

THE SUPREME COURT OF OHIO

LORAIN COUNTY BAR
ASSOCIATION AND DISCIPLINARY
COUNSEL,

Relators,

vs.

JEFFREY H. WEIR II, ESQ.,

Respondent.

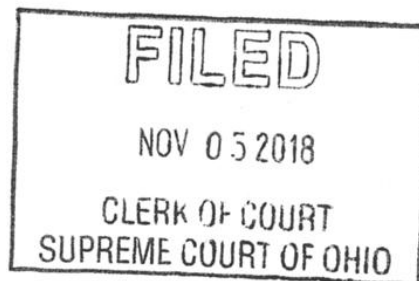
CASE NO. 2018-1447

RESPONDENT'S OBJECTIONS TO
FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
PROPOSED SANCTIONS, WITH
MEMORANDUM OF SUPPORT

FROM THE BOARD OF
PROFESSIONAL CONDUCT
(CASE NO. 2018-006)

Submitted by:

Jeffrey H. Weir II (OBN 0067470)
6145 Park Square Drive, Unit 1 - Box 2
Lorain, Ohio 44053
Telephone: (440) 988-9013
Telecopy: (440) 334-1936
Email: jeffreyweirlaw@gmail.com



**LORAIN COUNTY BAR
ASSOCIATION AND DISCIPLINARY
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VS.

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OBJECTIONS TO FINDINGS OF FACT

- Respondent testified at the hearing [this] was the first time he learned that Demyan had not been able to cash the check from the Copens. Hearing Tr. 75. He testified that he was willing to make restitution to Demyan but as of the hearing date, had made no attempt to do so. Hearing Tr. 76. (Emphasis added.)

2. Finding of Fact No. 36 is not supported by the evidence submitted and, as a result, is incomplete and inaccurate. The evidence submitted to the Board that is contrary to this Finding of Fact includes Respondent's continuing and ongoing efforts to locate the missing check, Respondent eventually locating this check, and his subsequent actions in an attempt to obtain payment for Ms. Demyan.

3. Inarguably, the evidence submitted included Respondent's correspondence with Ms. Demyan advising her that he had located the check and requesting her to advise if Respondent should contact the Copens' attorney (Attorney Mark Craig) on her behalf. LCBA Ex. 40; Finding of Fact No. 32. Notably, a copy of Respondent's correspondence to Ms. Demyan was provided to the Lorain Country Bar Association, in order to apprise it of this recent development. LCBA Ex. 40

4. At the request and instruction of Ms. Demyan, Respondent subsequently sent a letter to Attorney Craig asking, among other things, if the Copens would issue another check due to the age (and presumed staleness) of the Copens' check dated August 10, 2016. Finding of Fact No. 33; LCBA Ex. 41. In response, Attorney Craig advised Respondent that Ms. Demyan should negotiate the check, as the issuing bank had inform the Copens that the check would be honored if presented. Finding of Fact No. 33; LCBA Ex. 42.

5. Respondent then advised Ms. Demyan of the Copens' (and Attorney Craig's) instructions regarding the check. After receiving this information from Respondent and in reliance of the Copens' representations, Ms. Demyan attempted to negotiate the check, but it was not honored. Finding of Fact No. 33; LCBA Ex. 43.

6. Notably, the Findings of Fact fail to address the ongoing communications between Ms. Demyan, Attorney Craig and Attorney Kevin Donovan (as “the Investigator for the LCBA’s Grievance Committee”), submitted as LCBA Ex. 43 and 44. As noted in these exhibits, the parties discussed the circumstances surrounding Ms. Demyan’s inability to negotiate the August 2016 check and the possible re-issuance of a “replacement” check by the Copens. *Id.* None of this correspondence, however, was directed or addressed to Respondent.

7. Similarly, Respondent was not advised (a) that Ms. Demyan was not paid under the parties’ agreement and (b) if the Copens’ subsequent refusal to reissue a check and their offer to make payment under different terms. Additionally, Respondent was not aware that Relator LCBA had notice of these circumstances. *See* LCBA Ex. 43-45. Further, Relator LCBA did not advise Respondent of these facts at any time prior to the June 28, 2018 hearing.

8. Further, after the June 29 hearing, Ms. Demyan received payment in the amount of \$4,983.00 from the Copens. Ms. Demyan’s receipt of payment is evidenced by correspondence from Attorney James Taylor, as counsel for Ms. Demyan, dated August 15, 2018. A true and correct copy of this letter is attached hereto as Exhibit A and is incorporated herein. Respondent was advised that Relator LCBA was provided (a) notice of Ms. Demyan’s receipt of payment and (b) a copy of documentation of the same from Ms. Demyan’s counsel.

9. Based on the foregoing, Finding of Fact No. 36 that Respondent “made no attempt” to make restitution to Ms. Demyan is contrary to the evidence presented to the Board. The evidence (including the supplemental record) in this matter clearly evidences Respondent’s significant attempts to make restitution to Ms. Demyan including but not limited to (a) his continued efforts to locate the missing check, (b) the ultimate discovery of the check and notification to Ms. Demyan (and Relator LCBA) of its discovery, (c) his offer to Ms. Demyan

and (upon her instruction) contacting Attorney Craig to obtain payment, and (d) post-hearing efforts to obtain payment for Ms. Demyan, all of which culminated in Ms. Demyan receiving payment of the balance owing to her on or about August 15, 2018.

10. To the extent that Finding of Fact No. 36 relates solely to whether Respondent actually paid Ms. Demyan, then it states an admitted fact. Under the circumstances, however, such a finding would be unreasonable, unfair and irrelevant. The evidence submitted clearly shows that the Copens – who had entered into a binding settlement agreement with Ms. Demyan (findings of Fact Nos. 10-18) - remained willing to make the agreed-upon settlement payment to Ms. Demyan at all times relevant and, as acknowledged by the Board, Respondent's understanding that the Copens were willing and/or prepared to make payment.

11. Further, the Board acknowledged that Respondent "testified that he was willing to do so but testified that he did not know until the hearing that she had not **received another check from the Copens.**" Board Recommendation, para. 72. (Emphasis added). By this conclusion, the only possible interpretation of the Board's determinations is that Respondent's understanding of whether Ms. Demyan had received payment after he no longer was apprised of these matters in February 2018 was relevant. Finally, any resolution of this matter is incomplete without consideration of the Copens ultimately making payment to Ms. Demyan of the full amount owed to her on or before August 15, 2018.

12. The Board's contention in Finding of Fact No. 36 that Respondent made no attempt to make restitution to Ms. Demyan is contrary to the evidence submitted and, as such, must be overruled.

OBJECTIONS TO CONCLUSIONS OF LAW/PROPOSED SANCTIONS

13. The erroneous Finding of Fact No. 36 has significant implications for the Conclusions of Law/Sanctions recommended by the Board. As noted by the Board, the sanctions relating to the Medley matter would be a public reprimand. Board Recommendation, paras. 71 and 73.

14. Based on the Board Recommendation, the most significant facts in connection with the Demyan matter are (a) the extent of Respondent's cooperation with Relator LCBA (Board Recommendation No. 71) and (b) Respondent "yet to tender restitution to [Ms.] Demyan" (Board Recommendation para. 72, 73).

15. In most of the prior cases cited by the Board, the specific absence of cooperation with the certified grievance committee also included a failure to respond to the complaint resulting in a default judgment. These cases resulted in an indefinite suspension. The Board Recommendation cited one case cited where there was a failure to cooperate until notice of intent to file a complaint – *Lorain Cty. Bar Assn. v. Nelson*. In that case, the respondent previously had been sanctioned by the Supreme Court, a factor that is not present here.

16. In the cases cited by the Board involving incidents with multiple clients – *Cleveland Metro. Bar Assn. v. Fonda* and *Cleveland Metro. Bar Assn. v. Callahan* – the sanctions involved a **fully stayed suspension**. The Board asserts that the "misconduct of Respondent...to be...more serious than those in which a public reprimand or a fully stayed term suspension was imposed." Board Recommendation, para. 73. Without minimizing his actions in these matters, Respondent contends that this assertion is not supported by the facts of this case. A review of the cases cited by the Board, evidences that the underlying facts in these cases involved circumstances more egregious than the present case. For this

reason, Respondent contends that that a fully stayed suspension –as was issued in those cases – is proper in this case.

17. The central factor in the Board’s recommended sanction in these matters appears to be the absence of any payment to Demyan. As noted by the Board, this included Respondent’s “failure to make restitution to [Ms.] Demyan...or action to get another check” issued to her. Board Recommendation, para. 73. As described above, these conclusions are not supported by the evidence submitted and, as such, the sanctions recommended by the Board must not be adopted.

PROPOSED SANCTIONS

18. Respondent contends that the appropriate sanctions in this case are as follows:

A. a six (6) month suspension, with the entire term stayed on the conditions that respondent (1) completes a course on law office management, in addition to the CLE requirements set forth in Gov. Bar R. X, and (2) refrains from further misconduct.

B. Respondent pays the costs of these proceedings.

19. These proposed sanctions are based on Ms. Demyan having received restitution in the amount of \$4,983.00 from the Copens on or before August 15, 2018. *See* Exhibit A attached hereto.

WHEREFORE, PREMISES CONSIDERED, Respondent Jeffrey H. Weir II, Esq. requests that the Court grant his objections to the Board Recommendations, impose sanctions as proposed herein, and for such other and further relief, at law or in equity, which it deems appropriate.

DATED: November 5, 2018

Respectfully submitted,



Jeffrey H. Weir II (OBN 0067470)
6145 Park Square Drive, Unit 1 - Box 2
Lorain, Ohio 44053
Telephone: (440) 988-9013
Telecopy: (440) 334-1936
Email: jeffreyweirlaw@gmail.com

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing has been served by U.S. regular mail, postage prepaid, upon Richard A. Dove, Esq., Director, Ohio Board of Professional Conduct, 65 South Front Street, 5th Floor, Columbus, OH 43215-3431; Daniel A. Cook, Esq., Wickens, Herzer, Panza, Cook & Batista Co., 35765 Chester Road, Avon, OH 44011-1262; and Lia Meehan, Esq., Assistant Disciplinary Counsel, Office of Disciplinary Counsel, Supreme Court of Ohio, 250 Civic Center Drive, Suite 325, Columbus, Ohio 43215-3431 on this the 5th day of November 2018.



Jeffrey H. Weir II

The Law Firm of
JAMES N. TAYLOR CO., L.P.A.
"The Barristers Building"
409 East Avenue, Suite A
Elyria, Ohio 44035-5717

TELEPHONE: (440) 323-5700
FACSIMILE: (440) 284-2818
WEBSITE: JAMESTAYLORLPA.COM

JAMES N. TAYLOR

August 15, 2018

VIA EMAIL: jeffreyweirlaw@gmail.com

Jeffrey H. Weir, II
Attorney at Law
6145 Park Square Drive, Unit 1, Box 2
Lorain, Ohio 44053

RE: My Client: Jennifer Demyan

Dear Jeff:

Please be advised that I did receive funds totaling \$4,983.00 from Mr. and Mrs. Copen and same was placed in my trust account. I have made a check out from my trust account payable to Jennifer Demyan. It is my understanding that this amount satisfies the amount due her from Mr. and Mrs. Copen.

If you have any questions, please contact the undersigned.

Very truly yours,

JAMES N. TAYLOR CO., L.P.A.

By: _____

James N. Taylor

JNT:df

cc: Jennifer Demyan

