

ORIGINAL

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

In Re:	:	10-1139
Complaint against	:	Case No. 09-073
Michael J. Godles	:	Findings of Fact,
Attorney Reg. No. 0042398	:	Conclusions of Law and
	:	Recommendation of the
Respondent	:	Board of Commissioners on
	:	Grievances and Discipline of
Lorain County Bar Association	:	the Supreme Court of Ohio
	:	
Relator	:	

OVERVIEW

In his representation of one client, Respondent failed to communicate with the client and to keep the client informed about the status of the case. Respondent did not carry malpractice insurance and did not inform the client of that fact. The panel recommends a suspension of six months, all stayed, on the condition of no further misconduct.

INTRODUCTION

1. The Lorain County Bar Association filed a complaint against Respondent on September 14, 2009. The complaint alleged misconduct on the part of Respondent based on his representation of a client in a personal injury case and for failing to inform his client that he did not carry malpractice insurance. Respondent filed an answer on November 5, 2009.
2. The matter was heard on April 6, 2010, in Columbus, Ohio, before a panel composed of Martha L. Butler, McKenzie K. Davis, and Judge John B. Street, Chair. None of the panel

FILED
JUN 30 2010
CLERK OF COURT SUPREME COURT OF OHIO

members was from the appellate district from which the complaint arose and none was a member of the probable cause panel that certified the matter to the Board. Daniel A. Cook appeared as counsel for Relator, Lorain County Bar Association. Respondent Michael J. Godles represented himself throughout the proceedings.

3. The hearing was scheduled to begin at 10:00 a.m., but Respondent did not appear. The panel attempted to reach Respondent by telephone but was unable to do so. The hearing began at approximately 10:20 a.m., and Respondent was still not present. Shortly after the hearing began, the Board office received a telephone call from Respondent indicating that he thought the hearing was not supposed to begin until April 7, 2010, but that he would leave his home in Elyria immediately and drive to Columbus as soon as possible.

4. The panel heard the testimony of two authenticating witnesses before the Respondent arrived. The first represented Windstream Communications Company and identified telephone records that Relator had obtained concerning Respondent's office land lines. The second witness represented the Verizon Corporation and identified telephone records pertaining to Respondent's cell phone. The panel then recessed the hearing until one o'clock.

5. At 1:00 p.m. the hearing resumed, and Respondent arrived shortly after 1:00 p.m. Relator called three witnesses who were Attorney Kelly Badnell, the opposing counsel in the personal injury case that is the subject of this complaint; Respondent, upon cross-examination; and Curtis Henderson, Respondent's client who initiated this grievance. Relator offered the exhibits that had been identified during the trial and a stipulation that had been agreed to by the parties, and then rested. Respondent testified on his own behalf. Both sides made closing arguments, and the case was submitted to the panel.

FINDINGS OF FACT

6. Respondent was admitted to the practice of law in the State of Ohio on November 11, 1989.

7. Respondent is a sole practitioner whose offices are located at 371 Broad Street, City of Elyria, located in Lorain County. The majority of his practice is representing clients in personal injury cases.

8. On August 14, 2006, five days before the statute of limitations would run, Respondent first met with Curtis Henderson regarding his claim for personal injuries arising from an automobile accident that occurred on or about August 19, 2004, in Ashland County, Ohio. Respondent agreed to represent Henderson. This was the only face-to-face meeting between the two. They did, however, have several telephone conversations.

9. At all times relevant to these proceedings, Respondent did not maintain professional liability insurance, and he did not advise Henderson that he did not have professional liability insurance.

10. Respondent contacted the insurance company to discuss the possibility of settlement, but because the statute of limitations was about to run, he filed a complaint on behalf of Henderson on August 18, 2006, in the Ashland County Common Pleas Court.

11. An answer to the complaint was filed by Attorney Kelly Badnell on September 28, 2006. The answer included a first set of interrogatories and request for production of documents. Respondent did not send copies of these documents to Henderson, nor did he make any response to them.

12. Respondent participated in a telephone status conference concerning the case on November 13, 2006. Henderson was aware of the conference. The result of the conference was to schedule further proceedings.

13. On February 23, 2007, attorney Badnell filed a motion to compel discovery because Respondent had not answered the interrogatories and request for production of documents. The court granted the motion to compel and ordered Respondent to comply by May 1, 2007. Respondent did not respond to the motion to compel nor did he answer the discovery requests. Instead, in late April he submitted a voluntary dismissal to the court, which, for unexplained reasons, was not filed by the court until May 31, 2007. The voluntary dismissal gave Henderson until May 31, 2008, to refile his claim.

14. Neither Henderson nor Respondent refiled the claim within the appropriate time. Respondent did not refile because he thought his representation of Henderson had ended. Henderson did not refile because he was not aware that the case had been dismissed. Henderson did acknowledge discussing with Respondent the need for more time, and that Respondent would be asking for a "continuance." Respondent said that he told Henderson he would dismiss the case to buy more time.

15. The crux of this grievance is how much communication Respondent and Henderson had, and whether Respondent kept Henderson reasonably informed about his case. Discovering the true state of affairs was difficult because neither Henderson nor Respondent seemed completely credible in his testimony. It is clear that Respondent and Henderson had only one face-to-face meeting and somewhere between three and eight telephone conversations. The import of those telephone conversations is at issue and little documentation exists to establish what was said.

16. It is clear that Respondent did little work on the case. He did not obtain medical records. He did not send Henderson any documents concerning the case including the request for interrogatories. He explained that he realized early on the case was going to be dismissed at some point because Henderson was still being treated for injuries and there would not be time to get

everything ready until after the case was refiled. Respondent claimed that in the few telephone conversations he had with Henderson, he kept him informed about the status of the case.

17. On February 7, 2008, Respondent mailed a letter to Henderson to notify him that he would no longer be representing him on the claim. A copy of that letter is attached to this report. Henderson claimed he did not receive the letter and did not realize that Respondent no longer represented him. Henderson further claimed that he did not realize that Respondent had dismissed the claim on May 31, 2007, or that he had only until May 31, 2008, to refile the claim. He did not discover this fact until a telephone conversation he had with Respondent in October 2008. Within a short time of that telephone conversation, Henderson retained another attorney. Henderson has now filed a malpractice action against Respondent, and that case is currently pending.

CONCLUSIONS OF LAW - COUNT ONE

18. The complaint alleged a violation of the following rules of the Ohio Rules of Professional Conduct:

- Prof. Cond. R. 1.2(a) – A lawyer shall abide by a client’s decisions concerning the objectives of representation and . . . shall consult with the client as to the means by which they are to be pursued;
- Prof. Cond. R. 1.3 - A lawyer shall act with reasonable diligence and promptness in representing a client;
- Prof. Cond. R. 1.4(a) - A lawyer shall do all the following:
 - (1) Promptly inform the client of any decision or circumstance with respect to which the client’s informed consent is required;
 - (2) Reasonably consult with the client about the means by which the client’s objectives are to be accomplished;
 - (3) Keep the client reasonably informed about the status of the matter;
 - (4) Comply as soon as practicable with reasonable requests for information from the client;

(5) Consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted.

- Prof. Cond. R. 1.4(b) - A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
- Prof. Cond. R. 1.16(d) - As part of the termination of representation, a lawyer shall take steps, to the extent reasonably practicable, to protect the client's interest.

19. The panel does not find by clear and convincing evidence that Respondent violated Prof. Cond. R. 1.2(a), 1.3, or 1.16(d) and therefore recommends that the Board dismiss those allegations.

20. The Panel does find by clear and convincing evidence that Respondent violated Prof. Cond. R. 1.4(a) and 1.4(b).

CONCLUSIONS OF LAW - COUNT TWO

21. The panel finds, by clear and convincing evidence, that Respondent specifically violated both DR 1-104 and Prof. Cond. R. 1.4(c) for failing to maintain liability insurance and for not advising the client of the same.

MATTERS IN MITIGATION AND AGGRAVATION

22. The panel finds, by clear and convincing evidence, that the following factors in mitigation under BCGD Proc. Reg. 10(B)(2) have been established:

- a. Absence of prior disciplinary record;
- b. Absence of dishonest or selfish motive; and
- c. Imposition of other penalties or sanctions in that a malpractice action is pending against Respondent.

23. With respect to matters in aggravation under BCGD Proc. Reg. 10(B)(1), the panel finds, by clear and convincing evidence, that Henderson was vulnerable in that he was quite

unsophisticated as to legal matters and did not have a full understanding of the legal process. He lost an opportunity to pursue his claim for damages.

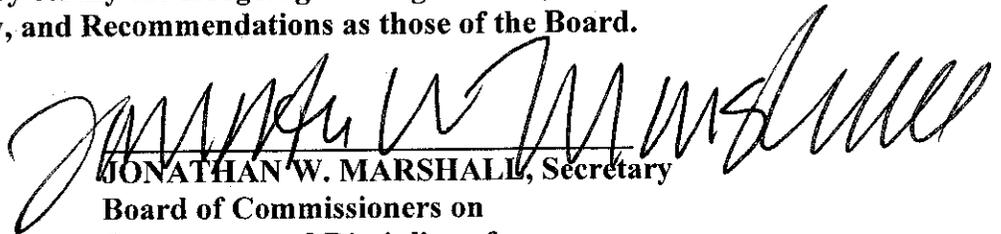
SANCTION

24. Relator recommended a sanction of a one year suspension. Respondent recommended a public reprimand. The Panel recommends that Respondent be suspended for six months, all stayed, on the condition of no further misconduct.

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 June 10, 2010. The Board adopted the Findings of Fact and Conclusions of Law of the hearing panel. However, it recommends, based on the actual misconduct committed, that the sanction be amended to a public reprimand and that Respondent, Michael J. Godles, be publically reprimanded in the State of Ohio. The Board further recommends that the cost of these proceedings be taxed to 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**

Michael J. Godles
Attorney At Law

371 Broad Street • Elyria, Ohio 44035
Phone (440) 323-0866 • (440) 284-0800 • Fax (440) 323-0867

February 7, 2008

Curtis Henderson
553 West Highland
Wooster, Ohio 44691

Dear Mr. Henderson:

Please allow this letter to serve as notice that my office will no longer represent you for the injuries that you sustained in a motor vehicle accident which occurred on August 19, 2004. As you are aware, my office filed a voluntary dismissal, without prejudice, on May 31, 2007. Per our discussion, you continue to treat for the injuries that you sustained in the subject motor vehicle accident. Because it is necessary for my office to provide documentation to opposing counsel, it is necessary to file a voluntary dismissal in order to afford you an opportunity to conclude your medical care so that all of the necessary medical records can be obtained in order to prosecute your case.

You should be advised that you have one year to re-file your case so be certain that your substitute counsel re-files litigation on or before May 31, 2008. Your failure to re-file your claim on or before May 31, 2008 will forever bar your claim.

Recently, you expressed an expectation that you would receive at least \$100,000.00. Given that you were offered \$8,200.00 to resolve your claim, it is clear that your case will need to go to a trial by jury. My office has found it necessary to reduce the amount of cases that the undersigned is taking to trial and thus, my decision, to release your claim to you.

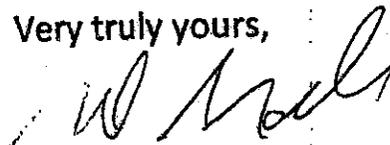


Curtis Henderson
Page 2
February 7, 2007

Due to financial restraints in my office, it has been necessary for the undersigned to bow out of several cases that were headed to trial. Although my office is entitled to compensation for time expended on your claim it is my office policy to not charge for services rendered when it is my office's decision to discontinue the attorney-client relationship.

Given the short amount of time that I have had your file there has not been an opportunity to obtain any medical documentation regarding your claim. Accordingly, the file contains only court related documents which my office will forward to you upon request. I wish you well as you pursue your claim through the litigation process and please feel free to contact my office with any questions, comments or concerns.

Very truly yours,



Michael J. Godles
Attorney at Law

MJG/sg

c:/chenderson.ltr