

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

IN RE: : **07-0733**

Complaint against : **Case No. 05-076**

William Mark Fumich, Jr. Atty. Reg. No. 0022600	:	Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio
Respondent	:	
Disciplinary Counsel	:	
Relator	:	

FILED
APR 24 2007
MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

INTRODUCTION

This matter came on for hearing on the 22nd day of February, 2007, at the courthouse of the Ohio Seventh District Court of Appeals in Youngstown, Ohio. The hearing panel representing the Board of Commissioners consisted of John Siegenthaler, Martha Butler and Judge Joseph J. Vukovich, Panel Chair. Relator was represented by Attorneys Jonathan Coughlin and Phillip King. Respondent was present and was represented by Attorneys Ronald House and C. David Paragas. At the hearing, the parties jointly submitted stipulations of fact, violations of the Code of Professional Responsibility, and factors of mitigation as contemplated by BCGD Proc. 10(B). Said stipulations are attached hereto as Exhibit A. Based upon the aforementioned stipulations and the evidence adduced at the hearing, the panel makes the findings hereinafter set forth.

FINDINGS OF FACT

1. Respondent has been practicing law since November 19, 1976.
2. Prior to the matters before the panel, Respondent has never been the subject of disciplinary proceedings.
3. In both counts of the complaint, Respondent was legal counsel for relatives.

COUNT ONE

4. Respondent was initially consulted to represent the family of Janko Klepac, deceased, to probate his last will and testament and his estate.

5. Subsequently, Respondent was asked to review the circumstances of the amputation of Mr. Klepac's toe prior to his death.

6. Mr. Klepac was a diabetic and had died of congestive heart failure.

7. While providing legal counsel to the estate of Mr. Klepac, Respondent agreed to pursue a medical malpractice action on behalf of the estate concerning the aforementioned amputated toe which allegedly occurred due to negligent post-operative care.

8. Respondent timely initiated the malpractice action.

9. Pursuant to a case management order of the court where the malpractice action was pending, the estate was ordered to submit a report of an expert showing the purported negligence in post-operative care.

10. Despite his efforts to locate and/or secure an expert witness (see, e.g. Exhibit 4, "Pre-bill worksheet," attached to the stipulations of the parties) Respondent was unable to locate an expert witness willing to testify on behalf of the estate.

11. The defendants to the malpractice action filed for, and obtained, a summary judgment.

12. Respondent did not respond to the motions for summary judgment which resulted in the dismissal of the estate's complaint on February 12, 2002.

13. Respondent never advised his clients of his inability to secure an expert witness or that the action had been dismissed.

14. In May and June, 2004, one of Respondent's clients was pressuring him to settle the malpractice case for \$25,000, being unaware that the action had been terminated over two years earlier.

15. Instead of telling the family of the deceased the truth of the matter, Respondent met with one of the daughters of the deceased (Ms. Jelovic, the other daughter being the executrix of the estate, Ms. Bukszar) and told her he could settle the case for \$16,000.

16. Upon being advised that the \$16,000 "offer" was acceptable, Respondent, in the presence of Ms. Jelovic, obtained a blank check from his IOLTA account and drafted a \$16,000 check payable to "Donna Jelovic."

17. Contemporaneous with the aforementioned transaction, Ms. Jelovic executed a form authorizing Respondent to close his file on the malpractice case.

18. Ms. Jelovic cashed the check from Respondent's IOLTA account and gave one-half to her sister, Ms. Bukszar, the executrix of the estate of Janko Klepac.

19. The source of the \$16,000 paid to Ms. Jelovic was from the personal funds of Respondent, i.e. his Merrill Lynch account. (See stipulations 36-38.)

20. Neither Ms. Jelovic nor Ms. Bukszar was advised by Respondent or were aware that the malpractice action of their father's estate was in fact dismissed for over two years, or that the money they received was from Respondent's personal funds.

21. Respondent never charged the estate, or filed a request for payment, or received any payment for the probate work he performed, or for the work he performed in the malpractice action.

COUNT TWO

22. Paragraph 49 through 63 of the stipulations of the parties attached hereto are incorporated by reference as if fully rewritten.

23. In summation, Respondent represented his uncle Nelson Neubig and Nelson's daughter, Kathleen Neubig. Respondent and Kathleen Neubig possessed a power of attorney for Nelson Neubig. Respondent believed that if he provided Kathleen access to certain documents of Nelson or pertaining to Nelson's assets, he would violate his obligation to Nelson. In the words of Relator, Respondent represented two clients and took the interest of one over the other. Respondent failed to return documents or the file of Kathleen upon her request or the request of Relator.

CONCLUSIONS OF LAW

The panel finds the admissions and stipulations of Respondent and the evidence adduced to be clear and convincing evidence that Respondent has violated the following Disciplinary Rules:

COUNT ONE

(1) DR 1-102(A)(4). A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(2) DR 1-102(A)(6). A lawyer shall not engage in conduct that adversely reflects upon his fitness to practice law;

(3) DR 6-101(A)(3). A lawyer shall not neglect a legal matter entrusted to him; and

(4) DR 9-102(A). No funds belonging to a lawyer or law firm shall be deposited into the attorney's trust account.

COUNT TWO

(5) DR 9-102(B)(4). A lawyer shall promptly deliver upon request from the client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

AGGRAVATION

The panel finds none of the factors set forth in BCGD Proc. Reg. 10(B)(1)(a-i).

MITIGATION

Pursuant to BCGD Proc. Reg. 10(B)(2)(a-h), the panel finds the following mitigating factors:

(a) Absence of a prior disciplinary record. (Stipulated).

(b) Respondent acknowledges the wrongful nature of his conduct. (Stipulated).

(c) Respondent has made restitution to the Estate of Janko Klepac. (Stipulated).

(d) Respondent has fully cooperated in these proceedings. (Stipulated).

(e) Character or reputation is generally excellent.

(f) Absence of a dishonest or selfish motive relative to personal financial gain. In fact, Respondent lost \$16,000 out of pocket in an effort to appease relatives and performed legal services on their behalf without fees.

(g) Absence of financial harm to his clients.

SANCTION RECOMMENDATION

Relator recommended a sanction of a 12 month suspension with 6 months stayed. Respondent requested a 12 month suspension with all of the suspension stayed. The rule violation which would ordinarily cause this panel to embrace the recommendation of Relator is one involving DR 1-102(A)(4). However, the panel accepted that stipulated violation primarily because Respondent was deceitful to his client. Accordingly, the dishonesty and selfish motive found in cases where an actual suspension was imposed, was noticeably lacking here. Moreover, the absence of any harm to a client (arguably the clients received a benefit from the

conduct of Respondent relative to the tenuous merits of the malpractice case), the good character and reputation of Respondent, his cooperation and clean disciplinary record, necessitate a conclusion that an actual suspension is not a just result under the facts and circumstances of this case. Therefore, the panel recommends that Respondent receive a 12 month suspension, all of it stayed.

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 April 13, 2007. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Panel and recommends that the Respondent, William Mark Fumich, Jr., be suspended from the practice of law in the State of Ohio for a period of one year with the entire one year stayed. 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 GRIEVANCES AND DISCIPLINE OF
THE SUPREME COURT OF OHIO

In re:

Complaint against

William Mark Fumich, Jr., Esq.
Seeley, Savidge & Ebert
800 Bank One Center, 8th Floor
600 Superior Avenue, East
Cleveland, OH 44114-2655

AGREED STIPULATIONS

Attorney Registration No. (0022600)

BOARD NO. 05-076

Respondent,

FILED

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

FEB 23 2007
BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

Relator.

Relator, Disciplinary Counsel, and respondent, William Mark Fumich, do hereby stipulate to the admission of the following facts, the following violations of the Code of Professional Conduct and the authenticity and admission of the attached exhibits.

STIPULATED FACTS

1. Respondent, William Mark Fumich, was admitted to the practice of law in the state of Ohio on November 19, 1976. Respondent is subject to the Code of Professional Responsibility and the Rules for the Government of the Bar of Ohio.
2. Respondent is currently practicing law as a sole practitioner in Westlake, Ohio.

COUNT I – THE ESTATE OF JANKO KLEPAC

3. Janko Klepac, now deceased, was a relative of respondent's, and Nada Bukszar and Danica ("Donna") Jelovic are Mr. Klepac's daughters.
4. In February 1980, respondent began representing Mr. Klepac, including preparing estate planning documents for him.
5. Respondent drafted a will and a trust for Ms. Bukszar and her husband and a will for Ms. Jelovic and her husband.
6. Mr. Klepac passed away in June 1998 at the age of 76. The cause of death identified on the death certificate is congestive heart failure.
7. Shortly after Mr. Klepac's death, Ms. Bukszar and Ms. Jelovic asked respondent to assist in the probate of Mr. Klepac's will.
8. Respondent agreed to the representation, and he filed the estate in the Cuyahoga County Probate Court on November 30, 1998. The estate was assigned case number 1998 EST 0013596.
9. Ms. Bukszar was named as the executor of Mr. Klepac's estate.
10. Respondent never charged the estate or filed a request for payment with the probate court for the work that he performed.
11. Ms. Bukszar and Ms. Jelovic also asked respondent to review the circumstances that led to the amputation of Mr. Klepac's toe prior to his death.
12. Respondent agreed to review the matter.
13. At the end of 1998 or early in 1999, respondent agreed to pursue a medical malpractice action on behalf of the estate as a result of circumstances that led to the amputation of one of Mr. Klepac's toes.

14. Respondent asserts that he discussed the terms of the representation with Ms. Bukszar and Ms. Jelovic, and he asserts that they agreed to pay him a contingent fee of one-third of any recovery and to pay all expenses of the action.
15. The fee agreement was never reduced to writing.
16. On March 22, 1999, respondent filed a medical malpractice action in the Cuyahoga County Court of Common Pleas on behalf of the Estate of Janko Klepac against Metrohealth Medical Center ("Metro"), St. Vincent Charity Hospital ("St. Vincent"), and Grace Hospital ("Grace"), seeking \$500,000 in damages. The case was assigned case number CV-99-380595.
17. A case management conference was held on June 29, 1999, and as a result of the case management conference, respondent was required to submit an expert witness report by November 30, 1999.
18. Respondent was granted an extension to file the expert witness report.
19. Respondent had difficulty finding an expert witness to establish causation of death and the standard of care on the medical malpractice claim. Dr. Alexander, a vascular surgeon, had previously told Ms. Bukszar, Ms. Jelovic and Respondent that he believed that substandard medical care was the cause of Mr. Klepac's gangrenous toe.
20. On February 17, 2000, respondent filed a voluntary dismissal of the action on behalf of the estate, and the case was dismissed without prejudice on February 25, 2000.

21. Respondent re-filed the case in the Cuyahoga County Court of Common Pleas on February 20, 2001, with identical claims and identical parties. The case was assigned case number CV-01-430681.
22. Respondent continued to have difficulty retaining an expert witness to establish causation of death and the standard of care.
23. Dr. Alexander, the vascular surgeon who previously informed Ms. Bukszar, Ms. Jelovic and Respondent that substandard care led to the gangrenous toe, stated that he would not so testify because he was associated with one of the hospitals. Dr. Alexander submitted an affidavit now stating that there was no substandard care.
24. Respondent filed a Stipulation of Voluntary Dismissal of St. Vincent on September 25, 2001.
25. Respondent was not able to find an expert witness to establish causation of death, so he did not file an expert witness report within the deadline.
26. Metro and Grace filed for summary judgment.
27. Respondent did not file any response to the summary judgment motions. Respondent asserts that he did not do so because he had no expert witness to support opposition to the motion.
28. The court granted both summary judgment motions, and the case was dismissed as of February 12, 2002.
29. Respondent took no further action in the case.
30. Respondent never informed Ms. Bukszar or Ms. Jelovic that the case was concluded.

31. Thereafter, respondent would see Ms. Bukszar and Ms. Jelovic at family functions, and he continued to represent Ms. Jelovic's husband in business matters.
32. In May 2004, Ms. Jelovic telephoned respondent to inquire about the status of the case.
33. Respondent did not inform Ms. Jelovic that the case had been dismissed in February 2002.
34. On Friday, June 4, 2004, Ms. Jelovic telephoned respondent. She indicated that she wanted to settle and that she wanted the case settled by June 11, 2004 for \$25,000.
35. Respondent did not inform Ms. Jelovic that the case had been dismissed.
36. On Friday, June 11, 2004, respondent withdrew \$16,000 from his personal account at Merrill Lynch.
37. Respondent then deposited the \$16,000 from his personal Merrill Lynch account into his IOLTA account at National City Bank (account # 2214600).
38. Respondent ran the \$16,000 through his IOLTA account because he wanted the money to be paid to Ms. Jelovic on an "attorney check."
39. Respondent took a check from his IOLTA account and met with Ms. Jelovic at her place of employment on the afternoon of Friday, June 11, 2004.
40. Respondent wrote check #3266 from his IOLTA account to Ms. Jelovic for \$16,000.
41. Ms. Jelovic accepted the check.

42. At their meeting on June 11, 2004, respondent did not inform Ms. Jelovic that the case had been dismissed in February 2002.
43. At their meeting on June 11, 2004, respondent did not inform Ms. Jelovic that the money that he gave her was from his personal funds.
44. After respondent gave Ms. Jelovic the \$16,000 check, he had her sign a form from Seeley, Savidge & Ebert authorizing him to close the file.
45. On Monday, June 14, 2004, when Ms. Jelovic spoke with respondent to ask additional questions about the settlement, he was at the post office attending to the business of a client.
46. Respondent did not have any other conversations with Ms. Jelovic or Ms. Bukszar regarding the case after June 14, 2004.
47. Ms. Jelovic filed the grievance herein on July 16, 2004.
48. Respondent failed to keep Ms. Bukszar and Ms. Jelovic informed about the status of the medical malpractice case.

COUNT II – NEUBIG

49. Nelson Neubig (now deceased) was respondent's uncle, and Kathleen Neubig is a daughter of Nelson Neubig and respondent's first cousin.
50. Respondent represented Mr. Neubig on various legal matters between 1976 and December 2004.
51. Respondent represented Ms. Neubig on several legal matters, including misdemeanor criminal charges and estate planning matters.
52. For many years prior to Mr. Neubig's death on April 6, 2006, he and Ms. Neubig resided together in Chesterland, Geauga County, Ohio.

53. Prior to Mr. Neubig's death, Ms. Neubig was his primary caregiver.
54. On June 19, 2004, Mr. Neubig executed a Power of Attorney authorizing Respondent and Ms. Neubig to act on his behalf.
55. On January 15, 2005, Ms. Neubig sent respondent a letter by certified mail.
56. Respondent received the letter from Ms. Neubig.
57. In February 2005, Ms. Neubig filed a grievance against respondent unrelated to the return of her files.
58. Respondent received a copy of the grievance that Ms. Neubig filed.
59. On May 11, 2005, relator sent respondent a letter of inquiry by certified mail requesting that respondent provide a written response to the allegations raised in the grievance filed by Ms. Neubig.
60. Respondent received the letter from relator, but respondent did not return any documents to Ms. Neubig.
61. The July 26, 2005 letter requested that all of Ms. Neubig's legal documents in respondent's possession be returned.
62. The July 26, 2005 letter was sent to respondent by certified mail.
63. Respondent received the July 26, 2005 letter, but respondent did not return copies any documents to Ms. Neubig.

STIPULATED VIOLATIONS

64. Respondent's conduct as set forth in Count I herein violates the Code of Professional Responsibility: DR 1-102(A)(4) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); DR 1-

102(A)(6) (a lawyer shall not engage in conduct that adversely reflects on his fitness to practice law); DR 6-101(A)(3) (a lawyer shall not neglect a legal matter entrusted to him); and DR 9-102(A) (no funds belonging to a lawyer shall be deposited into the attorney's trust account).

- 65 Respondent's conduct as set forth in Count II herein violates the Code of Professional Responsibility: DR 9-102(B)(4) (a lawyer shall promptly deliver to the client as requested by the client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive).

STIPULATED MITIGATING FACTORS

Relator and respondent stipulate to the following mitigating factors as listed in BCGD Proc. Reg. § 10(B)(2):

- (a) absence of a prior disciplinary record.
- (b) Respondent acknowledges the wrongful nature of his conduct.
- (c) Respondent has made restitution to the Estate of Janko Klepac.
- (d) Respondent has fully cooperated in these proceedings.

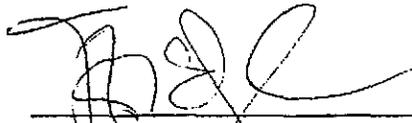
STIPULATED EXHIBITS

1. Check # 3266 dated 6/11/2004 from William Fumich IOLTA account to Donna Jelovic (front and back);
2. Check stub from William Fumich IOLTA in connection with check # 3266;
3. Form entitled "Authorization;"
4. Pre-bill worksheet for Estate of Janko Klepac from Seeley, Savidge & Ebert, Co. LPA;
5. Fax dated 10/9/01 from Seeley, Savidge & Ebert, Co. LPA to Dr. Baird and George Gianakopoulos;
6. Complaint from Cuyahoga County Case # CV 99-380595 Estate of Janko Klepac v. Metrohealth Medical Center, et al;
7. Docket from Cuyahoga County Case # CV 99-380595 Estate of Janko Klepac v. Metrohealth Medical Center, et al;
8. Notice of Dismissal pursuant to Rule 41(A) in # CV 99-380595 Estate of Janko Klepac v. Metrohealth Medical Center, et al;
9. Complaint filed in Cuyahoga County Case # CV 01-430681 Estate of Janko Klepac v. Metrohealth Medical Center, et al;
10. Docket from Cuyahoga County Case # CV 01-430681 Estate of Janko Klepac v. Metrohealth Medical Center, et al;
11. Stipulation of Dismissal of defendant St. Vincent Charity Hospital in Case # 430681, Estate of Janko Klepac v. MetroHealth Medical Center, et al;
12. Journal Entry granting Motion for Summary Judgment on behalf of defendant Grace Hospital in Case # 430681, Estate of Janko Klepac v. MetroHealth Medical Center, et al;
13. Journal Entry granting Motion for Summary Judgment on behalf of defendant Metrohealth Medical Center in Case # 430681, Estate of Janko Klepac v. MetroHealth Medical Center, et al;
14. May 9, 2005 written response of William Fumich to relator's letter of inquiry dated August 3, 2004;
15. June 2004 statement of William Fumich's IOLTA #2214600;

16. June 30, 2005 written response of William Fumich to relator's letter dated June 13, 2005;
17. October 18, 1999 bill for legal services in the "Estate of Janko Klepac" submitted by respondent to Ms. Nada Bukzsar;
18. October 18, 1999 letter from William Fumich to Ms. Nada Bukzsar, re: Estate of Janko Klepac;
19. Copy of October 22, 1999 money order in the amount of \$2,457.58 made out to William Fumich;
20. Docket from the Cuyahoga County Probate Court case # 1998 EST 0013596; decedent Janko Klepac;
21. One page of William Fumich's Merrill Lynch Account showing a withdrawal of \$16,000 on June 11, 2004;
22. January 15, 2005 letter from Nelson R. Neubig and Kathleen Neubig to respondent;
23. June 21, 2005 letter from respondent to relator;
24. January 13, 2006 letter from relator to respondent;
25. March 31, 2006 letter from respondent's counsel to relator;
26. Billing summary for Klepac lawsuit representation
27. Medical Record summary for Klepac lawsuit representation
28. 9/25/01 Plaintiff's Motion for Enlargement of Time to Provide Expert Report in Klepac lawsuit
29. 10/15/01 Affidavit of Jeffrey Alexander, M.D.
30. Character Letters

CONCLUSION

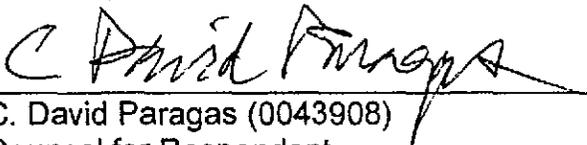
The above are stipulated to and entered into by agreement by the undersigned parties on this 22nd day of February, 2007.



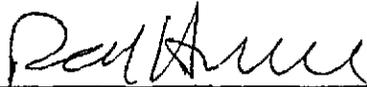
Jonathan E. Coughlan (0026424)
Disciplinary Counsel



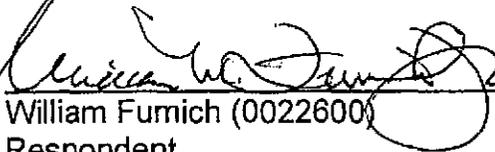
Philip A. King (0071895)
Assistant Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, OH 43215
614-461-0256



C. David Paragas (0043908)
Counsel for Respondent



Ronald L. House (0036752)
Counsel for Respondent
Benesch, Friedlander, Coplan &
Aronoff LLP
88 East Broad Street, Suite 900
Columbus, OH 43215
614-223-9300



William Furnich (0022600)
Respondent
Seeley, Savidge & Ebert
800 Bank One Center, 8th Floor
600 Superior Avenue, East
Cleveland, OH 44114-2655