was voluntarily dismissed on November 17, 2005.

22. Subsequent to the dismissal, Debra Cobb received a phone call from Respondent. During the call, Respondent questioned Debra Cobb about the reason the complaint was dismissed.

23. On November 14, 2006, the complaint was refiled and assigned case number 06 CV 2992 on the docket of the Trumbull County Common Pleas Court.

24. In March, 2009, a status conference was scheduled with the court. At that time, Attorney White was of the opinion that the complaint against Tara Shipman, M.D. would not settle and that, given the complexity of the case, he would need additional help in prosecuting the case. At that time, being under the assumption that the Cobbs were Respondent's clients, Attorney White called Respondent and discussed the issue of going forward, the complexity of the case, and the costs with Respondent.

25. Subsequently, Attorney White consulted with the Cobbs relative to the future course of the litigation. Specifically, White discussed his telephone call with Bauer regarding the future complexity of the case and the cost. It was at that time that Attorney White came to the realization that there was no relationship between the Cobbs and Respondent.

26. Specifically, the Cobbs explained that they never consulted with any attorney before Attorney White. The Cobbs never agreed to have Respondent represent them or act as co-counsel in any case.

27. The reason the Cobbs consulted Attorney White was because Denise Sherman, Debra Cobbs' sister, and William Dye, II, Debra Cobb's brother, recommended Attorney White.

28. Shortly thereafter, Attorney White confronted Respondent with the fact that the Cobbs did not consider Respondent to be their attorney.

29. The next day, Respondent faxed information to Attorney White which Respondent claims established an attorney-client relationship with the Cobbs and a co-counsel relationship with Attorney White. Again, Attorney White consulted the Cobbs relative to this relationship.

30. On June 11, 2009, as a result of the above revelations, Attorney White authored a letter to Respondent.

31. In his letter, Attorney White explained to Respondent that no attorney-client relationship was established between Respondent and the Cobbs.

32. Attorney White also explained that he was of the opinion that Respondent was not co-counsel on the case and was thus not entitled to any legal fees.

33. On or about June 23, 2009, Debra Cobb and Okey Cobb Jr. signed a new contingent fee agreement with Attorney Martin White which included Attorney Norman Moses, and the law firm of Djordjevic, Casey, Marmoros Co. L.L.C. as co-counsel to prosecute the case on their behalf. (Exhibit 2).

34. Before their case proceeded to trial against Tara Shipman, M.D. and Associates in Female Health, Inc., Respondent again contacted Debra Cobb. During the phone call, Respondent asserted that he was sorry that Debra Cobb did not remember meeting with him. Debra Cobb told Respondent she would not even recognize him. Prior to this call, Debra Cobb never met Respondent nor talked to him more than as set forth above.

35. On September 13, 2010, Attorney Michael D. Rossi wrote to Attorney Martin White, indicating that Attorney Rossi represented Respondent.

36. Attorney Rossi's letter represents that William Dye II introduced Debra Cobb to Respondent. Both William Dye II and Debra Cobb deny that any such introduction occurred.

37. Rossi's letter represents that Debra Cobb considered Respondent to be her lawyer. Debra Cobb and her husband Okey Cobb Jr. deny that they ever considered Respondent to be their attorney.

38. Rossi's letter represents that Respondent personally interviewed Debra Cobb, reviewed her paperwork, and "took copious notes." Debra Cobb denies this, and no such "copious notes" exist. Respondent has provided his entire file to Relator. It is attached as Exhibit 3.

39. Attorney Rossi's letter represents that Respondent "convinced Debbie to bring you [Attorney Martin White] in on the case." Debra Cobb denies this.

40. Attorney Rossi's letter also represents that Respondent "made arrangements for" Debra Cobb "to interview with your nurse [Attorney White's nurse] Wanda." Attorney White and Debra Cobb deny this.

41. The letter maintains that Attorney White agreed to his "customary 50/50 fee division." Attorney White denies this.

42. The letter represents that Respondent "repeatedly inquired into the status of case." Attorney White, Debra Cobb, and Okey Cobb Jr. deny this.

43. As the case proceeded, Respondent did not communicate or participate in the case with either Attorney White, Debra Cobb, or Okey Cobb Jr.

44. On October 21, 2010, the jury returned a verdict, and the Court entered judgment, in favor of plaintiffs, Haley Cobb, Debra Cobb, and Okey Cobb Jr., in the amount of thirteen million nine hundred thousand dollars (\$13,900,000.00).

45. On October 28, 2010, Respondent sued Attorney White in the Court of Common Pleas, Trumbull County, Ohio, alleging that he was entitled to share in any attorney fee earned. Respondent's claims included breach of contract, unjust enrichment, joint venture/partnership, and promissory estoppel, and requested declaratory judgment. The case was assigned the number 10 CV 2846.

46. On June 10, 2011, the Court entered judgment with prejudice against Respondent. The Court referred the matter to the Trumbull County Bar Association for arbitration or mediation and indicated that, if the Trumbull County Bar Association was unable to resolve the matter, it should be referred to the Ohio State Bar Association for resolution. The Court concluded that Respondent's claim was a dispute about a fee sharing agreement between attorneys which was an issue to be decided pursuant to the Rules of Professional Conduct and/or the Code of Professional Responsibility.

47. On or about July 7, 2011, Respondent filed a Notice of Appeal from the Judgment Entry of the Court of Common Pleas, Trumbull County, Ohio, to the Court of Appeals for the 11th Appellate District. Respondent's appeal was assigned the case number 2011 T 71.

48. On March 19, 2012, the Court of Appeals for the 11th Appellate District affirmed the judgment of the Trumbull County Court of Common Pleas. It was a unanimous decision.

49. On March 27, 2012, Respondent filed a motion to certify a conflict to the Ohio Supreme Court. On March 27, 2012, Respondent filed an application for reconsideration with the Court of Appeals.

50. On April 20, 2012, Respondent filed a Notice of Appeal to the Supreme Court. The Ohio Supreme Court assigned his appeal the number 2012-0629.

51. On May 3, 2012, the Court of Appeals for the 11th Appellate District overruled Respondent's motion to certify a conflict.

52. On July 5, 2012, the Ohio Supreme Court declined to accept jurisdiction. Respondent continued to assert a claim even though he was never retained by the Cobbs.

III. Procedural History

53. On February 16, 2011, counsel for the Relator forwarded to Respondent a letter notifying him of Relator's investigation.

54. Thereafter, Relator investigated the facts and circumstances set forth in paragraphs 4 through 52 of the Complaint.

55. On September 13, 2012, the Mahoning County Bar Association Certified Grievance Committee found that sufficient evidence existed to proceed forward with the filing of a formal complaint.

56. Thereafter, the Relator, through its counsel, drafted a complaint which was forwarded to counsel for the Respondent for review.

57. Counsel for the Respondent reviewed the complaint and prepared an initial response on behalf of the Respondent.

58. In the interim, the Trumbull County Common Pleas Court referred the dispute between Respondent and Attorney White to the Ohio State Bar Association.

59. The Ohio State Bar Association appointed a panel to address the fee dispute which Respondent had instituted.

60. After reviewing the matter with bar counsel, Relator came to the conclusion that it would be inappropriate for the fee dispute and grievance investigation to proceed simultaneously. Therefore, on December 4, 2012, Relator dismissed its investigation of Respondent until the Ohio State Bar Association's proceedings were concluded. Respondent was advised that Relator would decide whether or not it would take further action at that time.

61. Respondent was expressly advised that the dismissal of the grievance was not a dismissal on the merits.

62. Relator learned in early August of 2013 that the arbitration of the dispute between Respondent and Martin F. White had been concluded.

63. Thereafter, Respondent reviewed the facts, circumstances, and the procedural issues which had occurred after the grievance and complaint had been dismissed on or about December 4, 2012.

64. On March 13, 2014, Relator's Certified Grievance Committee again found that sufficient evidence exists to proceed with the filing of this complaint.

IV. Misconduct

65. Paragraphs 1 through 52 set forth above constitute a violation of Rule 2-107 of the Code of Professional Responsibility, in that the Cobbs never provided consent for Respondent to serve as their counsel, and Respondent failed to set forth in writing the division and identity of all lawyers sharing in the claimed fee; to the extent that the conduct continued after February 1, 2007, the conduct of the Respondent also violates Rule 1.5(c) and (e) of the Ohio Rules of Professional Conduct in that a written contingency fee agreement was never signed by the client which sets forth the division of fees and responsibilities of the counsel.

66. Paragraphs 1 through 52 set forth above constitute a violation of DR2-107(b) in that any dispute between lawyers arising under Rule 2-107 must be resolved via the local bar association or the Ohio state Bar Association; to the extent the dispute arose after February 1, 2007, the conduct of the Respondent constitutes a violation of

Rule 1.5(f) of the Ohio Rules of Professional Conduct which provides a case which is a dispute between lawyers for fees shall be resolved in accordance with the mediation or arbitration provided by the local bar association or the Ohio State Bar Association.

67. Paragraphs 1 through 52 set forth above constitute a violation of Rule 3.3(a)(1) and (3) of the Ohio Rules of Professional Conduct, a lawyer shall not knowingly make a false statement of fact or law to a tribunal or offer evidence that the lawyer knows to be false.

68. Paragraphs 1 through 52 set forth above constitute a violation of the Ohio Rules of Professional Conduct, Rule 8.1(1)(a) and (b), providing that in connection with a disciplinary matter a lawyer shall not knowingly make a false statement of material fact or fail to disclose a material fact.

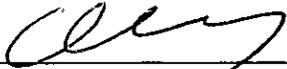
69. Paragraphs 1 through 52 set forth above constitute a violation of Rule 8.4(c) – “Misconduct – engage in conduct involving dishonesty, fraud, deceit, or misrepresentation” and DR 1-102(A)(4), Code of Professional Responsibility.

70. Paragraphs 1 through 52 set forth above constitute a violation of Rule 8.4(d) – “Misconduct – engage in conduct that is prejudicial to the administration of justice” and DR 1-102(A)(5), Code of Professional Responsibility.

WHEREFORE, pursuant to Rule V of the Rules for the Government of the Bar of Ohio, and the Code 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 for the Government of the Bar of Ohio.

MAHONING COUNTY BAR ASSOCIATION



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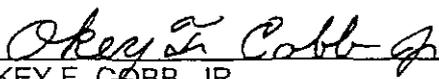
CONTRACT

We hereby engage Attorney Martin F. White, hereinafter referred to as "attorney," to represent us and our daughter, Haley Nicole Cobb, in the prosecution of a claim for medical malpractice arising from our daughter's birth at Trumbull Memorial Hospital.

The attorney shall charge a reasonable fee for his services which will be paid only if he is successful in retaining recovery on the claim. Regarding all claims, the attorney fees shall not exceed 40% of the amount collected, regardless of whether the case is settled, arbitrated, tried before a jury or appealed.

The attorney shall advance all costs necessary for the preparation and presentation of the claim including, but not limited to, expert fees, investigative fees, deposition fees, and all other reasonable and necessary services and materials relating to the claim. In addition to his fee, the attorney shall be reimbursed for the expenses of this nature that he actually incurs. The attorney shall not seek reimbursement for expenses in the event there is no recovery on our daughter's claim.

No settlement of this claim shall be made without the consent of the clients and the approval of the Trumbull County Probate Court.


OKEY F. COBB, JR.


DEBRA R. COBB


DEBRA R. COBB, as Court Appointed
Guardian of Haley Nicole Cobb

APPROVED BY:


MARTIN F. WHITE
Attorney at Law

EXHIBIT

CONTINGENCY FEE AGREEMENT

This contract supersedes a prior contingent fee agreement entered into between OKEY F. COBB, JR. and DEBRA R. COBB and Attorney Martin F. White, and is subject to the approval of the Trumbull County Probate Court. We hereby retain the law firm of Djordjevic, Casey & Marmaros Co. LLC (DCM), Norman A. Moses, and Martin F. White to act as attorneys to investigate, prepare, file in Court and pursue a personal injury claim against Tara A. Shipman, M.D., Trumbull Anesthesia Group, Inc., the estate of Edmundo Salero, M.D., and Forum Memorial Hospital or any other person, firm, or corporation liable for injuries, sustained to Haley Nicole Cobb, a minor.

FILED

ATTORNEYS FEES

As compensation for their services, I (we) agree to pay to said attorneys 40% from the total proceeds of recovery. Said fee will be shared 60% to DCM/Norman A. Moses and 40% to Martin F. White.

OCT 27 2009
JUDGE THOMAS A. SWIFT
TRUMBULL COUNTY PROBATE COURT
WARREN, OHIO

No further or greater fee will be charged by the attorneys if there are additional trials of the case, nor if there are one or more appeals in the Court of Appeals or the Supreme Court in such cases where the attorney's determine in their sole discretion that there is a meritorious basis to file said appeal. In the event of a structured settlement, the attorney's fee will be based on the present value of the settlement or award. IT IS AGREED THERE IS NO ATTORNEY FEE WITHOUT RECOVERY.

CASE EXPENSES

In consideration of their undertaking this work, I/we understand that said attorneys may incur out-of-pocket expenses in the investigation, preparation, probating and litigation of the case and the reasonable cost of investigators' services, non-testifying medical, nursing and other non-legal consultation, expert witnesses and consultants, mileage and travel expenses, all of said expenses collectively defined herein as "Case Expenses". Client(s) understand attorneys may utilize independent nurse consultants and hereby authorize said attorneys to pay "Case Expenses," medical expenses and subrogated interests from the proceeds of recovery directly to medical or other providers. IT IS AGREED THAT REPAYMENT OF CASE EXPENSES BY CLIENTS OF OUR FIRM REFERRED TO HEREIN IS CONTINGENT ON THE OUTCOME OF THE MATTER. Notwithstanding the preceding sentence, Case Expenses incurred after attorneys in good faith advise the Client(s) that the merits of the case do not warrant the incurrence of further Case Expenses shall be the sole responsibility of the Client(s) and attorneys shall have the right to be paid in advance by the Client(s) before any such additional Case Expenses are incurred.

LETTERS OF PROTECTION

Client(s) authorize attorneys at their discretion and/or client's request to send letters to medical providers which authorizes payment to said medical provider in the event of recovery.

VOLUNTARY DISMISSAL OF A LAWSUIT

Client(s) authorize attorneys to voluntarily dismiss a lawsuit after it is filed with a right to refile the claim if attorneys deem said dismissal to be in the client(s) best interest.

TERMINATION OF ATTORNEY-CLIENT RELATIONSHIP/ASSIGNMENT

If the attorneys or clients do not wish to proceed with further representation on the claim (or claims), the attorneys' representation may be terminated by express communication to the other party at the last known address. However, the attorneys shall be entitled to the fee stated herein based upon any settlement or award or offer to settle at the time of termination, or pending offer to settle at the time of termination which is the result of their services. In the event that a settlement or award or offer to settle has not been made, or pending offer to settle does not exist at the time of termination by the Client and/or at the time of termination by the attorney provided the client ultimately receives a recovery, then the attorneys shall be paid the reasonable value of their services rendered plus Case Expenses. In no event shall there be any attorney's fees paid or expense liabilities contrary to the law of Ohio, including its Code of Professional Responsibility. Client(s) hereby assign an interest in proceeds recovered equivalent to the attorney's fee and case expenses should the relationship be terminated by the client.

CLIENTS DUTY TO COOPERATE

Client(s) hereby agree to keep attorney advised of their whereabouts and current address and phone number at all times and to appear on reasonable notice at depositions and court appearances and to comply with all reasonable requests made of client in connection with the preparation and presentation of the case.

SETTLEMENT/LITIGATION

I hereby authorize you, my Attorneys to negotiate the settlement of this claim, and also to institute such legal actions as may be advisable in your judgment to enforce my rights. No settlement will be made without the oral or written consent of the client(s). Client(s) authorize all checks and drafts to be payable to client(s) and attorneys jointly.

Special arrangements if any:

DATED at Trumbull County, Ohio, this 23 day of June, 2009.
CLIENT Okey F. Cobb, Jr. CLIENT Debra R. Cobb
[Signature] [Signature]
OKEY F. COBB, JR. DEBRA R. COBB
tabbles EXHIBIT 2
DJORDJEVIC, CASEY & MARMAROS CO. LLC

A. D. Wanda

Debbie Cobb
4147 Masters
Levittsburg Ohio 44430

Okey F. Cobb JR
271-70-3842
5-27-60

{ 330 898 4903
288-60-2713
11-15-60

Haley Nicole Cobb

1-4-00

Traumbull Memorial
Forum Health

Dr. Tara Shipman

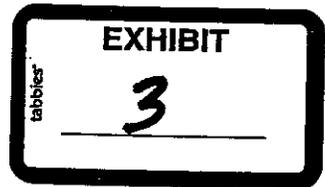
Brain Swelling -

hypoxic Ischemic Encephalopathy

Seizure Disorder Resolved.

Dr. Sampson =
Dr. Douline =

No systems ---
occupational therapy ---



cat scan

{ 2 places on Brain show Lack of
oxygen child is 6 weeks old }

No one knows ---- when

- ① Hypoxic-Ischemic Encephalopathy
- ② Seizure Disorder - Resolved

Dr. Shipman called me on ²⁻³⁰⁰ _{7:00}

SHIPMAN IS THE DOCTOR WHO DELIVERED HALEY

I DID NOTHING WRONG

HE HAS A MILLION NO OFFER

POTOSIN NOT EFFECTIVE

HOSPITAL NO NEWO NATALIST OR PEDLATRICIAN

KID SHOULD HAVE BEEN BORN BY C SECTION

DR LETS GIVE IT ONE MORE PUSH

ATGAR SCORES AWFUL CODE PINK

NON QUALIFIED PEOPLE CAME

SALERO ANESTHESIOLOGIST WRONG TUBE WRONG PLACE

KID GOES TO NURSERY 10 12 MINUTES LATER NURSE PUS IN THE RIGHT TUBE

KID PINKS UP

SALERO 1,000,000 WILL PAY RIGHT NOW

HOSPITAL 1,000,000

EXCESS 10,000,000

TOM MANION

FORUM HEALTH CARE INS COMPANY

INDEPENDANT WELL FUNDED

CAPTIVE OFF SHORE

BRAIN DAMAGE AND CEREBRAL PALSEY

CAROL GREEN HALEYS NEUROLOGIST NOT RELATED TO BIRTH

MOM HAD HERPIES MOM HAD A FALL

MULTIPLE BREAKS IN THE STANDARD OF CARE

2. KID NEVER SHOULD HAVE BEEN ADMITTED TO THIS HOSPITAL

NEED A TRAINED NEO NATAL UNIT

CRITISIM OF SALARO

PLUS MINUS TIME OF BIRTH IS WHEN THE CHILD WAS HARMED

10 EXPERTS SAY IT WAS BEFORE SHE WAS IN THE HOSPITAL

41 EXPERTS

LAW CHANGED ON FEE SPLIT ILL QUIETLY TAKE CARE OF YOU

I NEED TO HIRE OTHER LAWYERS CLEVE AKRON

THEY NEED PAID

ROGER YOUR END IS CUT FORGET 50 50 BUT BUT BUT

HOW MUCH MARTY

I DON'T KNOW I MUST SEE WHAT I MUST PAY THEM

PROBATE WILL NEVER ALLOW YOUR FEE BUT I WILL COVER YOU

CALL ME WHEN YOU KNOW SOMETHING ABOUT MY END

IF WE WIN APPEAL DOES EXCESS COVERAGE APPLY TO SHIPMAN AND SALERO

THEY ARE INDEPENDANT CONTRACTORS NO

THERE IS AGENCY BY ESTOPEL BY AGENCY WE WOULD PREVAIL

2 50000 He must spend!

