

ORIGINAL

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

FILED
AUG 14 2009
CLERK OF COURT
SUPREME COURT OF OHIO

09-1231

In re:
Complaint against

Case No. 08-077

KEITH BROWN
Attorney Reg. No. 0025640,

Respondent,

DAYTON BAR ASSOCIATION,

Relator.

RELATOR'S ANSWER BRIEF
REGARDING RESPONDENT'S
OBJECTIONS TO FINDINGS OF
FACT AND RECOMMENDATIONS

RECEIVED
AUG 14 2009
CLERK OF COURT
SUPREME COURT OF OHIO

On July 7, 2009, the Board of Commissioners filed with this Court its Findings of Fact,

Conclusions of Law and Recommendation for an indefinite suspension of Respondent's right to practice law. That Recommendation was based upon finding that Respondent had engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, engaged in conduct prejudicial to the administration of justice, engaged in conduct adversely reflecting on the lawyer's fitness to practice law, neglected an entrusted legal matter, failed to provide competent representation, and failed to act with reasonable diligence and promptness in representing a client. The Board of Commissioners noted as a mitigating factor Respondent's lack of prior disciplinary record, and also noted as aggravating factors that this matter involves multiple offenses, Respondent did not

cooperate during the disciplinary process, the vulnerability of the victims of Respondent's misconduct, and Respondent's failure to make restitution.

On July 15, this Court issued an Order to Show Cause why the Recommendation of the Board of Commissioners should not be confirmed by the Court. Thereafter, Respondent for the first time actively appeared in this case and filed Objections to Findings of Fact and Recommendations.

Respondent objects to the Board's Findings on three grounds; specifically, (1) Respondent claims to have been unaware of the disciplinary proceedings against him (Objections, p. 1); (2) Respondent claims to have been unable to obtain copies of these proceedings because he was in an alcohol rehabilitation center for the last year (Objections, p. 1); and (3) Respondent intends not to practice law in Ohio, but rather to relocate to Florida (Objections, p. 2). In his Objections, Respondent asks for an opportunity to respond to the charges once he is informed of the substance of the allegations against him, but does not set forth in his Objections what additional information he would present other than what is already contained in his Objections.

In fact, Respondent's grounds for objecting to the confirmation of the Recommendations of the Board of Commissioners do not justify this Court's refusal to follow the recommendation of the Board.

Respondent first claims to have been unaware of the proceedings against him. In fact, on September 18, 2007, Respondent wrote to Arthur Hollencamp, chair of the Dayton Bar Association's Grievance Committee investigating him and in that letter referenced his earlier communications with Ronald J. Maurer, the attorney investigating the complaint on behalf of the Grievance Committee. A true and accurate copy of the September 18, 2007 correspondence is

attached hereto as Exhibit A. In that letter, Respondent insists that he does not want to attend an in-person meeting not because of any restraint on his travel for any substance abuse treatment, but because: "... such a trip is at best an inconvenience and at worst a huge waste of resources."

After Maurer issued his report, the Grievance Committee invited Respondent to appear before it. On the date set for his initial appearance, he did inform the Committee that he was in rehabilitation and was unavailable. The Committee then rescheduled his appearance and Respondent did not appear nor did he contact the Committee (see Affidavit of Ronald J. Maurer, attached hereto as Exhibit B, ¶ 5).

Thereafter, Notice of the Complaint being filed was sent to Brown at his address at 4646 Carvel Avenue in Indianapolis on July 23, 2008 (see correspondence, a true and accurate copy of which is attached hereto as Exhibit C). The Complaint was ordered by this Court to be served upon him at his Carvel Avenue address in Indianapolis on October 6, 2008, and on January 2, 2009, an Amended Complaint was sent to Brown at the Carvel address (see correspondence, a true and accurate copy of which is attached hereto as Exhibit D). In response, the January 2 mailing was returned listing "no such person" (see envelope of mailing, a true and accurate copy of which is attached hereto as Exhibit E). On February 13, 2009 another copy of the Amended Complaint was sent to an address listed by Respondent on a website, Justia.com, at 201 Shelby Street in Indianapolis City, Indiana. This mailing was returned "undeliverable as addressed" (see envelope of mailing, a true and accurate copy of which is attached as Exhibit F). The same mailing to the Carvel address came back as "forwarding order expired" (see envelope of mailing, a true and accurate copy of which is attached as Exhibit G).

Rule VI(1)(D) of the Rules for the Government of the Bar provides:

“Each attorney who is registered for active status shall keep the Office of Attorney Registration and CLE apprised of the attorney’s current residence address and office address and shall notify the Office of Attorney Registration and CLE of any change in the information on the Certificate of Registration.”

Interestingly, despite claiming that he did not and could not receive information regarding this proceeding at his Carvel Avenue address in Indianapolis, he attached to his Objections his Certificate of Registration for the 2009-2011 Biennium which shows that it reached him at or through the Carvel address. In addition, Respondent clearly received the Findings of Fact, etc. issued by this Court, which prompted, at last, his response. Accordingly, this Court can only conclude either that Respondent did receive mail, including the notices of this proceeding, at his Carvel address, or that he failed to keep this Court apprised of his whereabouts and therefore any lost opportunity to present unspecified matters in his defense due solely to his own omissions.

Respondent next claims that he was unable to participate in these proceedings because he was in a rehabilitation facility. As evidenced by the Hollencamp letter, attached as Exhibit A, however, Respondent did not suggest his involvement in rehabilitation as a reason for not appearing before the Grievance Committee of the Dayton Bar Association. Also, such inability to travel does not excuse his failure to respond in writing to the Complaint filed against him, which would not have required his physical presence in Ohio. In short, Respondent could have meaningfully participated in the proceedings before this Court to date without his personal appearance. Accordingly, he cannot now use his stay in a rehabilitation facility as a reason for not participating in this disciplinary matter.

Last, Respondent asserts that it is his intention to go on inactive status and ultimately to relocate to Florida. Rather than being a reason for not taking the recommended disciplinary

action against him, this factor actually weighs in favor of imposing the recommended sanctions. The State of Ohio should not be in a position of exporting its problems elsewhere, which is exactly what would occur if Respondent were permitted to go to Florida and then at some time in the future seek Bar admission there, without a record of any disciplinary action being taken in Ohio.

Instead, this Court should recognize that the excuses proffered by Respondent are in fact not excuses at all. His proffered reasons are neither factually accurate nor are they legally sufficient to avoid the imposition of the sanction recommended by the Board of Commissioners. Accordingly, this Court should reject Respondent's Objections and confirm the Recommendation of the Board of Commissioners in this case.

Respectfully submitted,

DUNLEVEY, MAHAN & FURRY

By David M. Rickert
David M. Rickert (0010483)
110 North Main Street; Suite 1000
Dayton, Ohio 45402
Phone: 937-223-6003
Fax: 937-223-8550
Email: dmr@dmfdayton.com

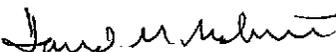
ATTORNEY FOR RELATOR

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served upon the following by ordinary U.S. mail, this 13th day of August, 2009.

Keith Brown
PERSONAL & CONFIDENTIAL
214 E. 15th Street
Jasper, IN 47546

Jonathan W. Marshall, Secretary
The Supreme Court of Ohio
Board of Commissioners on
Grievances and Discipline
65 South Front Street; 5th Flr.
Columbus, Ohio 43215



David M. Rickert

HASKIN LAUTER LaRUE & GIBBONS

(A Law Partnership Of Professional Corporations)

255 NORTH ALABAMA STREET
INDIANAPOLIS, INDIANA 46204-2131
PHONE/VOICE (317) 955-9500
FAX (317) 955-2570
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JOHN H. HASKIN
KENNETH E. LAUTER
DENISE K. LaRUE
PHILIP J. GIBBONS, JR.
BRADLEY L. WILSON
JAY MEISENHOLDER
ANDREW G. JONES
CHRISTOPHER S. WOLCOTT

PAUL A. LOGAN
CAROLYN A. CLAY
KYLE C. GILLASPIE
MEGHAN U. LEHNER
ELIZABETH A. JOSEPH

OF COUNSEL
ROBERT D. KING

September 18, 2007

Mr. Arthur Hollencamp, Chair
Attorney Grievance Committee
Dayton Bar Association
109 N. Main Street
Suite 600
Dayton, Ohio 45402-1129

RE: Grievance filed on behalf of LaFern Smith

Dear Mr. Hollencamp:

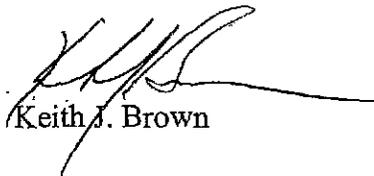
Please be advised that I have received a letter from Ronald J. Maurer, Attorney with regard to a Complaint lodged with regard to a Trust and advanced directives prepared by my office for Ms. Smith and her late husband. Without getting to the facts of the matter, Mr. Maurer has been made aware that it is my position that the Complaint is without merit and that I have documentation to this effect.

Mr. Maurer has insisted that my presence is necessary in his office in Centerville to discuss the matter knowing full well that I am in Indianapolis and that such a trip is at best an inconvenience and at worst a huge waste of resources. I am fully prepared to answer any allegation and have tried to make this clear to Mr. Maurer, he insists however that should I not physically appear in Centerville, he will consider this as non-cooperation with the investigation and report same as such.

This strikes me as ham-handed and certainly not the professional courtesy that I have come to know from my fellows in the bar. While I appreciate that all matters need to be investigated, I have had over 26 years of practice with one other call to the bar which was easily handled with a call and follow up with written documentation. It would be much appreciated if you would look into this and advise.

While not insensitive to Ms. Smith's issue with regard to the one deed that was jointly held and not funded into the Trust, the problem could have been easily addressed by an affidavit of survivorship and this was communicated. I find it difficult to understand how a trip to Centerville will aid in the investigation.

Your kind attention is appreciated.



Keith J. Brown

AFFIDAVIT

COUNTY OF MONTGOMERY)
)
) SS:
STATE OF OHIO)

Ronald J. Maurer, being first duly cautioned and sworn, hereby deposes and says as follows, to wit:

1. Affiant is Ronald J. Maurer, an attorney licensed to practice law in the State of Ohio and a member of the Grievance Committee of the Dayton Bar Association. Affiant has personal knowledge of, and is in all respects competent to testify to, the matters set forth herein.
2. I was commissioned by the Dayton Bar Association's Certified Grievance Committee to investigate the complaints brought by William and Donna Upton and LaFern V. Smith against attorney Keith J. Brown.
3. I was able to speak with Mr. Brown in connection with the complaint by LaFern V. Smith. In my first telephone discussion with him, Mr. Brown was combative and resisted, and refused, meeting with me in person. He stated he did not need to discuss it because the complaint (which he knew of) had no merit. He later wrote a letter to Art Hollencamp, the attorney chairing the Grievance Committee investigating the complaint against Brown, again resisting meeting in person to explain his position in reference to the then-pending complaint. I did have a phone interview with Mr. Brown after that. He continued to repeat that this had no merit and he believed that the only reason this was being brought was because Mrs. Smith's present attorney was trying to justify his fees.
5. After I had given my initial report to the Grievance Committee, the Committee as a whole set a date to meet with Brown in person in Dayton, Ohio to discuss the complaints against him. On the date set for his initial appearance before the Committee, he did call and informed the Committee that he was in rehabilitation and was not available to attend. The Committee then rescheduled his appearance and Brown did not appear. To the best of my knowledge he did not contact the Committee to reschedule his second appearance.

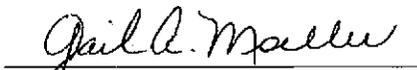
Further Affiant sayeth naught.


Ronald J. Maurer

Sworn to before me and subscribed in my presence this 13th day of August, 2009 by
Ronald J. Maurer



GALE A. HOFFER, Notary Public
In and for the State of Ohio
My Commission Expires Nov. 27, 2010


Notary Public



July 23, 2008



Keith Brown, Esq.
4646 Carvel Ave.
Indianapolis, IN 46205

RE: Dayton Bar Association vs. Keith Brown

Dear Mr. Brown:

Enclosed please find the final complaint completed by David M. Rickert and approved by John Ruffolo, Bar Counsel for the Dayton Bar Association.

If you have any information that you would like the Dayton Bar Association or Mr. Rickert to consider, or alternatively, that you would desire to present to the Board of Commissioners on Grievances and Discipline or The Supreme Court of Ohio for their consideration, please do not hesitate to forward this information to this office by August 11, 2008. If I do not hear from you, the Relator reserves all of its rights against you and will proceed accordingly.

If you have any questions, or would like to discuss this matter further, please feel free to contact me at (937) 222-7902.

Yours truly,

Christin Albrektson,
Certified Grievance Committee

encl.

cc: Mark C. Engling, Esq. (without encl.)
David M. Rickert, Esq. (without encl.)
Ronald Maurer, Esq. (Without encl.)
John M. Ruffolo, Esq. (without encl.)

Ronald S. Pretekin
Jonas J. Gruenberg
Merle F. Wilberding
Glenn L. Bower
J. Stephen Herbert
R. Scott Blackburn
Richard A. Schwartz
Sam Warwar
Terence L. Fague
John C. Chambers
Douglas M. Ventura
Richard A. Talda
R. Brent Gambill
C. Mark Kingseed
David C. Korte
John L. Green
Kristin A. Finch
David P. Pierce
Shannon L. Costello
Christopher R. Conard
Michelle D. Bach
Gregory M. Ewers
David M. Rickert
Edie E. Crump
Allison D. Michael
Daniel J. Gentry
Laura L. Wilson
Joshua R. Lounsbury
Erica L. Glass
Michael G. Leesman
Maureen S. Hinson
Nicholas A. Heppner
Joshua M. Stolly

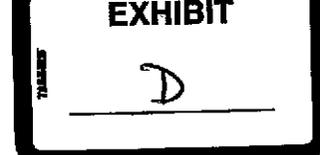
J. Bradford Coolidge
1886-1965

Hugh E. Wall, Jr.
1912-2001



COOLIDGE WALL

A Legal Professional Association



Suite 600
33 West First Street
Dayton, Ohio 45402-1289
937-223-8177
Fax: 937-223-6705
www.coollaw.com

Direct Dial Number
937-449-5790

E-mail Address:
rickert@coollaw.com

January 2, 2009

Keith Brown, Esq.
G2G
4646 Carvel Avenue
Indianapolis, IN 46205

Re: Keith Brown, Respondent / Dayton Bar Association, Relator
Case No. 08-077

Dear Mr. Brown:

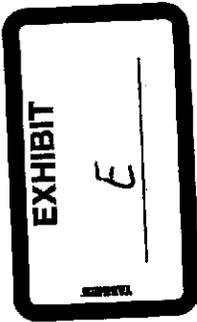
Enclosed please find an Amended Complaint, which is being submitted to the Board of Commissioners on Grievances and Discipline. If you have any questions, please feel free to call.

Very truly yours,

Michelle Fann,
Legal Assistant

Enclosure

cc: Clerk, Ohio Supreme Court



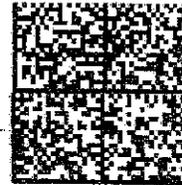
COOLIDGE WALL

Suite 600
33 West First Street
Dayton, Ohio 45402-1289

*Return to Sender
No Such Person*

Keith Brown, Esq.
G2G
4645 Carvel Avenue
Indianapolis IN 46205

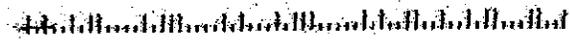
Ant



Haster

016H26509625
\$00.590
01/02/2009
Mailed From 45402
US POSTAGE

4620592023 0041



FIRST CLASS

FIRST CLASS

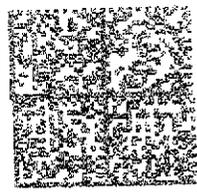
CERTIFIED MAIL

DGE WALL CO., L.P.A.

1 W. FIRST ST., STE 600
DAYTON, OHIO 45402



7000 0520 0013 3595 2871



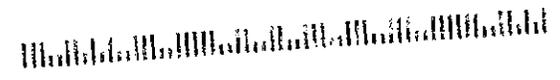
Hester

015H26509625
\$05.070
02/13/2009
Mailed From 45402
US POSTAGE

FIRST CLASS MAIL

NIKIE 3024 1 20 02/21/09

RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD
RETURN TO SENDER



SCANNED

Keith J. Brown
c/o Progress House
201 S. Shelby Street
Indianapolis, IN 46202

*WBA
0706*

- A
- C
- S
- INSUFFICIENT ADDRESS
- ATTEMPTED NOT KNOWN
- NO SUCH NUMBER/ STREET
- NOT DELIVERABLE AS ADDRESSED - UNABLE TO FORWARD
- OTHER

RTS
RETURN TO SENDER



FIRST CLASS

FIRST CLASS

FIRST CLASS

FIRST CLASS

or on the front if space permits.

1. Article Addressed to:

Keith J. Brown
G2G
4646 Carvel Avenue
Indianapolis, IN 46205

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number

(Transfer from service label)

7000 0520 0013 3595 2918

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1540

33 W. FIRST ST., STE 600
DAYTON, OHIO 45402

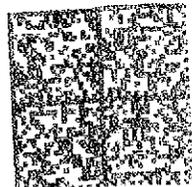
7000 0520 0013 3595 2918



FIRST CLASS MAIL

Return to sender
Keith J. Brown
G2G
4646 Carvel Avenue
Indianapolis, IN 46205

Handwritten signature



Master

\$06.070
02/13/2009
Meters From 45402
US POSTAGE

016126509625

