

07-0319

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

In Re:	:	
Complaint against	:	Case No. 06-081
Dennis DiMartino	:	Findings of Fact,
Attorney Reg. No. 0039270	:	Conclusions of Law and
	:	Recommendation of the
Respondent	:	Board of Commissioners on
	:	Grievances and Discipline of
Mahoning Bar Association	:	the Supreme Court of Ohio
	:	
Relator	:	

On November 29, 2006, the Board appointed panel members Sandra Anderson, Robert Housel, and Judge Otho Eyster, Chair, in the above referenced case. None of the members reside in the district from which the complaint originated or served on the probable cause panel that reviewed the complaint.

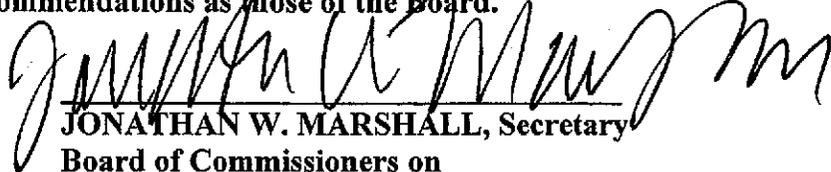
Pursuant to Gov. Bar Rule V (11)(A)(3)(c) the parties timely filed a Written Agreement For Consent To Discipline on January 29, 2007. The hearing panel finds that this agreement conforms to Board of Commissioners on Grievances and Discipline Proc. Reg. Sec. 11 and the panel members recommend the acceptance of the agreement including the statement of facts and the violations of DR 6-101(A)(2) and DR 7-101(A)(2) and concur in the agreed sanction of a one year suspension with one year stayed in favor of probation and the appointment of a monitor.

FILED
FEB 10 2007
MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

Board Recommendation

Pursuant to Gov. Bar Rule V (6)(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on February 9, 2007. The Board voted to accept and adopt the agreement entered into by the Relator and Respondent. The agreement sets forth the misconduct and the sanction of a one year suspension with the entire one year stayed on condition of probation and the appointment of a monitor which is the recommendation of the Board. The Board further recommends that the cost of these proceedings be taxed to the Respondent in any disciplinary order entered, so that execution may issue.

Pursuant to the order of the Board of Commissioners on Grievances and Discipline of The Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendations as those of the Board.



**JONATHAN W. MARSHALL, Secretary
Board of Commissioners on
Grievances and Discipline of
The Supreme Court of Ohio**

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

FAXED FILED

ON 1-29-07 ~~AS~~

In re:)

COMPLAINT AGAINST)

DENNIS DIMARTINO)
Atty Reg. No. 0039270)
6004 Market Street)
Youngstown, Ohio 44512)

Respondent)

MAHONING COUNTY BAR)
ASSOCIATION)
1st Floor)
29 East Front Street)
Youngstown, Ohio 44503)

Relator)

CASE NO. 06-081

WRITTEN AGREEMENT FOR
CONSENT TO DISCIPLINE

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

Now comes the Relator, Mahoning County Bar Association and Respondent, Dennis DiMartino, pursuant to Gov. Bar R. V. Section 11(A)(3)(c) and enter into this written agreement:

1. The Probable Cause Panel Certified the complaint of the Relator against Respondent on October 6, 2006. Respondent's answer was filed on November 22, 2006. A Hearing Panel was appointed on November 29, 2006.

2. Consent to this agreement has been filed with the Board within 60 days of the appointment of the hearing panel.

3. Relator and Respondent adopt, by incorporation, the Stipulations of Fact filed with the Board of Commissioners on Grievance and Discipline, which are attached to this agreement as Exhibit 1.

4. Respondent admits that he committed the misconduct listed in these stipulation, conditioned upon the acceptance of this agreement by the Board.

5. The Relator and Respondent agree that Respondent shall be suspended from the practice of law for one year, with the entire one year period stayed on condition that Respondent commit no future violations during that time. Respondent also agrees to the appointment of a monitor by Relator during the one year period of stay.

6. The following aggravating factors applicable to the misconduct and agreed upon sanctions apply:

a) Prior disciplinary offense: Mahoning County Bar Association v. DiMartino (1994), 71 Ohio St.3d 95, 642 N.E. 2d 342, 1994-Ohio-281.

7. The following mitigating factors applicable to the misconduct and agreed upon sanctions apply:

a) Good faith effort to make restitution.

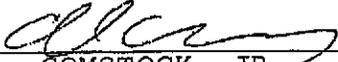
b) Full and free disclosure to disciplinary board.

c) Evidence of good character or reputation (as evidenced by letters to be submitted to the board)

d) The neglect of a legal matter [D.R. 6-101(A)] and failure to carry out a contract of employment for professional services [D.R. 7-101(A)] were caused, in part, by Respondent's inability to formulate a viable legal strategy for reducing Lombardi's sentence.

e) Family circumstances as set forth above.

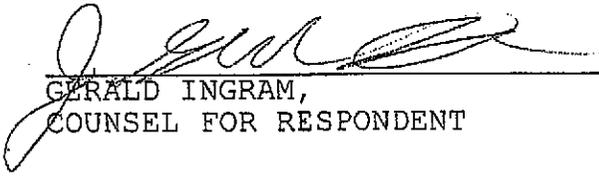
8) An affidavit of Respondent is attached to this agreement as Exhibit 2.



DAVID C. COMSTOCK, JR.
MAHONING COUNTY BAR ASSOCIATION
Bar Counsel



DENNIS DIMARTINO
RESPONDENT



GERALD INGRAM,
COUNSEL FOR RESPONDENT

FILED

JAN 30 2007

BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

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

In re:)	
)	
COMPLAINT AGAINST	)	CASE NO. 06-081
)	
DENNIS DIMARTINO)	
Atty Reg. No. 0039270	)	<u>STIPULATIONS OF FACT</u>
6004 Market Street)	
Youngstown, Ohio 44512)	
)	
Respondent)	
)	
MAHONING COUNTY BAR)	
ASSOCIATION	)	(Rule V of the Supreme
1st Floor	)	Court Rules for the
29 East Front Street	)	Government of the Bar
Youngstown, Ohio 44503	)	of Ohio)
)	
Relator)	

Now comes the Relator, Mahoning County Bar Association and Respondent, Dennis DiMartino and enter into the following stipulations of fact:

1. Relator is a local bar association which maintains a certified grievance committee pursuant to Section 3 of Gov. Bar R. V.

2. Respondent is an attorney at law and is duly licensed to practice law in the State of Ohio. His bar registration number is 0039270.

3. Respondent's business address is 6004 Market Street, Youngstown, Ohio 44512.

EXHIBIT
1

4. In November of 2001, Riccardi Lombardi (hereafter referred to as "Lombardi") was arrested and charged with multiple counts of cocaine possession and trafficking. He was indicted in two separate cases in Stark County Common Pleas Court: 2001-CR-1606 and 2001-CR-1560.

5. In Stark County Common Pleas Court Case 2001-CR-1606 Lombardi was indicted on one count of cocaine trafficking, a fourth degree felony and one count of cocaine trafficking, a fifth degree felony. In Stark County Common Pleas Court Case 2001-CR-1560, Lombardi was indicted on one count of cocaine possession and one count of cocaine trafficking, both felonies of the second degree.

6. On February 4, 2002, a hearing was held on both cases for the purpose of a change of plea and sentencing. During that hearing, Lombardi was advised that he faced a maximum of 10 ½ years in prison. As a result of plea negotiations entered into between Lombardi's counsel, Attorney Jeffery D. Haupt, and the Prosecutor's Office, Lombardi pled guilty to all four counts and, in accordance with the plea agreement, was sentenced to five years with respect to each count in Case 2001-CR-1560, to run concurrently. In addition, the plea agreement between the State and Lombardi called for an agreed upon mandatory sentence of five years. Since the sentence was both agreed upon and mandatory, Lombardi was ineligible for judicial release, and the sentence was not appealable.

7. Lombardi was also sentenced to seven and eleven month terms in connection with Case 2001-CR-1606 to run concurrent with the sentences in Case 2001-CR-1560. Lombardi was also fined

\$7,500, received a five year driver's license suspension and was advised that he would not be eligible for early release and would be required to serve the entire prison term to which he was sentenced. (Because the agreed upon sentence was a mandatory term, Lombardi was ineligible for Judicial release.)

8. On December 20, 2002, Attorney Haupt filed a motion for post sentence evaluation. The motion recited that the request was made in order for Lombardi to gain admittance into the honor camp.

9. On January 30, 2003 Stark County Common Pleas Court Judge Sara Lioi entered judgment denying the motion for post sentencing evaluation.

10. On April 22, 2003, Lombardi filed a pro se motion to vacate and/or set aside the sentence or to allow the withdrawal of his guilty pleas based upon manifest injustice. The motion asserted the trial court's failure to advise Lombardi of his right to appeal and also asserted a failure to comply with R.C. §2929.14 at sentencing, despite the fact that it was Lombardi's first offense. Despite the nature of Lombardi's allegations, there was no duty upon the trial court to inform Lombardi of his right to appeal since the sentence imposed was an agreed upon sentence, and accordingly, not appealable.

11. On May 23, 2003, the State filed a motion to dismiss or, in the alternative, for summary judgment and response to the motion to vacate/set aside the sentence. [Despite the fact that his motion was filed in April 2003 and responded to in May 2003, it appears that no ruling on such motion was rendered until over a year later.]

12. On or about September 2003, Traci Zufall (hereafter referred to as "Zufall") contacted Respondent on behalf of Lombardi. Zufall was apparently Lombardi's girlfriend or fiancée at that time. Apparently, Respondent had been recommended to Lombardi by a fellow inmate.

13. In conversations with Zufall, Respondent indicated that he would need to obtain a transcript of the sentencing and other relevant documents in order to consider the case. On or about September 2, 2003, Zufall forwarded the transcript of the proceedings to Respondent.

14. On September 10, 2003, Lombardi filed a *pro se* motion for return of certain personal property taken at the time of his arrest. On September 19, 2003, the State filed a response to the *pro se* motion for the return of the property.

15. Sometime after the filing of the September 10, 2003 *pro se* motion for return of personal property, a three-way telephone conversation occurred between Lombardi, Zufall, and Respondent. At that time, Respondent agreed to take the case upon receipt of a \$5,000 retainer. According to Zufall, Respondent's engagement included determining the status of the previously filed *pro se* motions. Respondent maintains that during this three-way conversation, he informed Lombardi that his chances of prevailing upon a post conviction motion for relief were negligible.

16. With respect to the original retainer of Respondent's services, the exact nature of the conversations regarding the scope of representation is less than clear. Respondent denies that he was engaged to pursue Lombardi's previously filed *pro se* motions,

and asserts that he was engaged to find some route of reducing Lombardi's sentence. Respondent's correspondence characterized his role as to file a motion for judicial release.

17. On September 23, 2003, a \$5,000 retainer check was forwarded to Respondent. (See Exhibit A attached to complaint.)

18. On October 7, 2003, Respondent sent a letter to Attorney Haupt requesting his file. A letter was also sent to Lombardi acknowledging the representation. The letter acknowledged the receipt of the \$5,000 retainer fee. The letter further indicated that the retainer would include all expenses from the Trial Court to the Court of Appeals one time. The letter did not specifically state what would be filed by the Respondent on behalf of Lombardi. Respondent's written response does indicate, however, that he told Lombardi that he would "file a Motion for Judicial Release and/or to Consider Suspension of Sentence". (See Exhibit B attached to complaint.)

19. On October 7, 2003, Respondent directed his office staff to contact Zufall for information to arrange a prison visit with Lombardi.

20. On October 21, 2003, Respondent sent letters to the Belmont Correctional Institution attempting to arrange an in-person meeting with Lombardi.

21. On October 22, 2003, Respondent sent another letter to Lombardi, which refers to copies of materials obtained from Haupt. (See Exhibit C attached to complaint.)

22. On November 24, 2003, Respondent sent another letter to Lombardi advising that he planned on visiting in the near future,

but the visit was not approved as of that date. (See Exhibit D attached to complaint.) Respondent also forwarded a "Notice of Substitution" to the clerk that same date. (See Exhibit E attached to complaint.)

23. On December 12, 2003, Respondent sent a letter to an administrator at the Belmont Correctional Institution attempting to schedule a meeting for Saturday, December 20, 2003. (See Exhibit F attached to complaint.)

24. On December 26, 2003, Respondent sent a letter to Lombardi indicating that complications had arisen with the attempt to meet on Saturday, December 20, 2003. He expressed his anxiousness to "try and help to get your sentence reduced" and indicated that he would make arrangements to meet after January 5, 2004. (See Exhibit G attached to complaint.)

25. On January 15, 2004, Zufall called Respondent to complain that after four months Respondent still had not met with Lombardi. (See Exhibit H attached to complaint.)

26. On January 21, 2004, Respondent sent another letter to Lombardi. (See Exhibit I attached to complaint.)

27. On February 12, 2004, Respondent met with Lombardi. Respondent documented that meeting in a letter of February 13, 2004. (See Exhibit J attached to complaint.)

28. On or about February 18, 2004, Respondent drafted a "request for hearing" which was sent to the Stark County Clerk of Courts for filing. The request for a hearing is docketed as having being received one week later, on February 25, 2004. Further, the motion requested a hearing on the previously filed motion for post

sentence evaluation, rather than upon defendant's motion to vacate and/or set aside the sentence or to allow withdrawal of the guilty plea. (See Exhibit K attached to complaint.)

29. On April 29, 2004, Respondent wrote to Lombardi. In that letter, Respondent thanked Lombardi for his recent inquiry and indicated that Zufall had phoned Respondent's office that day and had inquired as to how long it would take the Judge to rule on the *pro se* motion. Respondent indicated that he had recently learned that the Court had overruled the *pro se* motion even before they filed "our last pleading." (See Exhibit L attached to complaint.)

30. Respondent further wrote in the letter of April 29, 2004 that "we did contact several of the witnesses to the conversation between you and Atty. Haupt at the courthouse on the day of your Plea and sentence just as we promised". Respondent indicated that he had been in contact with the Court and anticipated a hearing within the next thirty (30) days. (See Exhibit L attached to complaint.) Respondent maintains that Lombardi's sentence was not appealable and that the appealability of the denial of Lombardi's *pro se* motion and/or a motion for judicial release was questionable at best.

31. On or about June 7, 2004 Lombardi wrote a letter to Respondent requesting a copy of the denial of his *pro se* motion to vacate or set aside the sentence or allow withdraw of his guilty plea. Lombardi stated that Respondent's office did send a copy of the overruled motion for post sentence evaluation, which had nothing to do with what he was requesting. Lombardi further stated that he had not heard back from Respondent since Respondent's

letter of April 29, 2004, and had never seen anything that Respondent had filed with the exception of the change of attorney of September 2003. Lombardi stated that he hoped Respondent would respond with good news or at least "see my request through". (See Exhibit M attached to complaint.)

32. On June 22nd and 24, 2004, Respondent wrote to Lombardi. Respondent enclosed a copy of a journal entry that Judge Lioid signed overruling the *pro se* motion. The letter discussed the possibility of a motion for delayed appeal, indicated that the bailiff said that a copy of the prior journal entry had been sent to Attorney Haupt, and that it was no surprise that Attorney Haupt failed to provide a copy to Lombardi. (See Exhibits N and O attached to complaint.)

33. Respondent further stated that he had "good news" that "from my conversations with the bailiff, it appears that the Judge may treat a Motion for Judicial Release". The letter continues "we have prepared the enclosed draft copy which we would like you to review." (See Exhibit O attached to complaint.) The letter included a motion which was titled "motion for shock probation".

34. Sometime between June 24th and July 15th, Lombardi apparently returned the journal entry with a note that the entry had nothing to do with the *pro se* motion to vacate.¹ See Exhibits P and Q attached to complaint.)

¹MCBA Investigator, Rick Bush, requested a copy of this draft motion. This response was provided by Respondent November 9, 2005. The letter of July 15, 2004 was produced by DiMartino. With the exception of the first sentence, the letter is virtually identical to the one dated June 24, 2004.

35. On July 23, 2004, Respondent wrote to Lombardi indicating that the Court had scheduled a motion hearing on Wednesday, August 11, 2004 at 8:30 a.m. The docket reflects this hearing with an entry "motions hearing set on 8/11/04 8:30 a.m. notice sent". (See Exhibit R attached to complaint.)

36. Respondent did not appear for the August 11, 2004 hearing because of a scheduling conflict.

37. The Court then set a non-oral hearing for August 19, 2004. On August 20, 2004, the Court denied the motion to vacate or set aside the sentence. (See Exhibits S and T attached to complaint.) The notice of hearing and journal entry were not sent to Respondent, but were mailed by the court directly to Lombardi.

38. The judgment entry of August 20, 2004 states that the matter came before the Court upon a motion by Lombardi to vacate and/or set aside the sentence imposed or to allow the withdrawal of guilty pleas and the State's motion for summary judgment. The judgment entry reflects that Lombardi did not respond to the State's motion for summary judgment and that a non-oral hearing on the matter was scheduled for August 19, 2004. The judgment entry went on to find Lombardi's motion not well taken and that the State's motion for summary judgment to be well taken. In its opinion, the Court states that Lombardi's motion seeking to vacate or correct his sentence on the basis of a constitutional violation is considered a petition for post conviction relief which must be filed within 180 days of the expiration of the time for appeal. Further, the Court found that Lombardi failed to sustain his burden

of demonstrating the existence of manifest injustice sufficient to sustain his motion to withdraw guilty pleas. (See Exhibit T attached to complaint.)

39. Respondent did not file an appeal of the denial of the motion to vacate. Respondent asserts that he was not retained to appeal any denial of Lombardi's *pro se* motions, or that Respondent was aware of the court's order within the 30 day period for perfecting an appeal. As stated previously, the journal entry issued by the court denying Lombardi's *pro se* motion was not sent to Respondent, but was rather mailed to Lombardi himself.

40. On August 20, 2004, Beth Reiner (hereafter referred to as "Reiner"), an office staff member to Respondent, e-mailed Respondent. The electronic memorandum indicates that Lombardi's sister, Rochelle Savage (hereafter referred to as "Savage"), called to ask what happened at the hearing yesterday and that Reiner told Savage that it was a non-oral hearing and that the Court did not notify them of the outcome. Reiner further indicated that Respondent would not know the outcome for a few days, that Respondent was having a family emergency so he would not be able to answer any questions until late the following week. The e-mail also refers to complaints from Savage about her inability to contact Respondent and states that Reiner told Savage that there were two deaths in the family and that Respondent's wife possibly had cancer and that he could not get to Lombardi. (See Exhibit U attached to complaint.)

41. Reiner further stated that the conversation escalated to the point where she would no longer communicate with Savage and

hung up on her. The memo reflects, in a post script, that Reiner informed Savage that the office manager would know more and that she would need to speak with her, "did not want to let on that you guys were married so I told her that OM was on vacation for the two weeks and she said HOW CONVENIENT. I also called CAP and she told me that the hearing did not go forward at all yesterday. I did not know this at the time I spoke to this woman". (See Exhibit U attached to complaint.)

42. There were in fact two deaths in Respondent's family and Respondents wife was diagnosed with intrauterine tumors.

43. On August 24, 2004, Respondent wrote to Lombardi indicating that Rochelle Savage had called his office on August 20, 2004, was verbally abusive when the staff explained that the hearing was continued due to the death in the family, and was demanding and non-compassionate. It further indicated that he would no longer accept further communications through his family. (See Exhibit V attached to complaint.)

44. On August 31, 2004, Lombardi wrote to Respondent apologizing for the conduct of his family, but explained there was a concern that it had been approximately one year since Respondent was retained. The letter requested Respondent to advise what he was doing as of the last correspondence, stated that Respondent had said he was preparing to file a Judicial Release, and asked whether he was in fact eligible for any such release (this letter was not included in documents provide by Respondent to the Mahoning County Bar Association investigator.) (See Exhibit W attached to complaint.)

45. On November 12, 2004, Respondent's legal assistant sent a letter to Lombardi outlining the Respondent's attempted activity and apologized for any delays. (See Exhibit X attached to complaint.) On December 27, 2004, Lombardi sent a letter terminating Respondent and asking for a statement and a refund. (See Exhibit Y attached to complaint.)

46. In February of 2005, both Savage and Zufall attempted to contact Respondent, but Respondent would not communicate with them. Intra-office memos reflect that both women threatened pursuit of disciplinary action. (See Exhibits Z and AA attached to complaint.)

47. On March 17, 2005, Respondent sent Lombardi a letter stating he was prepared to advance a \$2,500 refund. A statement or accounting was not enclosed with this offer. (See Exhibit BB attached to complaint.) On March 20, 2005, Lombardi wrote and requested the \$2,500 be sent to Zufall. (See Exhibit CC attached to complaint.) This was completed by Respondent on April 1, 2005.

48. A grievance was filed by Lombardi against Respondent on May 12, 2005.

49. Respondent admitted, in his response, that Lombardi contacted him in September of 2003 about filing post conviction motions and that Respondent explained that he would file a Motion for Judicial Release and/or to Consider Suspension of Sentence. Respondent advised Lombardi that he thought the case would more than likely end up in the Court of Appeals and that his sentence

might even be done by that time, but Lombardi nevertheless agreed to proceed. (See Exhibit HH attached to complaint..)

50. Respondent's response further indicates that almost immediately thereafter his office began receiving weekly and daily telephone calls from Zufall asking when Lombardi was going to be released from prison, when they would be in court, and when the Judge would rule. Respondent stated that "I repeatedly explained to her that this case would take time, several years most likely." (Exhibit HH at page 2 attached to complaint.)

51. Respondent further stated, in his response, that Lombardi decided that he could no longer wait for a hearing on "our motions" and terminated Respondent's services. Lombardi then hired Attorney Steven LoDico who filed irrelevant motions, all of which were denied. LoDico was later suspended by the Supreme Court for inappropriate behavior including use of a loaded pistol at an adult entertainment club. (See Exhibit HH attached to complaint.)

52. Respondent stated that he prepared and filed pleadings, spoke with Zufall, contacted potential defense witnesses, prepared affidavits, and spent over 20 hours on the case at which time his services were terminated.

53. Respondent stated that "we sent a number of letters to witnesses. We prepared four (4) affidavits for them to sign." No letters to witnesses were ever produced by Respondent, no witness addresses were contained within Respondent's file, and all four of the witnesses deny ever receiving any such affidavit.

53. From March 1, 2004 through March 5, 2005 there does appear to be a string of intra-office communications discussing the

preparation of these affidavits. From these communications, it appears that someone in Respondent's office made an attempt to contact witnesses and may have prepared skeletal affidavits. However, the affidavits were never submitted to witnesses.

55. Respondent sent several letters to Lombardi. However, during the entire course of his representation, Respondent filed only two documents on Lombardi's behalf - the first was a one sentence notice of substitution of counsel filed on or about December 1, 2003. The second pleading was a three sentence "request for hearing on previously/filed pro se motion for post sentence evaluation", the pro se motion which had in fact already been denied and which was not relevant to the scope of representation.

56. At some point during the representation, Respondent became aware that Lombardi was ineligible for judicial release, time barred from filing a petition for post conviction relief, and that the sentence was not appealable.

57. Respondent failed to attend or reschedule the August 11, 2004 hearing, and did not file a substantive pleading on behalf on Lombardi before the non-oral hearing. He did not file or advance any written or oral argument to support the pro se motion to vacate, did not appeal the denial, and filed no further motion.

58. However, there was no legal basis to provide Lombardi relief. This fact was not apparent to Respondent at the time of his original retention, but became apparent as time unfolded. This fact was not conveyed to Lombardi.

59. The conduct of Respondent as set forth above constitutes a violation of D.R. 6-101(A): A lawyer shall not neglect a legal matter nor handle a legal matter without adequate preparation.

60. The conduct of the Respondent as set forth above constitutes a violation of D.R. 7-101(A): A lawyer shall not fail to carry out a contract of employment for professional services.

61. Relator and Respondent agree that Respondent shall be suspended from the practice of law for a period of one year. However, Relator and Respondent further agree that the entire one year period shall be stayed.

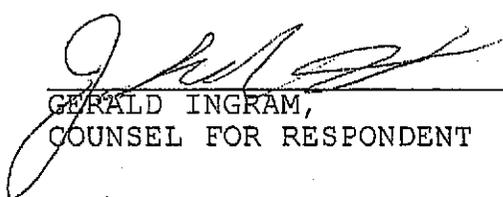
62. Relator and Respondent further agree that Relator shall appoint a monitor of Respondent during the one year period.



DAVID C. COMSTOCK, JR.
MAHONING COUNTY BAR ASSOCIATION
Bar Counsel



DENNIS DIMARTINO
RESPONDENT



GERALD INGRAM,
COUNSEL FOR RESPONDENT

STATE OF OHIO)
) SS: AFFIDAVIT OF
COUNTY OF MAHONING) DENNIS DIMARTINO

Now comes DENNIS DIMARTINO who first being duly sworn, affirmed and cautioned according to law deposes and says:

1. Affiant has personal knowledge of all facts related in this Affidavit and is competent to testify.

2. Affiant admits to having committed the misconduct listed in the agreement between Relator and Respondent (and set forth in Exhibit 1 and, the Stipulations);

3. That grounds exist for the imposition of a sanction against Affiant for the misconduct, and that the agreement sets forth all grounds for the discipline currently pending before the board;

4. That the Affiant admits to the truth of the material facts relevant to the misconduct listed in the agreement and attached stipulations;

5. That the Affiant agrees to the sanction to be recommended to the board;

6. That the Affiant's admissions and agreement are freely and voluntarily given, without coercion or duress, and that the Affiant is fully aware of the implication of the admissions and agreements on his ability to practice law in Ohio;

7. That the Affiant understands that the Supreme Court of Ohio has the final authority to determine the appropriate sanction for the misconduct admitted by the Affiant;

FURTHER AFFIANT SAYETH NAUGHT.



Dennis Dimartino
DENNIS DIMARTINO

SWORN to before me and SUBSCRIBED in my presence this
29 day of January, 2007.

Kathleen Peake
NOTARY PUBLIC
my commission expires
Jan. 24, 2008

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

RECEIVED

AUG 23 2006

BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

In re:

Complaint against

Dennis DiMartino

(Name of Attorney)

6004 Market Street

Youngstown, Ohio 44512

(Address)

RESPONDENT

Mahoning County Bar Association

(Name of Bar Association or Disciplinary Counsel)

114 East Front Street

Youngstown, Ohio 44503

(Address)

RELATOR

No. 06-081

COMPLAINT
AND
CERTIFICATE

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

FILED

OCT 06 2006

BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

Now comes the Relator and alleges that Dennis DiMartino,
an Attorney at Law, duly admitted to the practice of law in this State of Ohio is guilty of the
following misconduct:

See attached complaint.

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

In re:)	
)	
COMPLAINT AGAINST	)	CASE NO.
)	
DENNIS DIMARTINO)	
Atty Reg. No. 0039270	)	<u>COMPLAINT</u>
6004 Market Street)	
Youngstown, Ohio 44512)	
)	
Respondent)	
)	
MAHONING COUNTY BAR)	
ASSOCIATION	)	(Rule V of the Supreme
1st Floor	)	Court Rules for the
29 East Front Street	)	Government of the Bar
Youngstown, Ohio 44503	)	of Ohio)
)	
Relator)	

Now comes the Relator, Mahoning County Bar Association, and for its causes of action against Respondent, Dennis DiMartino, says:

I. Parties

1. Relator is a local bar association which maintains a certified grievance committee pursuant to Section 3 of Gov. Bar R. V.

2. Respondent is an attorney at law and is duly licensed to practice law in the State of Ohio. His bar registration number is 0039270.

3. Respondent's last known address is 6004 Market Street, Youngstown, Ohio 44512.

II. Factual Background

A. Underlying Claim

4. In November of 2001, Riccardi Lombardi (hereafter referred to as "Lombardi") was arrested and charged with multiple counts of cocaine possession and trafficking. He was indicted in two separate cases in Stark County Common Pleas Court: 2001-CR-1606 and 2001-CR-1560.

5. In Stark County Common Pleas Court Case 2001-CR-1606 Lombardi was indicted on one count of cocaine trafficking, a fourth degree felony and one count of cocaine trafficking, a fifth degree felony. In Stark County Common Pleas Court Case 2001-CR-1560, Lombardi was indicted on one count of cocaine possession and one count of cocaine trafficking, both felonies of the second degree.

6. On February 4, 2002, a hearing was held on both cases for the purpose of a change of plea and sentencing. During that hearing, Lombardi was advised that he faced a maximum of 10 ½ years in prison. As a result of plea negotiations entered into between Lombardi's counsel, Attorney Jeffery D. Haupt, and the Prosecutor's Office, Lombardi pled guilty to all four counts and, in accordance with the plea agreement, was sentenced to five years with respect to each count in Case 2001-CR-1560, to run concurrently.

7. Lombardi was also sentenced to seven and eleven month terms in connection with Case 2001-CR-1606 to run concurrent with the sentences in Case 2001-CR-1560. Lombardi was also fined \$7,500, received a five year driver's license suspension and was advised that he would not be eligible for early release and would

be required to serve the entire prison term to which he was sentenced.

8. On December 20, 2002, Attorney Haupt filed a motion for post sentence evaluation. The motion recited that the request was made in order for Lombardi to gain admittance into the honor camp.

9. On January 30, 2003 Stark County Common Pleas Court Judge Sara Lioi entered judgment denying the motion for post sentencing evaluation.

10. On April 22, 2003, Lombardi filed a *pro se* motion to vacate and/or set aside the sentence or to allow the withdrawal of his guilty pleas based upon manifest injustice. The motion asserted the trial court's failure to advise Lombardi of his right to appeal and also asserted a failure to comply with R.C. §2929.14 at sentencing, despite the fact that it was Lombardi's first offense.

11. On May 23, 2003, the State filed a motion to dismiss or, in the alternative, for summary judgment and response to the motion to vacate/set aside the sentence. [Despite the fact that his motion was filed in April 2003 and responded to in May 2003, it appears that no ruling on such motion was rendered until over a year later.]

12. On or about September 2003, Traci Zufall (hereafter referred to as "Zufall") contacted Respondent. Zufall was apparently Lombardi's girlfriend or fiancée at that time. Apparently, Respondent had been recommended to Lombardi by a fellow inmate.

13. In conversations with Zufall, Respondent indicated that he would need to obtain a transcript of the sentencing and other relevant documents in order to consider the case. On or about September 2, 2003, Zufall forwarded the transcript of the proceedings to Respondent.

14. On September 10, 2003, Lombardi filed a *pro se* motion for return of certain personal property taken at the time of his arrest. On September 19, 2003, the State filed a response to the *pro se* motion for the return of the property.

15. Sometime after the filing of the September 10, 2003 *pro se* motion for return of personal property, a three-way telephone conversation occurred between Lombardi, Zufall, and Respondent. At that time, Respondent agreed to take the case upon receipt of a \$5,000 retainer. According to Zufall, Respondent's engagement included determining the status of the previously filed *pro se* motions.

16. [With respect to the original retainer of Respondent's services: the exact nature of the conversations regarding the scope of representation is less than clear. Nonetheless, it does appear that Respondent was retained to pursue Lombardi's previously filed *pro se* motion to modify the sentence or withdraw the guilty plea. However, Respondent's letter from the start characterized his role as to file a motion for judicial release.]

17. On September 23, 2003, a \$5,000 retainer check was forwarded to Respondent. (See Exhibit A.)

18. On October 7, 2003, Respondent sent a letter to Attorney Haupt requesting his file. A letter was also sent to Lombardi

acknowledging the representation. The letter acknowledged the receipt of the \$5,000 retainer fee. The letter further indicated that the retainer would include all expenses from the Trial Court to the Court of Appeals one time. The letter did not specifically state what would be filed by the Respondent on behalf of Lombardi. Respondent's written response does indicate, however, that he told Lombardi that he would "file a Motion for Judicial Release and/or to Consider Suspension of Sentence". (See Exhibit B.)

19. On October 7, 2003, Respondent directed his office staff to contact Zufall for information to arrange a prison visit with Lombardi.

20. On October 21, 2003, Respondent sent letters to the Belmont Correctional Institution attempting to arrange an in-person meeting with Lombardi.

21. On October 22, 2003, Respondent sent another letter to Lombardi, which refers to copies of materials obtained from Haupt and also refers to a recent article regarding another inmate, stating "if he is able to get Judicial Release ... then I think you can too." (See Exhibit C.)

22. On November 24, 2003, Respondent sent another letter to Lombardi advising that he planned on visiting in the near future, but the visit was not approved as of that date. (See Exhibit D.) Respondent also forwarded a "Notice of Substitution" to the clerk that same date. (See Exhibit E.)

23. On December 12, 2003, Respondent sent a letter to an administrator at the Belmont Correctional Institution attempting to

schedule a meeting for Saturday, December 20, 2003. (See Exhibit F.)

24. On December 26, 2003, Respondent sent a letter to Lombardi indicating that complications had arisen with the attempt to meet on Saturday, December 20, 2003. He expressed his anxiousness to "try and help to get your sentence reduced" and indicated that he would make arrangements to meet after January 5, 2004. (See Exhibit G.)

25. On January 15, 2004, Zufall called Respondent to complain that after four months Respondent still had not met with Lombardi. (See Exhibit H.)

26. On January 21, 2004, Respondent sent another letter to Lombardi. The letter indicated that due to a family vacation and weather conditions he had not yet been able to make arrangements to meet. However, Respondent indicated that he would visit Lombardi on February 8, 2004. He further stated in his correspondence that "rest assured that work has been ongoing and continues on your case". (See Exhibit I.)

27. On February 12, 2004, Respondent finally met with Lombardi. Respondent documented that meeting in a letter of February 13, 2004. (See Exhibit J.) In that letter Respondent stated "we have provided you a copy of the *request for hearing* that we have filed with the Stark County Common Pleas Clerk of Courts". Furthermore Respondent stated that he would know by March 1, 2004 when the hearing would be conducted and that he would let Zufall know so that she could attend. Finally, the February 13, 2004 correspondence indicated that Respondent had received contact

information regarding the witnesses to the former attorney's statements at the time of the sentencing hearing.

28. On or about February 18, 2004, Respondent drafted a "request for hearing" which was sent to the Stark County Clerk of Courts for filing. The request for a hearing is docketed as having been received one week later, on February 25, 2004. Further, the motion requested a hearing on the previously filed motion for post sentence evaluation, rather than upon defendant's motion to vacate and/or set aside the sentence or to allow withdrawal of the guilty plea. (See Exhibit K.)

29. On April 29, 2004, Respondent wrote to Lombardi. In that letter, Respondent thanked Lombardi for his recent inquiry and indicated that Zufall had phoned Respondent's office that day and had inquired as to how long it would take the Judge to rule on the *pro se* motion. Respondent indicated that he had recently learned that the Court had overruled the *pro se* motion even before they filed "our last pleading." (See Exhibit L.)

30. Respondent further wrote in the letter of April 29, 2004 that "we did contact several of the witnesses to the conversation between you and Atty. Haupt at the courthouse on the day of your Plea and sentence just as we promised". Respondent indicated that he would try to get Lombardi released without the need of a full blown appeal and that Respondent was in the process of trying to negotiate a "Judicial Release". Respondent indicated that he had been in contact with the Court and anticipated a hearing within the next thirty (30) days. See Exhibit L.)

31. On or about June 7, 2004 Lombardi wrote a letter to Respondent requesting a copy of the denial of his *pro se* motion to vacate or set aside the sentence or allow withdraw of his guilty plea. Lombardi stated that Respondent's office did send a copy of the overruled motion for post sentence evaluation, which had nothing to do with what he was requesting. Lombardi further stated that he had not heard back from Respondent since Respondent's letter of April 29, 2004, and had never seen anything that Respondent had filed with the exception of the change of attorney of September 2003. Lombardi stated that he hoped Respondent would respond with good news or at least "see my request through". (See Exhibit M.)

32. On June 22nd and 24, 2004, Respondent wrote to Lombardi. Respondent enclosed a copy of a journal entry that Judge Lioi signed overruling the *pro se* motion. The letter discussed the possibility of a motion for delayed appeal, indicated that the bailiff said that a copy of the prior journal entry had been sent to Attorney Haupt, and that it was no surprise that Attorney Haupt failed to provide a copy to Lombardi. (See Exhibits N and O.)

33. However, Respondent stated that he had "good news" that "from my conversations with the bailiff, it appears that the Judge may treat a Motion for Judicial Release". The letter further states "we have prepared the enclosed draft copy which we would like you to review." (See Exhibit O.) Lombardi denies ever receiving such a draft letter.

34. Sometime between June 24th and July 15th, Lombardi apparently returned the journal entry with a note that the entry

had nothing to do with the *pro se* motion to vacate.¹ See Exhibits P and Q.)

35. On July 23, 2004, Respondent wrote to Lombardi indicating that the Court had scheduled a motion hearing on Wednesday, August 11, 2004 at 8:30 a.m. The docket reflects this hearing with an entry "motions hearing set on 8/11/04 8:30 a.m. notice sent". (See Exhibit R.)

36. Respondent did not appear for the August 11, 2004 hearing. Bailiff Norcia called Respondent's office when he failed to appear and offered the opportunity to reschedule the hearing, which Respondent did not do.

37. The Court then set a non-oral hearing for August 19, 2004. On August 20, 2004, the Court denied the motion to vacate or set aside the sentence. (See Exhibits S and T.)

38. The judgment entry of August 20, 2004 states that the matter came before the Court upon a motion by Lombardi to vacate and/or set aside the sentence imposed or to allow the withdrawal of guilty pleas and the State's motion for summary judgment. The judgment entry reflects that Lombardi did not respond to the State's motion for summary judgment and that a non-oral hearing on the matter was scheduled for August 19, 2004. The judgment entry went on to find Lombardi's motion not well taken and that the State's motion for summary judgment to be well taken. In its

¹MCBA Investigator, Rick Bush, requested a copy of this draft motion. This response was provided by Respondent November 9, 2005. The letter of July 15, 2004 was produced by DiMartino. With the exception of the first sentence, the letter is virtually identical to the one dated June 24, 2004.

opinion, the Court states that Lombardi's motion seeking to vacate or correct his sentence on the basis of a constitutional violation is considered a petition for post conviction relief which must be filed within 180 days of the expiration of the time for appeal. Further, the Court found that Lombardi failed to sustain his burden of demonstrating the existence of manifest injustice sufficient to sustain his motion to withdraw guilty pleas. (See Exhibit T.)

39. Respondent did not file an appeal of the denial of the motion to vacate.

40. On August 20, 2004, Beth Reiner (hereafter referred to as "Reiner"), an office staff member to Respondent, e-mailed Respondent. The electronic memorandum indicates that Lombardi's sister, Rochelle Savage (hereafter referred to as "Savage"), called to ask what happened at the hearing yesterday and that Reiner told Savage that it was an oral hearing and that the Court did not notify them of the outcome. Reiner further indicated that Respondent would not know the outcome for a few days, that Respondent was having a family emergency so he would not be able to answer any questions until late the following week. The e-mail also refers to complaints from Savage about her inability to contact Respondent and states that Reiner told Savage that their were two deaths in the family and that Respondent's wife possibly had cancer and that he could not get to Lombardi. (See Exhibit U.)

41. Reiner further stated that the conversation escalated to the point where she would no longer communicate with Savage and hung up on her. The memo reflects, in a post script, that Reiner informed Savage that the office manager would know more and that

she would need to speak with her, "did not want to let on that you guys were married so I told her that OM was on vacation for the two weeks and she said HOW CONVENIENT. I also called CAP and she told me that the hearing did not go forward at all yesterday. I did not know this at the time I spoke to this woman". (See Exhibit U.)

42. On August 24, 2004, Respondent wrote to Lombardi indicating that Rochelle Savage had called his office on August 20, 2004, was verbally abusive when the staff explained that the hearing was continued due to the death in the family, and was demanding and non-compassionate. It further indicated that he would no longer accept further communications through his family. (See Exhibit V.)

43. On August 31, 2004, Lombardi wrote to Respondent apologizing for the conduct of his family, but explained there was a concern that it had been approximately one year since Respondent was retained. The letter requested Respondent to advise what he was doing as of the last correspondence, stated that Respondent had said he was preparing to file a Judicial Release, and asked whether he was in fact eligible for any such release (this letter was not included in documents provide by Respondent to the Mahoning County Bar Association investigator.) (See Exhibit W.)

44. Between August 31, 2004 and December 27, 2004, Respondent did nothing on the case. However, on November 12, 2004, Respondent's legal assistant sent a letter to Lombardi outlining the Respondent's attempted activity and apologized for any delays. (See Exhibit X.) On December 27, 2004, Lombardi sent a letter

terminating Respondent and asking for a statement and a refund.
(See Exhibit Y.)

45. In February of 2005, both Savage and Zufall attempted to contact Respondent, but Respondent would not communicate with them. Intra-office memos reflect that both women threatened pursuit of disciplinary action as a result. (See Exhibits Z and AA.)

46. On March 17, 2005, Respondent sent Lombardi a letter stating he was prepared to advance a \$2,500 refund. A statement or accounting was not enclosed with this offer. (See Exhibit BB.) On March 20, 2005, Lombardi wrote and requested the \$2,500 be sent to Zufall. (See Exhibit CC.) This was completed by Respondent on April 1, 2005.

B. Complaint and Investigation

47. A grievance was filed by Lombardi against Respondent on May 12, 2005. The complaint alleged that Lombardi hired Respondent in September of 2003 and gave him a retainer of \$5,000, that Respondent failed to appear in Court on his behalf or to represent him in any way. Lombardi further alleged that Respondent failed to keep his promises and would not return letters or telephone calls (See Exhibit DD.)

48. The grievance was mailed to Respondent on May 25, 2005. Respondent did not file a response within 14 days as required by Rule 11(b) of the Rules for the Proceeding of the Certified Grievance Committee of the Mahoning County Bar Association. (See Exhibit EE.)

49. On June 22, 2005, the Mahoning County Bar Association investigator sent a letter to Respondent indicating his response had not yet been received, was overdue, and that failure to respond may be deemed a failure to cooperate as well as an admission of the allegations of the complaint. (See Exhibit FF.) Respondent did not respond.

50. Thereafter, one or more telephone messages were left by the investigator at Respondent's office concerning the grievance.

51. On September 7, 2005, the investigator sent another letter by certified mail to Respondent again advising him that his response was long overdue and if no response was received by Friday, September 16, 2005, a report would be made to the committee without his input and that the report would indicate that he failed to cooperate in the investigation. (See Exhibit GG.)

52. Respondent's written response was received on or about September 16, 2005. (See Exhibit HH.) The report consists of a four page letter together with copies of a substantial number of documents including 11 letters to Lombardi from Respondent, the letter to Lombardi's prior counsel, Jeffrey D. Haupt requesting a copy of his file, copies of letters to prison officials attempting to schedule an interview, and two transmittal letters to the clerk of courts office. One referenced the Notice of Substitution of Counsel and the other referenced a "request for hearing". Also included were several pages of intra office communications, apparent notes of Respondent's interview of the grievant, copies of indictments and certain other pleadings filed prior to Respondent's involvement, and two pleadings which Respondent himself filed: a

substitution of counsel and a three sentence "request for hearing on previously filed pro se motion for post sentencing evaluation". Other documents included copies of hand written requests from Lombardi for the reimbursement of the \$2,500, dated March 20, 2005, a \$5,000 retainer check dated September 23, 2005 and a transmittal letter of the same date. Also included in the material provided by Respondent was the transcript of the sentencing proceedings, copies of a few newspaper articles, copies of two court opinions apparently printed in 2003 (one dealing with forfeiture of property and the other dealing with issues of undeterminable relevance to the matter of representation.)

53. Respondent's written response summarizes Lombardi's grievance-Lombardi paid \$5,000 in legal fees, Respondent did nothing for him, that Respondent refunded only \$2,500, and that Respondent's inaction caused Lombardi harm. Respondent denied this, stating that he provided legal services, including research, an interview at the prison, and had contact with friends, family and witnesses in contact with the Court. Respondent further indicated that Lombardi, a longtime firefighter with the Canton Fire Department, was the subject of an undercover drug sale sting, Lombardi hired Attorney Jeffrey Haupt who never met with him, and then on the eve of trial Attorney Haupt forced Lombardi to enter into guilty pleas. Respondent indicated that the sentencing was set for September 2001, a few days after the September 11th attacks (the Court's docket and the transcript clearly indicated that the sentencing took place on February 4, 2002.) (See Exhibits HH and II.)

54. Respondent admitted, in his response, that Lombardi contacted him in September of 2003 about filing post conviction motions and that Respondent explained that he would file a Motion for Judicial Release and/or to Consider Suspension of Sentence. Respondent advised Lombardi that he thought the case was more than likely to end up in the Court of Appeals and that his sentence might even be done by that time, but Lombardi nevertheless agreed to proceed. (See Exhibit HH.)

55. Respondent's response further indicates that almost immediately thereafter his office began receiving weekly and daily telephone calls from Zufall asking when Lombardi was going to be released from prison, when they would be in court, and when the Judge would rule. Respondent stated that "I repeatedly explained to her that this case would take time, several years most likely." (Exhibit HH at page 2.)

56. Respondent further indicated that Zufall continued to harass his staff; that he went to the Courthouse, reviewed the file, contacted Attorney Haupt, and spent approximately 68 hours traveling to and conducting a prison interview. Respondent then stated that he began conducting research and focusing on trying to win a post judgment motion before Judge Lioi. Respondent stated that he phoned the prosecutor assigned to the courtroom and finally made contact. Respondent stated that if he just filed a motion to withdraw the guilty plea Lombardi would have no chance at getting out on judicial release. Respondent further stated that he continues to research which method would provide the best chance for release at the earliest possible time. (See Exhibit HH.)

57. Respondent further stated, in his response, that Lombardi decided that he could no longer wait for a hearing on "our motions" and terminated Respondent's services. Lombardi then hired Attorney Steven LoDico who filed irrelevant motions, all of which were denied. LoDico was later suspended by the Supreme Court for inappropriate behavior including use of a loaded pistol at an adult entertainment club. (See Exhibit HH.)

58. Respondent stated that he prepared four pleadings, filed three of them, spoke with Zufall at least five times, contacted potential defense witness, prepared four affidavits, and spent over 20 hours on the case at which time his services were terminated. (See exhibit HH.)

59. The Stark County Prosecutor's Office records do not contain any documentation relating to alleged communications regarding the case or of discussions between the assigned prosecutor and Respondent. Assistant Prosecutor Dennis Barr, Chief of the Criminal Division of the Stark County Prosecutor's Office, has denied that he ever received any communications regarding negotiations for early release. Additionally, by statute (R.C. §2929.20), a motion for Judicial Release could not even be considered prior to February of 2006, at which time Lombardi will have served four years of his five year sentence.

60. On September 20, 2005, the Mahoning County Bar Association's investigator sent another certified letter to Respondent attempting to obtain additional information. (See Exhibit JJ.) Specifically, the investigator requested the identification of what pleadings were prepared and filed since

Respondent's representation appeared inconsistent with the dockets. The investigator also requested copies of the affidavits and correspondence referenced in Respondent's answer. The investigator also asked about the circumstances of the August 11, 2004 hearing. (See Exhibit JJ.)

61. The investigator requested a response by September 27, 2005 in order to complete the report by the next Grievance Committee meeting. Respondent did not immediately respond to this correspondence. On November 3, 2005, the investigator sent another letter to Respondent stating that he had not yet received a response to the September 20, 2005 inquiry. (See Exhibit KK.)

62. November 9, 2005, Respondent telephoned and wrote to the investigator, and provided additional documents. Included in the additional documents provided were "draft" affidavits, which Respondent stated he prepared. (See Exhibits LL, MM, NN, OO, and PP.)

III. Respondent's Deficient Conduct

63. Respondent did not meet with Lombardi for over 4½ months after he was retained.

64. Respondent appeared to send several letters to Lombardi. However, during the entire course of his representation, Respondent filed only two documents on Lombardi's behalf - the first was a one sentence notice of substitution of counsel filed on or about December 1, 2003. The second pleading was a three sentence "request for hearing on previously/filed pro se motion for post sentence evaluation", the pro se motion which had in fact already

been denied and which was not relevant to the scope of representation.

65. Pursuant to R.C. §2929.20, a convict cannot apply for judicial release on concurrent five year sentences until he has served at least four years of that sentence, a time period which would not begin until sometime after February of 2006. Furthermore, Judge Lioi indicated in sentencing that Lombardi would not be eligible for early release. Respondent ignored this fact.

66. Respondent's representation of Lombardi lasted for a period of fifteen months. The purpose of Respondent's representation of Lombardi was to shorten or eliminate the roughly forty months remaining on the sentence at the time Lombardi retained Respondent. During the time, Respondent filed nothing which advanced his client's cause and presented no substantive argument to the Court orally or in writing.

67. Respondent failed to attend or reschedule the August 11, 2004 hearing, did not appear at any subsequent hearing, and never filed a substantive pleading on behalf of Lombardi. He did not file or advance any written or oral argument to support the pro se motion to vacate, did not appeal the denial, and filed no other motion. From late August through December of 2004, Respondent did nothing on the case.

68. Respondent's written answer of September is less than forthcoming. While Respondent's response and accompanying documents appear critical of Lombardi, his family, Lombardi's former and subsequent counsel, Respondent fails to address substantial issues regarding his representation. For example

Respondent failed to address the August 11, 2004 hearing, at which he failed to appear and/or explain why the hearing was canceled. Respondent stated "Mr. Lombardi decided he could no longer wait for a hearing on our motions and terminated my services". In fact Respondent filed no such motions and no hearing was pending.

69. Respondent stated that he did substantial research. The evidence neither verifies nor undermines this assertion. There are copies of three cases in the file, one of which was attached to Lombardi's *pro se* motion and the other two appear to have been printed in 2003 and do not appear related to reduction of sentence issues.

70. Respondent stated that "we sent a number of letters to witnesses. We prepared four (4) affidavits for them to sign." No letters to witnesses were ever produced by Respondent, no witness addresses were contained within Respondent's file, and all four of the witnesses deny ever receiving any such affidavit.

71. From March 1, 2004 through March 5, 2005 there does appear to be a string of intra-office communications discussing the preparation of these affidavits. From these communications, it appears that someone in Respondent's office made an attempt to contact witnesses and may have prepared skeletal affidavits. However, the affidavits were never submitted to witnesses.

IV. DISCIPLINARY VIOLATIONS

COUNT ONE

72. Relator incorporates the allegations set forth in paragraphs 1 through 71 of the complaint as though fully re-written herein.

73. The conduct of Respondent as set forth in paragraphs 1 through 71 above constitutes a violation of D.R. 6-101(A): A lawyer shall not neglect a legal matter nor handle a legal matter without adequate preparation.

COUNT TWO

74. Relator incorporates the allegations set forth in paragraphs 1 through 71 of the complaint as though full re-written herein.

75. The conduct of the Respondent as set forth in paragraphs 1 through 71 above constitutes a violation of D.R. 7-101(A): A lawyer shall not fail to carry out a contract of employment for professional services.

COUNT THREE

76. Relator incorporates the allegations set forth in paragraphs 1 through 71 of the complaint as though full re-written herein.

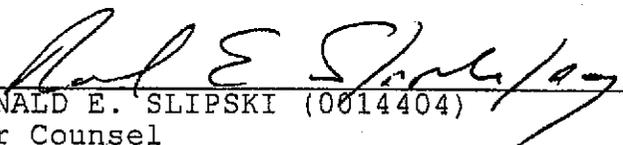
77. The conduct of Respondent as set forth in paragraphs 47 through 62 above constitutes a violation of Gov. Bar R. V §4(G): A lawyer shall cooperate in disciplinary investigations, and Ohio Supreme Case Law set forth in *Mahoning County Bar Association v. Lavelle* (2005), 107 Ohio St.3d 92.

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

By 
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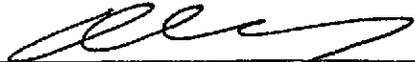
CERTIFICATE OF SERVICE

Pursuant to Gov. Bar R. V, Section 5, I certify that a copy of the foregoing complaint has been mailed by U.S. regular mail on this 21st day of August, 2006, to: **Dennis DiMartino**, 6004 Market Street, Youngstown, Ohio 44512; **Office of Disciplinary Counsel**, Bicentennial Plaza One, 250 Civic Center Drive, Suite 325, Columbus, Ohio 43215-5454; **The Certified Grievance Committee of the Ohio State Bar Association**, 41 South High Street, Suite 3370, Columbus, Ohio 43215-6105; and to the **Mahoning County Bar**

Association, 29 East Front Street, Youngstown, Ohio 44503.

MAHONING COUNTY BAR ASSOCIATION

By


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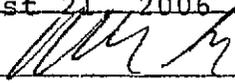
By


RONALD E. SLIPSKI (0014404)
Bar Counsel
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(330) 797-2969

CERTIFICATE

The undersigned Larry Wilkes, Chairman
(President, Secretary, Chairman of the Grievance Committee or Disciplinary Counsel)
of the Mahoning County Bar Association Certified Grievance Committee
hereby certifies that David C. Comstock, Jr. and Ronald Slipski
_____, are duly authorized to
(is or are)
represent Relator in the premises and _____ have _____ accepted the responsibility of
(has or have)
prosecuting the complaint to its conclusion. After investigation, Relator believes reasonable cause exists
to warrant a hearing on such complaint.

Dated August 21, 2006, ~~10xx~~ 2006



(Title)

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

Section (4)

(4) (I) (8) *The Complaint; Where Filed; By Whom Signed.* A complaint shall mean a formal written complaint alleging misconduct or mental illness of one who shall be designated as the Respondent. Six (6) copies of all such complaints shall be filed in the office of the Secretary of the Board. Complaints filed by a Certified Grievance Committee shall not be accepted for filing unless signed by one or more members of the Bar of Ohio in good standing, who shall be counsel for the Relator, and supported by a certificate in writing signed by the President, Secretary or Chairman of the Certified Grievance Committee, which Certified Grievance Committee shall be deemed the Relator, certifying that said counsel are duly authorized to represent said Relator in the premises and have accepted the responsibility of prosecuting the complaint to conclusion. It shall constitute the authorization of such counsel to represent said Relator in the premises as fully and completely as if designated and appointed by order of the Supreme Court of Ohio with all the privileges and immunities of an officer of such Court. The complaint may also, but need not, be signed by the person aggrieved.

Complaints filed by the Disciplinary Counsel shall be filed in the name of Disciplinary Counsel as Relator.

Upon the filing of a complaint with the Secretary of the Board, Relator shall forward a copy thereof to Disciplinary Counsel, to the Certified Grievance Committee of the Ohio State Bar Association, to the local bar association and to any Certified Grievance Committee serving the county or counties in which the Respondent resides and maintains his office and for the county from which the complaint arose.