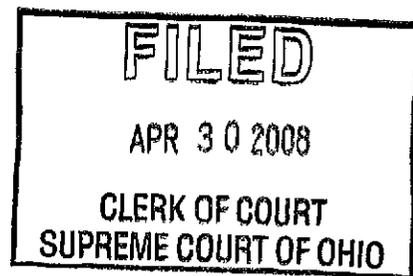


**BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO**

In Re:	:	08-0822
Complaint against	:	Case No. 07-022
John Eugene DiAlbert Attorney Reg. No. 0030101	:	Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio
Respondent	:	
Columbus Bar Association	:	
Relator	:	

Background

1. The Columbus Bar Association filed a complaint against Respondent on April 16, 2007. Respondent filed his answer on August 9, 2007.
2. The matter was heard on November 19, 2007, in Columbus, Ohio, before a panel composed of Judge Thomas F. Bryant, Judge Otho S. Eyster and Judge John B. Street, Chair. None of the panel members was from the district from which the complaint arose, and none was a member of the probable cause panel that certified the matter to the board. Lisa Pierce Reisz and Bruce A. Campbell appeared as counsel for Relator, Columbus Bar Association. Respondent, John Eugene DiAlbert was present for the hearing. He represented himself.
3. The complaint alleged one count of misconduct against Respondent. At the hearing, the Relator offered the attached stipulations. Relator then rested its case.



4. Respondent offered his own testimony and that of Stephanie Krznarich from the Ohio Lawyers Assistance Program (“OLAP”).

5. Respondent was admitted to the bar of Ohio on November 4, 1985. He is currently registered as “active” with the Supreme Court of Ohio, but he has been under a CLE suspension since May 24, 2007. He has been a sole practitioner for seventeen years handling small personal injury cases, some domestic relations matters, and some traffic and criminal cases. When he was suspended for CLE, he had to contact “about a dozen clients” to advise them of his suspended status.

6. On March 26, 2003, Respondent was suspended for six months, with the sanction stayed, for engaging in conduct involving misrepresentation, engaging in conduct adversely reflecting on fitness to practice law, neglect of an entrusted legal matter, prejudicing or damaging a client during representation, and failing to cooperate in a disciplinary investigation. *Columbus Bar Assn v. DiAlbert*, 98 Ohio St.3d 386, 2003-Ohio-1091.

Current Disciplinary Matter

7. In April, 2004, May Cabeen sought legal representation from Respondent for a personal injury claim in which an employee of a retail store bumped her with a stock cart causing damage to her knee and shoulder. She signed respondent’s contingency fee agreement on April 26, 2004.

8. Prior to respondent’s acceptance of her case, Ms. Cabeen had a settlement offer pending from the store’s insurance carrier in the amount of \$350.00, but Respondent advised her not to take this offer because he believed her claim was worth more money.

9. While representing Mrs. Cabeen, Respondent failed to return her phone calls, letters, or voice mail messages. Mrs. Cabeen also talked to another attorney with whom Respondent

shared office space in hopes that he could relay a message to Respondent. The attorney did relay the message, but Respondent did not contact Mrs. Cabeen.

10. Mrs. Cabeen's claim was never settled. Respondent failed to file suit before the statute of limitations expired. Respondent testified that he was depressed during this time and was not taking care of his business or his clients. He would simply put things aside and not deal with them.

11. Mrs. Cabeen requested but has not received her files back. Respondent testified that he does not have, or cannot find, a file for Mrs. Cabeen.

12. Respondent does not carry professional malpractice insurance and did not inform Mrs. Cabeen or other clients of this fact.

13. Based on the stipulations and testimony, the panel finds, by clear and convincing evidence, that Respondent violated the following disciplinary rules:

- DR 1-102(A)(6) – engaging in conduct adversely reflecting on fitness to practice law;
- DR 1-104(A) and (C) – failing to inform client of the lack of professional liability insurance;
- DR 6-101(A)(1) – failing to act competently;
- DR 6-101(A)(2) – handling a legal matter without adequate preparation;
- DR 6-101(A)(3) – neglecting an entrusted legal matter;
- DR 7-101(A)(1) – intentionally fail to seek lawful objectives of a client; and
- DR 7-101(A)(2) – intentionally fail to carry out a contract of employment for professional services

Aggravation and Mitigation

14. The parties stipulated that the following aggravating and mitigating factors existed in this case:

Aggravating factors:

- 1) prior disciplinary offenses;
- 2) vulnerability of and resulting harm to the victims of the misconduct; and
- 3) failure to make restitution.

Mitigating factors:

- 1) absence of dishonest or selfish motive;
- 2) full and free disclosure to disciplinary board or cooperative attitude toward the proceedings; and
- 3) chemical dependency or mental disability. There is no indication of chemical dependency, so the stipulation relates to mental disability.

15. In addition, the panel finds that Respondent entered into a three year contract with OLAP on August 10, 2007, to assist in his treatment plan for anxiety and depression. Since the contract was signed, he has been compliant with the majority of OLAP's requirements. He has been eating regular meals, has had medical tests, sought treatment for sleep problems, and has begun treating with a psychologist, who diagnosed him with Dysthymic Disorder, a low level depression. He did not, however, contact OLAP with the frequency requested by them, and he has not made any payments towards the fee, although OLAP agreed to put the fee on hold.

16. Respondent relates much of his depression to personal and family problems. His wife asked him for a divorce in 2004, after fifteen years of marriage. He then became focused on trying to save the marriage. He spent more and more time at home and less and less time at work. His business began to suffer, his health began to suffer, his home life was not getting any better, and he did not know what to do about it. So he did nothing. The panel finds this mental health condition to be a mitigating factor.

Sanction

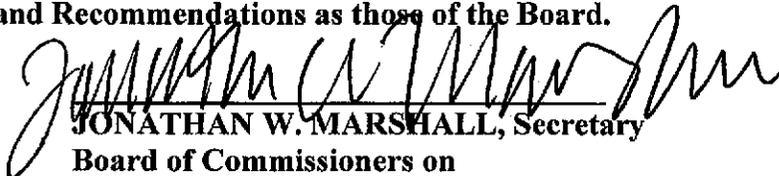
17. Respondent and Relator jointly recommended "that Respondent be given a two-year suspension with eighteen months stayed, and that he shall demonstrate through a medical professional, approved by both parties, that prior to his reinstatement he can competently and ethically practice law, maintain a contract with the Ohio Lawyers Assistance Program, and shall, beginning from the date of the hearing on this matter, serve a two year monitored probation under the terms of Gov. Bar Rule V(9) with a monitor appointed by Relator.

18. The Panel adopts the recommended sanction with the following additions: (1) he make payment as restitution to Mary Cabeen in the amount of \$350.00; and (2) there be no further misconduct on his part.

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 11, 2008. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Panel and recommends that the Respondent, John Eugene DiAlbert, be suspended for a period of twenty-four months with eighteen months stayed upon the conditions contained in the panel report. 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**

In re:

Complaint against:

JOHN EUGENE DIALBERT, ESQ.
[Registration No. 0030101]
483 Dempsey Road
Westerville, OH 43081-3794

Respondent,

by

COLUMBUS BAR ASSOCIATION
175 South Third Street S-1100
Columbus, OH 43215-5134,

Relator.

FILED
NOV 16 2007
BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

No. 07-022

STIPULATIONS

Now comes Relator and Respondent John Eugene DiAlbert (Registration No. 0030101), an Attorney at Law duly admitted to the practice of law in the State of Ohio, and hereby stipulate that Respondent is guilty of the following misconduct:

Background

1. Respondent was admitted to the bar in Ohio on November 4, 1985. Respondent is currently registered as "active" with the Supreme Court of Ohio.
2. On March 26, 2003, Respondent was suspended for six months for engaging in conduct involving misrepresentation, engaging in conduct adversely reflecting on fitness to practice law, neglect of an entrusted legal matter, prejudicing or damaging a client during representation and failing to cooperate in a disciplinary investigation. See Columbus Bar Association v. DiAlbert, 98 Ohio St. 3d 386 (2003)(a copy is attached hereto as Exhibit A).

Complaint of Mary Cabeen

3. In April 2004, Mary Cabeen ("Mrs. Cabeen") sought legal representation from Respondent in connection with a personal injury claim arising from an incident five months earlier in which an employee of a retail store bumped her with a stock cart causing damage to her knee and shoulder. See Affidavit of Mary C. Cabeen, at ¶ 1 (a copy is attached hereto as Exhibit B).

4. Ms. Cabeen signed Respondent's contingency fee agreement on April 26, 2004 (a copy is attached hereto as Exhibit C).

5. Prior to Respondent's acceptance of her case, Ms. Cabeen had a settlement offer pending from the store's insurance carrier, but Respondent advised her not to take this offer because he believed her claim was worth more money. See Cabeen Affidavit, at ¶ 9.

6. While representing Ms. Cabeen, Respondent failed to return Ms. Cabeen's phone calls, letters, or voice mail messages. See Cabeen Affidavit, at ¶ 2. Ms. Cabeen attempted to reach Respondent repeatedly, but he did not contact her. Id.; see also Letter to Mr. John DiAlbert from Ms. Cabeen (Feb. 25, 2005)(a copy is attached hereto as Exhibit D). Ms. Cabeen also talked with another attorney with whom Respondent shared office space, Mr. Milligan, in hopes that he could relay a message to Respondent. See Letter to Tim Milligan from Ms. Cabeen (March 30, 2005)(a copy is attached hereto as Exhibit E). Mr. Milligan did relay the message. See Letter from Tim Milligan to Ms. Cabeen (Apr. 4 2005)(a copy is attached hereto as Exhibit F). However, Respondent still did not contact Ms. Cabeen.

7. Ms. Cabeen's claim was never settled. Respondent failed to file suit before the statute of limitations expired. See Cabeen Affidavit, at ¶ 3.

8. Ms. Cabeen requested but has not received her files back. See Cabeen Affidavit, at ¶ 10.

9. Respondent acknowledges that he does not carry malpractice insurance and did not inform this client or other clients of this fact.

10. Respondent acknowledges violating DR 1-102(A)(6) [engaging in conduct adversely reflecting on fitness to practice], DR 1-104(A) & (C) [failing to inform client of lack of professional liability insurance], DR 6-101(A)(1) [failing to act competently], DR 6-101(A)(2) [handling a legal matter without adequate preparation], DR 6-101(A)(3) [neglecting an entrusted legal matter], DR 7-101(A)(1) [failing to seek lawful objections of a legal matter], and DR 7-101(A)(2) [intentionally failing to carry out a contract of employment for professional services].

Aggravating and Mitigating Factors

11. Respondent and Relator hereby stipulate that the following aggravating and mitigating factors as delineated in the BCGD Proc. Reg. 10 exist in this case:

Aggravating Factors:

- (1)(a) prior disciplinary offenses;
- (1)(h) vulnerability of and resulting harm to victims of the misconduct;
- (1)(i) failure to make restitution.

Mitigating Factors:

- (2)(b) absence of a dishonest or selfish motive;
- (2)(d) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;
- (2)(g) chemical dependency or mental disability when there has been all of the following:
 - (i) a diagnosis of a chemical dependency or mental disability by a qualified health care professional or alcohol/substance abuse counselor;

- (ii) a determination that the chemical dependency or mental disability contributed to cause the misconduct;
- (iii) in the event of chemical dependency, a certification of successful completion of an approved treatment program or in the event of mental disability, a sustained period of successful treatment;
- (iv) a prognosis from a qualified health care professional or alcohol/substance abuse counselor that the attorney will be able to return to competent, ethical professional practice under specified conditions.

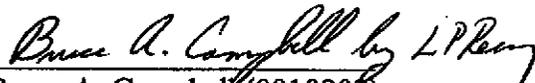
Joint Recommendation of Sanction

12. Respondent and Relator jointly recommend that Respondent be given a two-year suspension with eighteen months stayed, and that he shall demonstrate through a medical professional, approved by both parties, that he can competently and ethically practice law, maintain a contract with the Ohio Lawyer's Assistance Program, and shall, beginning from the date of the hearing on this matter, serve a two-year monitored probation under the terms of Gov. Bar. V§9 with a monitor appointed by Relator.

Respectfully submitted,



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