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SEP 16 2016

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

BOARD OF PROFESSIONAL CONDUCT

In re:

Complaint against

Justin Fernandez, Esq.
917 Main Street – Third Floor
Cincinnati, OH 45202

16 - 041

No. _____

Attorney Registration No. (0062974)

Respondent,

COMPLAINT AND CERTIFICATE

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

CINCINNATI BAR ASSOCIATION
225 East Sixth St., 2nd Floor
Cincinnati, OH 45202

FILED

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Relator.

BOARD OF PROFESSIONAL CONDUCT

Now comes Relator and alleges that Justin Fernandez, an Attorney at Law duly admitted to the practice of law in the State of Ohio on May 16, 1994, is guilty of the following misconduct:

Disciplinary History

1. On September 1, 2016, Respondent was publically reprimanded. See: *Cincinnati Bar Assn. v. Fernandez*, Slip Opinion No. 2016-Ohio-5586.

Respondent's Registration Status

2. Respondent is currently, and at all times during the investigation, registered for active status with the Supreme Court of Ohio, with a business address of 917 Main Street, #3, Cincinnati, Ohio 45202.

Background

3. Respondent had a business relationship with Morgan Drexen, Inc. ("MD").
4. MD was a California company that described itself as providing integrated support systems to attorneys with a focus on back-office paralegal and paraprofessional services.
5. MD also assisted Respondent with what MD classified as "non-formal debt resolution."
6. In August, 2013, an action was brought before the United States District Court for the Central District of California against MD by the Federal Consumer Financial Protection Bureau. In April, 2015, that court enjoined MD's business operations and froze its assets.
7. In June, 2015, MD filed for bankruptcy and went out of business. In July, 2015, letters were sent to MD's clients on "Howard Law, P.C." letterhead which bore the address 675 Anton Blvd., Costa Mesa, California 92626. This is the same as the "mailing address" which MD had used for Respondent. These letters advised clients that MD had filed for bankruptcy, and, as a result, the attorney representing the clients was no longer affiliated with MD. Further, that "All administrative and support services will now be provided directly by employees of the law firm you hired to represent you. . . ." and "Rest assured, none of your money is affected by Morgan Drexen's bankruptcy because your lawyers, not Morgan Drexen are responsible for ACHing your account and holding your money in trust. . . ."
8. Despite being licensed in Ohio as an active attorney through August 31, 2017 and having an Ohio address on file with the Ohio Supreme Court, Respondent has been completely unresponsive to both his clients and Relator, as described below.

Count 1

9. In April, 2015, Respondent undertook representation of Cleora Jean Smith, of Dayton, Ohio, to assist Ms. Smith in the settlement of her outstanding debts.
10. In April, 2015, Ms. Smith received a packet of materials bearing Respondent's name, as well as MD's, including a document entitled "Letter of Engagement." This letter was on Respondent's letterhead, over Respondent's typewritten signature. The letterhead included Respondent's address and telephone number in Cincinnati, but directed Ms. Smith to reply to an address belonging to MD in Costa Mesa, California. The telephone number for MD was also provided in this letter.
11. Ms. Smith also completed a "Disclosure Statement" that was among the documents sent to her by MD. One of these required disclosures stated as follows: "I/We understand the difference between secured and unsecured debts. . . ."
12. Respondent personally took no actions to ensure that Ms. Smith actually had such an understanding about the different types of debt referenced in paragraph 11 of this Complaint.
13. Ms. Smith called a contact number for Respondent, which was through MD, and scheduled times for Respondent to call Ms. Smith in order to provide a status update on the progress of the debt settlement matters. Respondent failed to call for every scheduled appointment.
14. On July 10, 2015, Ms. Smith received a letter from Vince Howard of Howard Law, P.C., informing Ms. Smith that Respondent was no longer affiliated with MD and that MD had filed a bankruptcy petition. This letter informed Ms. Smith that Respondent would still be

representing her and that MD's bankruptcy would not affect their attorney client relationship.

15. From March, 2015, until August, 2015, payments were made to Respondent from Ms. Smith for legal services to be rendered. Funds were automatically withdrawn directly from Ms. Smith's bank account.

16. As of February 1, 2016, Respondent had never communicated with Ms. Smith. On this date, Ms. Smith sent a grievance against Respondent to the Office of Disciplinary Counsel. That office forwarded Ms. Smith's grievance to Relator for review and disposition. To date, Ms. Smith has never spoken to Respondent.

17. Relator's investigator attempted to contact Respondent by sending a letter via ordinary mail to his address of record, as registered with the Supreme Court of Ohio. The letter was neither returned or answered.

18. On May 3, 2016, a follow-up letter was sent by certified mail to Respondent's address of record. The letter was signed for on May 5, 2016. Relator received no response from Respondent.

19. By reason of the foregoing, Respondent has violated his oath of office and the Rules of Professional Conduct, specifically:

- Rule 1.3, by failing to act with reasonable diligence and promptness in his representation of Ms. Smith;
- Rule 1.4(a)(2), by failing to reasonably consult with Ms. Smith about the means by which Ms. Smith's objectives were to be accomplished;

- Rule 1.4(b), by failing to explain the matters surrounding his representation of Ms. Smith to an extent reasonably necessary to permit Ms. Smith to make informed decisions regarding the representation;
- Rule 2.1, by failing to exercise independent professional judgment and render candid advice to Ms. Smith;
- Rule 5.3(b), by failing to make reasonable efforts to ensure that the conduct of nonlawyers employed by, retained by, and/or associated with Respondent are compatible with the professional obligations of Respondent; and
- Rule 8.1(b) by failing to respond to the grievance investigation.

Count 2

20. In May, 2015, Respondent undertook representation of Betty Smith Carpenter, of Salineville, Ohio, to assist Ms. Carpenter in settlement of her outstanding debts. Ms. Carpenter was directed to Respondent by MD before MD went out of business.

21. Ms. Carpenter's son, Jack W. Smith is the attorney in fact for Ms. Carpenter. Mr. Smith has been Ms. Carpenter's attorney in fact since October 31, 2011. Mr. Smith filed the foregoing grievance of behalf of Ms. Carpenter against Respondent.

22. From May, 2015, and continuing until February, 2016, payments were made to Respondent from Ms. Carpenter's bank account for a debt reduction plan. Funds were regularly withdrawn directly from Ms. Carpenter's bank account. During this time debt collection services against Ms. Carpenter had ceased.

23. In March, 2016, no payment was taken from Ms. Carpenter's account and no payment has been taken since.

24. When payments stopped, debt collection services began contacting Ms. Carpenter.
25. Mr. Smith has attempted to contact Respondent. Respondent's voicemail states that he is backlogged and to only leave one message per week. Neither Ms. Carpenter nor Mr. Smith have had any contact with Respondent since payments stopped.
26. On June 24, 2016, Relator sent a certified letter notifying Respondent of Ms. Carpenter's grievance and requesting a reply from Respondent. This letter was sent to Respondent's address of record. The letter was signed for on June 27, 2016. Respondent failed to answer Relator's request.
27. By reason of the foregoing, Respondent has violated his oath of office and the Rules of Professional Conduct, specifically:
- Rule 1.3, by failing to act with reasonable diligence and promptness in his representation of Ms. Carpenter;
 - Rule 1.4(a)(2), by failing to reasonably consult with Ms. Carpenter about the means by which Ms. Carpenter's objectives were to be accomplished;
 - Rule 1.4(b), by failing to explain the matters surrounding his representation of Ms. Carpenter to an extent reasonably necessary to permit Ms. Carpenter to make informed decisions regarding the representation;
 - Rule 1.15(d) by failing to account for disposition of the funds in Ms. Carpenter's case;
 - Rule 2.1, by failing to exercise independent professional judgment and render candid advice to Ms. Carpenter; and
 - Rule 8.1(b) by failing to respond to the grievance investigation.

Count 3

28. On June 15, 2015, Eddie and Amie Foster, of Cleveland, Ohio, hired Respondent. The Fosters paid Respondent \$900.00 to represent them in filing a Chapter 7 bankruptcy. Upon information and belief, the Fosters were directed to Respondent through MD before MD went out of business.
29. Upon information and belief, Respondent never filed any documents on behalf of the Fosters.
30. On October 21, 2015, Mr. and Mrs. Foster sought the help of attorney Richard A. Goulder, after no response was received from Respondent. Mr. Goulder discovered that the Fosters were ineligible to file for Chapter 7 bankruptcy since eight years had not passed since their last bankruptcy. Mr. Goulder wrote letters to Respondent and to the Howard Law Firm in California on October 28, 2015 and January 19, 2016 demanding that Respondent return the Fosters' money. No response was received.
31. On May 13, 2016, Relator sent a certified letter notifying Respondent of the Fosters' grievance and requesting a reply from Respondent. This letter was sent to Respondent's address of record. The letter was signed for on May 14, 2016. Respondent failed to answer Relator's request.
32. By reason of the foregoing, Respondent has violated his oath of office and the Rules of Professional Conduct, specifically:
- Rule 1.3, by failing to act with reasonable diligence and promptness in his representation of Mr. and Mrs. Foster;
 - Rule 1.4(a)(2), by failing to reasonably consult with Mr. and Mrs. Foster about the means by which Mr. and Mrs. Foster's objectives were to be accomplished;

- Rule 1.4(b), by failing to explain the matters surrounding his representation of Mr. and Mrs. Foster to an extent reasonably necessary to permit Mr. and Mrs. Foster to make informed decisions regarding the representation;
- Rule 2.1, by failing to exercise independent professional judgment and render candid advice to Mr. and Mrs. Foster; and
- Rule 8.1(b), by failing to respond to the grievance investigation.

Count 4

33. On October 19, 2015, the Office of Disciplinary Counsel received a notice from U.S. Bank regarding an overdraft on one of Respondent's IOLTA accounts. Disciplinary Counsel referred this matter to Relator by letter dated November 4, 2015.

34. On November 18, 2015, Relator's investigator sent a letter to Respondent via regular mail at his address of record and a copy of the letter was also sent to the e-mail address he had used during the 2014 grievance. Both documents informed Respondent that there had been a report of an overdraft on his IOLTA and a clarification as to why was needed. Neither the letter nor the e-mail were returned or answered.

35. On December 9, 2015, a follow-up letter was sent by Relator's investigator. This letter was sent to Respondent's address of record via regular mail and to his e-mail address. Neither were returned nor answered.

36. On May 3, 2016, a second follow-up letter was sent by certified mail to Respondent's address of record. The letter was signed for on May 5, 2016. Relator received no response from Respondent.

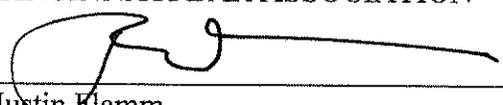
37. By reason of the foregoing, Respondent has violated his oath of office and the Rules of Professional Conduct, specifically:

- Rule 1.15(a) by failing to properly maintain his IOLTA account; and
- Rule 8.1(b) by failing to respond to the grievance investigation.

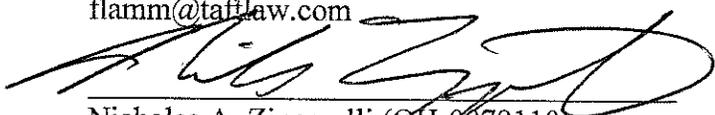
WHEREFORE, Relator alleges the Respondent is chargeable with misconduct as an attorney at law, which misconduct has brought disrepute to the legal profession, and, by reason thereof, Relator requests that Respondent be disciplined pursuant to Rule V of the Rules for the Government of the Bar of Ohio.

Respectfully submitted,

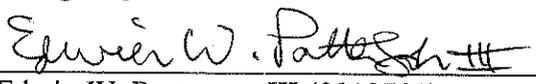
CINCINNATI BAR ASSOCIATION



Justin Flamm
425 Walnut Street, Suite 1800
Cincinnati, Ohio 45202-3957
Tel: 513.381.2838
flamm@taftlaw.com



Nicholas A. Zingarelli (OH-0079110)
810 Sycamore Street – Third Floor
Cincinnati, OH 45202
513-381-2047
nick@zingarellilaw.com



Edwin W. Patterson, III (0019701)
General Counsel
Cincinnati Bar Association
225 East Sixth St., 2nd Floor
Cincinnati, OH 45202
513-699-1403
ewpatterson@cincybar.org

CERTIFICATE

The undersigned, Chairman of the Grievance Committee of the Cincinnati Bar Association, hereby certifies that Justin Flamm, Nicholas Zingarelli, and Edwin W. Patterson, III 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: September 14, 2016



Grievance Committee Chair

Gov. Bar R. V, Section 10 *Requirements for Filing a Complaint.*

(1) Definition. "Complaint" means a formal written allegation of misconduct or mental illness of a person designated as the respondent.

(7) Complaint filed by Certified Grievance Committee. Six copies of all complaints shall be filed with the Director of the Board. Complaints filed by a Certified Grievance Committee shall be filed in the name of the committee as relator. The complaint shall not be accepted for filing unless signed by one or more attorneys admitted to the practice of law in Ohio, who shall be counsel for the relator. The complaint shall be accompanied by a written certification, signed by the president, secretary, or chair of the Certified Grievance Committee, that the counsel are authorized to represent the relator in the action and have accepted the responsibility of prosecuting the complaint to conclusion. The certification shall constitute the authorization of the counsel to represent the relator in the action as fully and completely as if designated and appointed by order of the Supreme Court with all the privileges and immunities of an officer of the Supreme Court. The complaint also may be signed by the grievant.

(8) Complaint filed by Disciplinary Counsel. Six copies of all complaints shall be filed with the Director of the Board. Complaints filed by the Disciplinary Counsel shall be filed in the name of the Disciplinary Counsel as relator.

(9) Service. Upon the filing of a complaint with the Director of the Board, the relator shall forward a copy of the complaint to the Disciplinary Counsel, the Certified Grievance Committee of the Ohio State Bar Association, the local bar association, and any Certified Grievance Committee serving the county or counties in which the respondent resides and maintains an office and for the county from which the complaint arose.