

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

RECEIVED

OCT 27 2016

In re:

Complaint against

BOARD OF PROFESSIONAL CONDUCT

Guy Darius Rutherford, Esq.
Guy D. Rutherford, Esq. & Associates
2525 Kemper Road
Suite #940
Cleveland, OH 44120

No. 16 - 051 a 3

Attorney Registration No. (0066032)

COMPLAINT AND CERTIFICATE

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

Respondent,

FILED

Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411

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Relator.

BOARD OF PROFESSIONAL CONDUCT

Now comes the relator and alleges that Guy Darius Rutherford, an Attorney at Law, duly admitted to the practice of law in the state of Ohio, is guilty of the following misconduct:

1. Respondent, Guy Darius Rutherford, was admitted to the practice of law in the state of Ohio on May 13, 1996.
2. Respondent is subject to the Code of Professional Responsibility, the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.
3. In each count of this complaint in which it is alleged that respondent received legal fees or advanced costs from a grievant but did not earn the fees or incur the costs on the grievant's behalf, respondent should be required to pay restitution to the grievants.
4. Respondent has been suspended from the practice of law in Ohio on numerous occasions. Respondent's prior suspensions from the practice of law are as follows:

- (a) On March 6, 1998, the Supreme Court suspended respondent from the practice of law for an interim period based on his default on a child support order. *In re Rutherford*, 81 Ohio St.3d 1254, 1998-Ohio-464, 691 N.E.2d 1049 (Mem). Respondent's license was subsequently reinstated two months later, on May 6, 1998;
- (b) On December 2, 2005, the Supreme Court suspended respondent for failing to properly register with the Office of Attorney Services. His license was thereafter reinstated on January 18, 2006;
- (c) On December 3, 2007, the Supreme Court again suspended respondent for failing to properly register with the Office of Attorney Services. On this occasion, respondent's license was reinstated on December 7, 2007. *12/04/2007 Administrative Actions*, 2007-Ohio-6463.
- (d) On December 27, 2006, the Supreme Court suspended respondent for six months but stayed the suspension on the condition that respondent serve a six-month probation. *Cuyahoga Cty. Bar Assn. v. Rutherford*, 112 Ohio St.3d 159, 2006-Ohio-6526, 858 N.E.2d 417. However, effective July 10, 2008, respondent's stayed suspension was revoked for failing to cooperate with probation. The Supreme Court subsequently reinstated respondent's license to practice law on May 13, 2009.
- (e) On March 11, 2016, respondent was suspended from the practice of law pursuant to an interim default suspension. *Disciplinary Counsel v. Guy Darius Rutherford*, 2016-0206. Respondent has remained suspended from the practice of law at all times since March 11, 2016.

COUNT I – The Sherrod Matter

5. In October 2013, Penny Sherrod (“Sherrod”) hired respondent to initiate a divorce action on her behalf and to represent her in that action.
6. Respondent told Sherrod that he would charge her only \$600 plus the filing fee for his representation.
7. Sherrod paid respondent \$600 via personal check which respondent cashed on October 22, 2013.
8. Respondent did not file a complaint for divorce, or take any other legal action, on Sherrod’s behalf.
9. Respondent maintained periodic communications with Sherrod through telephone calls and email during 2014. However, respondent falsely told Sherrod that he had filed her divorce action and that he was waiting to receive a court date.
10. Despite Sherrod’s ongoing attempts to contact him, respondent failed to respond to any of Sherrod’s telephone calls or emails in 2015 and thereafter.
11. In February 2016, Sherrod filed a grievance with relator’s office and requested a refund of the funds she had paid to respondent.
12. To date, respondent has failed to provide Sherrod with a refund of any portion of the \$600 that she paid to him as attorney fees.
13. Respondent’s conduct, as alleged in Count I of the Complaint in this matter, violates the following provisions of the Ohio Rules of Professional Conduct:
 - (a) By failing to take any legal action on Sherrod’s behalf, despite receiving advanced attorney fees in the amount of \$600, respondent violated Prof. Cond. R. 1.3 [a lawyer shall act with reasonable diligence and promptness in representing a client];

- (b) By failing to communicate with Sherrod regarding the status of her case for more than one year, respondent violated Prof. Cond. R. 1.4(a)(3) [a lawyer shall keep the client reasonably informed about the status of the matter];
- (c) By accepting \$600 for legal fees and failing to take any legal action on Sherrod's behalf, respondent violated Prof. Cond. R. 1.5(a) [a lawyer shall not make an arrangement for, charge or collect an illegal or clearly excessive fee];
- (d) By failing to take any legal action on Sherrod's behalf and failing to refund any portion of the \$600 in attorney fees paid by Sherrod, respondent violated Prof. Cond. R. 1.16(e) [a lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned].
- (e) By falsely telling Sherrod that her divorce action had been filed and that he was waiting for a court date when respondent had taken no legal action on her behalf, respondent violated Prof. Cond. R. 8.4(c) [it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation].

COUNT II – The Hernandez Matter

- 14. On May 28, 2015, Martha Hernandez (“Hernandez”) hired respondent to initiate a divorce action on her behalf and to represent her in that action.
- 15. On the same date, she paid respondent an advanced fee of \$600. Respondent gave Hernandez his business card as a receipt noting “total \$990, - \$600 down, \$390 balance”.
- 16. Respondent did not file a complaint for divorce, or take any other legal action, on Hernandez's behalf.
- 17. In February 2016, Hernandez filed a grievance with relator's office and requested a refund of the funds she paid to respondent.

18. To date, respondent has failed to provide Hernandez with a refund of any portion of the \$600 that she paid to him as attorney fees.
19. Respondent's conduct, as alleged in Count II of the Complaint in this matter, violates the following provisions of the Ohio Rules of Professional Conduct:
 - (a) By failing to take any legal action on Hernandez's behalf, despite receiving attorney fees in the amount of \$600, respondent violated Prof. Cond. R. 1.3 [a lawyer shall act with reasonable diligence and promptness in representing a client];
 - (b) By failing to communicate with Hernandez about her divorce action after he accepted \$600 in attorney fees, respondent violated Prof. Cond. R. 1.4(a)(3) [a lawyer shall keep a client reasonably informed regarding the status of the client's matter];
 - (c) By accepting \$600 for legal fees and failing to take any legal action on Hernandez's behalf, respondent violated Prof. Cond. R. 1.5(a) [a lawyer shall not make an arrangement for, charge or collect an illegal or clearly excessive fee];
 - (d) By failing to take any legal action on Hernandez's behalf and failing to refund any portion of the \$600 in attorney fees paid by Hernandez, respondent violated Prof. Cond. R. 1.16(e) [A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned].

COUNT III – The Cedeno Matter

20. On November 24, 2015, Reinaldo Cedeno ("Cedeno") hired respondent to initiate a divorce action on his behalf and to represent him in that action. On the same date, Cedeno paid respondent advanced fees of \$400.
21. On November 30, 2015, Cedeno paid respondent an additional \$400 in advanced fees.

22. Thereafter, Cedeno called respondent and visited his office to inquire about the status of his divorce action.
23. Respondent did not return Cedeno's calls and was not present when Cedeno visited his office.
24. Respondent did not file a complaint for divorce, or take any other legal action, on Cedeno's behalf.
25. In May 2016, Cedeno filed a grievance with relator's office and requested a refund of the funds he paid to respondent.
26. To date, respondent has failed to provide Cedeno with a refund of any portion of the \$800 in attorney fees that he received.
27. Respondent's conduct, as alleged in Count III of the Complaint in this matter, violates the following provisions of the Ohio Rules of Professional Conduct:
 - (a) By failing to take any legal action on Cedeno's behalf, despite receiving attorney fees in the amount of \$800, respondent violated Prof. Cond. R. 1.3 [a lawyer shall act with reasonable diligence and promptness in representing a client];
 - (b) By failing to communicate with Cedeno about his divorce action after he accepted \$800 in attorney fees, respondent violated Prof. Cond. R. 1.4(a)(3) [a lawyer shall keep a client reasonably informed about the status of the client's matter];
 - (c) By accepting \$800 for legal fees and failing to take any legal action on Cedeno's behalf, respondent violated Prof. Cond. R. 1.5(a) [a lawyer shall not make an arrangement for, charge or collect an illegal or clearly excessive fee];
 - (d) By failing to take any legal action on Cedeno's behalf and failing to refund any portion of the \$800 in attorney fees paid by Cedeno, respondent violated Prof. Cond.

R. 1.16(e) [A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned].

COUNT IV – The Vega Matter

28. On June 16, 2015, Rinaldo Vega (“Vega”) hired respondent to represent his son, Anibal, in pending criminal and immigration matters.
29. On that same date, Vega paid respondent advanced attorney fees of \$3,500 for his legal representation and, on October 15, 2015, paid respondent an additional \$1,000.
30. On September 10, 2015, respondent filed an Application for Inspection of Sealed Records in the matter of *State v. Ohio v. Anibal Vega*, Case No. 2004CR959 in the Stark County Court of Common Pleas.
31. In October 2015, respondent notified Vega that the application was filed on behalf of Anibal but, despite Vega’s repeated attempts to call him, respondent failed to communicate any additional information to Vega relating to the status of the application.
32. Because of respondent’s lack of preparation and failure to communicate the status of Anibal’s immigration case, in or about October 2015, Vega hired substitute counsel for the immigration case only.
33. In or about December 2015, respondent met with Vega’s new counsel, Sandra Boogaard (“Boogaard”), at the courthouse to discuss Anibal’s immigration case. At this meeting, in response to Boogaard’s request, respondent promised to provide her with Anibal’s files.
34. On January 10, 2016, Boogaard sent an email to respondent at guydrutherford@icloud.com requesting Vega’s files stating “time is of the essence”.

35. On January 11, 2016, respondent sent Boogard an email stating that he had been out of town; however, he failed to address her request for Vega's files. Neither Vega nor Boogard have had any further communication from respondent.
36. To date, respondent has failed to provide Boogard or Vega with a copy of his client's files.
37. On December 14, 2015, respondent filed a Motion for Leave to File Delayed Appeal in the matter of *State v. Ohio v. Anibal Vega*, Case No. 2015CA00220 in the Stark County Court of Appeals.
38. The motion filed by respondent on behalf of Anibal Vega said, in part, that "on April 22, 2015, defendant was found guilty...defendant filed this Motion for Leave to File Delayed Appeal based on the grounds that defendant was not advised of his right to appeal the verdict of guilty as a matter of right".
39. In the signature block, respondent listed his address as 2525 Kemper Road, Ste. 401, Shaker Heights, OH 44120.
40. On February 3, 2016, the court granted respondent's motion. The Judgment Entry ordered that respondent "shall file a notice of appeal as required by App.R. 5 and a fully completed docketing statement on or before February 16, 2016".
41. On February 4, 2016, the court sent a copy of the Judgment Entry to respondent by ordinary mail to his address identified above in ¶39; however, on March 14, 2016, the mail was returned to the court indicating "attempted – not known" and "unable to forward".
42. Respondent took no further action on Vega's behalf. As a result, on March 14, 2016, the Court dismissed Vega's appeal for failure to prosecute.

43. In May 2016, Vega filed a grievance with relator's office and requested a refund of the funds he paid to respondent.
44. To date, respondent has failed to provide Vega with a refund of any portion of the \$4,500 in attorney fees that he received.
45. Respondent's conduct, as alleged in Count IV of the Complaint in this matter, violates the following provisions of the Ohio Rules of Professional Conduct:
- (a) By failing to file a notice of appeal and a fully completed docketing statement subsequent to the Court's Order in Vega's appellate matter, resulting in the dismissal of his client's appeal, respondent violated Prof. Cond. R. 1.3 [a lawyer shall act with reasonable diligence and promptness in representing a client];
 - (b) By failing to file a notice of appeal and a fully completed docketing statement subsequent to the Court's Order in Vega's appellate matter, resulting in the dismissal of his client's appeal for failure to prosecute, respondent violated Prof. Cond. R. 8.4(d) [it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice];
 - (c) By failing to communicate with his client the status of Vega's application for inspection of sealed records or his immigration case, respondent violated Prof. Cond. R. 1.4(a)(3) [a lawyer shall keep the client reasonably informed about the status of the matter];
 - (d) By failing to respond to Vega's multiple telephone calls regarding the status of his son's matters, respondent violated Prof. Cond. R. 1.4(a)(4) [a lawyer shall respond as soon as practicable to reasonable status inquiries of a client];

(e) By failing to refund any unearned portion of the \$4,500 in attorney fees paid by Vega, respondent violated Prof. Cond. R. 1.16(e) [a lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned].

COUNT V – Failure to Cooperate

46. Relator incorporates the allegations contained in paragraphs 1-45 as if restated herein.
47. On February 10, 2016, relator sent a Letter of Inquiry (“LOI”) to respondent relating to the grievance filed by Penny Sherrod (“Sherrod grievance”) by certified mail to both the business and residential addresses maintained by respondent with the Supreme Court’s Office of Attorney Services, i.e., 2525 Kemper Road, Suite #940, Cleveland, Ohio 44120 and 2525 Kemper Road, Suite 401, Cleveland, Ohio 44120.
48. Both of relator’s LOIs relating to the Sherrod grievance were returned to relator with the U.S. Postal Service tracking information indicating “attempted – not known” and “unable to forward”.
49. On March 1, 2016, relator sent a LOI to respondent relating to the grievance filed by Martha Hernandez (“Hernandez grievance”) by certified mail to respondent’s business address as previously identified above in ¶47. Relator’s LOI was returned to relator with the U.S. Postal Service tracking information indicating “addressee unknown”.
50. On March 2, 2016, relator’s investigator attempted to personally serve respondent with the LOI relating to the Sherrod grievance at respondent’s addresses as previously identified in ¶47. Relator’s investigator was unable to locate respondent but learned from the building management company at respondent’s residential address that respondent

had been evicted from the premises in February 2016. The management company was unable to provide any forwarding address for respondent.

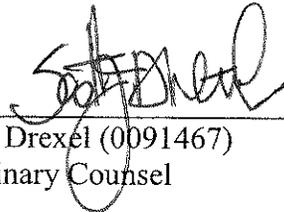
51. On March 16, 2016, relator sent LOIs to respondent relating to both the Sherrod and Hernandez grievances by regular first-class mail to respondent's addresses as previously identified in ¶47. Relator's LOIs were not returned by the U.S. Postal Service.
52. On March 23, 2016, relator's investigator attempted to personally serve respondent with LOIs relating to both the Sherrod and Hernandez grievances at respondent's previous business address, i.e., 614 W. Superior Ave., Suite 940, Cleveland, Ohio 44113. Relator's investigator was unable to locate respondent but learned from the building receptionist that, although respondent had not been seen in months, they continued to place his mail in his office. Relator's investigator placed both LOIs on respondent's desk, along with stacks of his unopened mail.
53. In light of respondent's failure to cooperate with relator's investigation, on July 27, 2016, relator sent an email to respondent at guydrutherford@gmail.com requesting his response. The email server indicated that delivery was complete. However, respondent did not reply to relator's email.
54. On July 29, 2016, relator sent LOIs to respondent relating to the grievances filed by Reinaldo Cedeno ("Cedeno grievance") and Rinaldo Vega ("Vega grievance") by certified mail to respondent's addresses previously identified in ¶47. All of relator's LOIs were returned to sender by the U.S. Postal Service as unclaimed indicating either "unable to forward" or "attempted – not known".
55. On September 13, 2016, relator sent LOIs to respondent relating to both the Cedeno and Vega grievances by regular first-class mail to respondent's addresses as previously

identified in ¶47. Relator's LOI relating to the Cedeno grievance sent to 2525 Kemper Road, Suite 401, Cleveland, Ohio 44120 was returned to sender by the U.S. Postal Service as "not deliverable as addressed" and "unable to forward". The remaining LOIs were not returned by the U.S. Postal Service.

56. To date, respondent has failed to contact relator or provide any written response whatsoever to any of relator's LOIs identified in this Complaint.
57. Additionally, respondent has failed to provide the Office of Attorney Services with either his current residence or business address.
58. Respondent's conduct, as alleged in Count V of the Complaint in this matter, violates the following provisions of the Ohio Rules of Professional Conduct and the Supreme Court Rules for the Government of the Bar of Ohio:
 - (a) By knowingly failing to respond to relator's demands for information in connection with its disciplinary investigation of the allegations in Counts I - IV of the Complaint, respondent violated Prof. Cond. R. 8.1(b);
 - (b) By neglecting or refusing to assist in relator's disciplinary investigation of the allegations contained in Counts I - IV of this Complaint, respondent violated Gov. Bar R. V(9)(G).
 - (c) By failing to notify the Supreme Court's Office of Attorney Services of his current office address, telephone number and email address as required by Gov. Bar R. VI(4)(B), respondent violated Prof. Cond. R. 3.4(c) [a lawyer shall not knowingly disobey an obligation under the rules of a tribunal].

CONCLUSION

Wherefore, pursuant to Gov. Bar R. V, the Code of Professional Responsibility and the Rules 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 of the Government of the Bar of Ohio.



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CERTIFICATE

The undersigned, Scott J. Drexel, Disciplinary Counsel, of the Office of Disciplinary Counsel of the Supreme Court of Ohio hereby certifies that Michelle R. Bowman is duly authorized to represent relator in the premises and has 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: October 27, 2016



Scott J. Drexel, Disciplinary Counsel