

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

10-1846

In Re:	:	
Complaint against	:	Case No. 09-083
Kenneth Ray Boggs	:	Findings of Fact,
Attorney Reg. No. 0025305	:	Conclusions of Law and
	:	Recommendation of the
Respondent	:	Board of Commissioners on
	:	Grievances and Discipline of
Columbus Bar Association	:	the Supreme Court of Ohio
	:	
Relator	:	

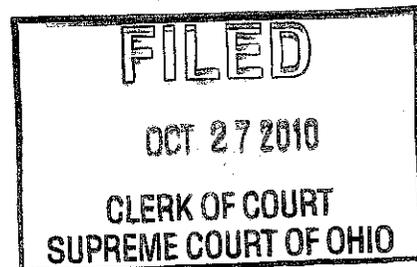
A formal hearing was held in this matter on May 12, 2010 in Columbus, Ohio before a panel consisting of Lawrence R. Elleman, John S. Polito and Robert V. Housel, panel Chair. None of the panel members resides in the district from which the Complaint arose or served as a member of the probable cause panel that reviewed the Complaint. Respondent, Kenneth Ray Boggs, appeared at the hearing, pro se. Relator, Columbus Bar Association, was represented by Michael L. Close, Bruce A. Campbell and A. Alysha Clous.

Charges

Respondent was charged in a five-count Complaint filed on October 12, 2009. It charged violations of the following provisions of the Rules of Professional Conduct:

Count One (The Miller Matter)

- a. Prof. Cond. R. 1.4(c) [failing to give client notice that the lawyer does not maintain professional liability insurance];



- b. 1.15(a) and (c) [failing to hold in trust client property, i.e. unearned fees and court costs];
and
- c. 1.15(d) [failing to promptly deliver funds to which a client is entitled].

Count Two (The Goheen Matter)

- a. Prof. Cond. R. 1.3 [failing to act with diligence and promptness];
- b. 1.4(c) [failing to give client notice that the lawyer does not maintain professional liability insurance];
- c. 1.15(a) and (c) [failing to hold in trust client property, i.e. unearned fees and court costs];
and
- d. 1.15(d) [failing to promptly deliver funds to which a client is entitled].

Count Three (The Stevens Matter)

- a. Prof. Cond. R. 1.3 [failing to act with diligence and promptness];
- b. 1.15(d) [failing to promptly deliver funds to which a client is entitled];
- c. 8.4(c) [conduct involving dishonesty, fraud, deceit or misrepresentation]; and
- d. 8.4(h) [conduct adversely reflecting on the lawyer's fitness to practice law].

Count Four (The Dotters Matter)

- a. Prof. Cond. R. 1.1 [failing to provide competent representation];
- b. 1.3 [failing to act with diligence and promptness];
- c. 1.4(a)(3) [failing to keep a client reasonably informed about the status of a matter];
- d. 1.5(a) [charging a clearly excessive fee];
- e. 1.15(a) and (c) [failing to hold in trust client property, i.e. unearned fees and court costs];
- f. 1.15(d) [failing to promptly deliver funds and property to which a client is entitled]; and
- g. 8.4(h) [conduct adversely reflecting on the lawyer's fitness to practice law].

Count Five (The Peacock Matter)

- a. Prof. Cond. R. 1.1 [failing to provide competent representation];

- b. 1.3 [failing to act with diligence and promptness];
- c. 1.4(a)(3) [failing to keep a client reasonably informed about the status of a matter];
- d. 1.4(c) [failing to give client notice that the lawyer does not maintain professional liability insurance];
- e. 1.5(a) [charging a clearly excessive fee];
- f. 1.15(c) [failing to hold in trust client property, i.e. unearned fees];
- g. 1.15(d) [failing to promptly deliver funds to which a client is entitled]; and
- h. 8.4(h) [conduct adversely reflecting on the lawyer's fitness to practice law].

Findings of Fact and Conclusions of Law

Respondent was admitted to the practice of law in the State of Ohio on November 7, 1980. He has a general practice, handling a variety of cases. Respondent is subject to the Rules of Professional Conduct and the Rules of the Government of the Bar of Ohio.

The Supreme Court of Ohio has twice sanctioned Respondent. First, it issued a public reprimand. *Columbus Bar Assn. v. Boggs* (1988), 39 Ohio St.3d 601. Subsequently, the Court imposed a one-year suspension, stayed on conditions. *Columbus Bar Assn. v. Boggs*, 103 Ohio St.3d 108, 2004-Ohio-4657.

Respondent has stipulated that he violated the following rules under the following counts. He also stipulated to certain facts pertaining to all of the alleged violations.

Respondent admits that, as to Count One (The Miller Matter), he violated Prof. Cond. R. 1.4(c) and 1.15(a) and (c). The remaining allegation involving a charged violation of Prof. Cond. R. 1.15(d) was dismissed by Relator as no evidence was presented to sustain it, and the panel concurs.

b. The Respondent admits that, as to Count Two (The Goheen Matter), he violated the Prof. Cond. R. 1.4(c) and 1.15(a) and (c). The other two alleged violations were dismissed because Relator presented no evidence to sustain them, and dismissal was accepted by the panel.

c. Respondent admits that, as to Count Four (The Dotters Matter), he violated the Prof. Conduct R. 1.15(a) and (c).

d. Respondent admits that, as to Count Five (The Peacock Matter) he violated Prof. Cond. R. 1.4(a)(3) and 1.4(c).

A copy of the stipulations of fact and rule violations is attached as "Exhibit A."

All the remaining alleged violations were submitted to this panel for its findings.

In Count Three (The Stevens Matter), the panel makes a finding that the Relator has failed to prove by clear and convincing evidence any of the alleged violations of the Rules of Professional Conduct. In that regard, the testimony of Kevin Stevens, his girlfriend Amber, the third witness - his mother, Mary Stevens, and the fourth witness - James Stevens proved not to be believable and certainly was not clear and convincing evidence that Respondent committed any violations. The stipulation in Stevens that Respondent carried no malpractice insurance was withdrawn because it was never charged. The panel finds that the rest of the disciplinary rules were not proven by clear and convincing evidence, and they are therefore dismissed.

In Count Four (The Dotters Matter), the panel finds the testimony of Danielle Dotters to be very credible. The evidence presented by Danielle Dotters is that she gave Respondent \$9,700 as a fee to assist her in a matter concerning an estate. The evidence was clear that there was never any explanation of how the fee money was spent, never any engagement letter, no explanation of any kind as to the hours that were used in doing this work, and no communication between Respondent and Danielle Dotters about what services she got for the money she gave the Respondent. It also

seemed clear that he took the \$9,700 and put it into his operating account. He did not put it into his trust account and pay it out to himself as it was earned.

To support the decision that Danielle Dotters is credible, we quote her testimony at the hearing:

- Q. So did you understand that to mean that the fee would be no more, no less than \$10,000 minus \$300?
- A. He said that was the flat fee and that if it did go over, then any addition – anything else then I would be responsible for.
- Q. Okay. Flat fee?
- A. But maybe not in full. Maybe he said flat fee.
- Q. Did he say flat fee or not?
- A. I believe so. I don't know. I can't remember.
- Q. That's fine. When you later called him and asked for an itemization and a refund of any unused money –
- A. Right.
- Q. -- how was the unused money, the amount of unused moneys supposed to be calculated? Hourly rate?
- A. I have no idea about that. That's what I was asking him.
- Q. Did you ask for a written statement of the time spent –
- A. Yes.
- Q. -- or did you just ask him to tell you what he spent?
- A. No, I asked him to send it to me. I asked him to CC me any letters that he had sent out to anybody and to send me an itemized bill of any hours spent on my case and any money left over.
- Q. In response to that, he told you some things he did; is that right?

A. I recall him saying there was no money left. I don't know if in that phone call if he said things that he supposedly did or not. I don't know if it was in other phone calls.

Q. Did you receive the written statement?

A. No.

Q. That's all I have.

(Tr. 218-219)

The panel also concluded from the testimony of Danielle Dotters that she never received an engagement letter from Mr. Boggs; he never set out in writing what the \$9,700 that he was charging her was going to be used for. This, too is borne out by the testimony:

By Chairman Housel:

Q. Ms. Dotters, did you ever receive an engagement letter from Mr. Boggs?

A. No.

Q. A letter that said you've hired me, you paid me 9,700 bucks, here's our understanding what I'm supposed to do?

A. I never received anything from Mr. Boggs.

Q. Did you ever receive any updates as to how your case was going?

A. No.

Q. Did you ever receive any kind of evidence of any kind to demonstrate how the \$9,700 you gave for legal fees was used.

A. No.

Q. Did he ever explain to you how he was going to charge you?

A. No.

Q. Did he ever tell you he was going to charge you an hourly rate to do this?

A. No.

Q. Ever tell you there was a court set fee he could get in a probate court setting or anything like that?

A. No.

Q. The complaint alleges that you subsequently after the meeting with him got a letter from him that he referred to a fee agreement, to a flat fee. Did you ever receive a letter that said he was charging you \$9,700 as a flat fee?

A. No. I don't recall ever receiving anything in the mail from Ken Boggs.

Q. Okay. So you really have no idea how he billed the \$9,700.

A. No.

Q. Did you ever receive any money back from Mr. Boggs?

A. No.

Q. Did you ever ask him to give you any money back?

A. Any unused when I talked to him the one time and asked him to send me an itemized statement.

Q. That was in a phone conversation?

A. Yes.

Q. Did he ever tell you that there was no money to return because the fee was exhausted?

A. I don't know if he used those words. He just said there was no money left.

Q. Okay. Thanks very much, ma'am.

(Tr. 224-226)

As a result of the evidence presented, primarily the testimony of Danielle Dotters, the panel finds that Respondent violated the following Rules of Professional Conduct in Count Four:

Prof. Cond. R. 1.1 [failing to provide competent representation];

1.3 [failing to act with diligence and promptness];

1.4(a)(3) [failing to keep a client reasonably informed about the status of a matter];

1.5(a) [charging a clearly excessive fee]; and

8.4(h) [engaging in conduct reflecting adversely on the lawyer's fitness to practice law].

The other Rules that were charged were Prof. Cond. R. 1.15(a) and (c) [failing to hold a trust client property, i.e. unearned fees and court costs], and Respondent stipulated a violation. The panel finds that a violation of 1.15(d) [failing to promptly deliver funds and property to which a client is entitled] was not proven by clear and convincing evidence, and it is dismissed.

Count Five (The Peacock Matter) involves a client requesting that Respondent review an appeal of a board ruling that affected his job in a state prison institution. Mr. Peacock testified that he hired Respondent to help him get his job back and to get him back pay. Peacock had been fired from the State of Ohio Department of Youth Services. Peacock testified that he had extreme difficulty getting ahold of Boggs. He stated that he gave Boggs \$4,000 to represent him in the case, and that Boggs would never call him back and did not advise him as to what was going on with the case. Peacock further testified that "well after I paid him, it was kind of difficult to get in contact with him because I would go up to his office, there wouldn't be nobody [sic] there. You know, I would call him constantly to try to, you know, see how he was representing my case after I paid him, you know, and try, -- I had to go and represent myself through the Ohio Civil Rights Commission as a rebuttal to address my removal. I tried to call Mr. Boggs several times to help me in writing my rebuttal." (Tr. 232) Mr. Peacock also said that he tried to call Mr. Boggs numerous times and never got any kind of response. When asked how many times he actually talked to Mr. Boggs after he paid him the \$4,000 and had the conversation about the arbitration result, Mr.

Peacock responded "maybe once or twice." (Tr. 235) Peacock testified in response to questions from one of the panel members that he had an extremely difficult time finding out what Mr. Boggs was doing on his case. The following testimony is an example of the client's difficulty.

- Q. Mr. Peacock, you never got a fee letter from him, a letter that outlined what he would do for the \$4,000?
- A. No, sir.
- Q. You never got any itemized bill that reflected that he did this work and he charged you this amount of money for it?
- A. No, sir.
- Q. It was just that, as I understood you to say, give me 4,000 bucks and I'll handle your matter for you?
- A. Yes, sir.
- Q. You never got any kind of communication from him as to what he was doing on any of the matters you talked to him about?
- A. No, sir.
- Q. Then there were plenty periods of time you tried to call him and never got any response; correct?
- A. Yes, sir.
- Q. Do you have any idea what work as you sit here today was done for your \$4,000?
- A. No, sir.

(Tr. 282)

Relator's counsel cross-examined Respondent, which reveals evidence that Respondent took a fee and did little, if any work:

- Q. If you knew that Mr. Peacock would be very unlikely to get his job back and there wouldn't be anything you could do to help him, why did you take his money?

A. Because at the time he came to me in November of '07, like he said, I wanted to be up to speed when the case came to arbitration if you can try it or go into an appeal. He wanted me to have all the information available. When he came to my office, we had an hour meeting of his allegations, I got his pre-D file and I started reading it. There was things missing. He gave me arguments where he had filed cases in the court. I went down and got copies of decisions and, again, it doesn't match up to what he told me.

I said, there's nothing I can do in these old cases because you were fired, you got your job back. You didn't get unemployment because you didn't deserve it.

Q. Sir, if you were smart enough to realize that the cases that had final entries put on in '01 and '02 that you couldn't reopen, you couldn't file an appeal, everything is done.

A. Exactly.

Q. Why did you bother looking at them?

A. When you go to a case before the personnel board of review, your past history, your past conduct and your past disciplinary findings like in this case are relevant. It goes to the credibility of the witness and the victim and also what is appropriate.

Q. So you didn't need to read all the briefs and everything. All you need to do is look at the history of the previous complaint?

A. I didn't get from him in that first interview what exactly he was supposed to done [sic] the first reasons to get fired. He didn't tell me all the details that I found out in the second case he got fired. I didn't find out more until we talked to all the witnesses.

(Tr. 366-367)

In Count Five (The Peacock Matter) the panel finds that Relator has proven by clear and convincing evidence a violation of the following Rules of Professional Conduct:

Prof. Cond. R. 1.1 [failing to provide competent representation];

1.3 [failing to act with diligence and promptness];

1.4(a)(3) [failing to keep a client reasonably informed about the status of a matter];

1.5(a) [charging a clearly excessive fee]; and

1.4(c) [failing to give client notice that the lawyer does not maintain professional liability insurance] that was stipulated.

The panel also finds violations of Prof. Cond. R. 1.15(c) [failing to hold in trust client property, i.e. unearned fees] and Prof. Cond. R. 8.4(h) [conduct reflecting adversely on the lawyer's fitness to practice law] that were proven by clear and convincing evidence. Prof. Cond. R. 1.15(d) [failing to promptly deliver funds to which a client is entitled] was not proven by clear and convincing evidence, and it is dismissed.

Aggravation and Mitigation

Concerning aggravating factors as set out in BCGD Proc. Reg. 10(B)(1), Respondent has been disciplined twice previously, has exhibited a dishonest motive, has engaged in multiple offenses, has failed to make restitution, and has caused harm to clients. Respondent stipulated that these aggravating factors are present.

Respondent proposes the following mitigating factors in his brief: (1) absence of a dishonest or selfish motive; (2) full and free disclosure to the Disciplinary Board and a cooperative attitude toward the of proceedings; and (3) that there was much character and reputation evidence both through testimony at the hearing and by letters provided to the Board. Respondent also believes that there are other relevant factors that the Board should consider as mitigation, such as: his health and physical limitations; his pro bono work as a lawyer with low income clients; and furthermore, his willingness to accept fee arbitration concerning fee disputes with at least two of these clients.

The panel finds that the health and physical limitations problems were not proven by clear and convincing evidence, and that absence of a dishonest or selfish motive was also not proven by clear and convincing evidence. The character reputation letters did clearly set out that, at one point

in his career, Respondent was a capable practicing lawyer, however. The panel does not believe pro bono work with low-income clients can be considered mitigation of any proposed sanction.

In mitigation, the panel finds there was full and free disclosure to the Disciplinary Board and a cooperative attitude toward the disciplinary proceedings. However, the panel is concerned that Respondent took large sums of money from two of his clients and could neither document nor demonstrate to the clients the work that was done, nor the time that was spent on the work.

Recommended Sanction

Relator requests an indefinite suspension, and argues that Respondent has twice been sanctioned for material breaches of the ethical rules of our profession, failed to carry out commitments to multiple clients, misused his IOLTA account by comingling funds, and kept no accounting records regarding client funds. Relator also argues that Respondent has not learned from two prior encounters with the disciplinary system or his monitored probation. The argument is that he previously committed the same kind of acts and has not apparently learned his lesson from what he did before. Relator further argues that Respondent cannot or will not conform his professional practice to fundamental ethical standards.

Respondent submitted a brief regarding proposed sanctions and suggested that the sanction should be one year, completely stayed, and he should be monitored because of the conduct involved here.

The panel finds that Respondent has still not figured out the appropriate way to represent clients, even though he has previously been disciplined on two occasions for similar misconduct. The panel finds that under the appropriate case law, it is apparent that the only way Respondent will realize that this is not the way to practice law is to recommend an actual suspension from the practice of law.

Applicable Case Law

Relator submits that recent, analogous cases decided by the Supreme Court suggest that an indefinite suspension is the appropriate sanction in this matter. While no two disciplinary cases are exactly alike, the parallels are clear between this and other matters in which the Court applied the penultimate sanction.

In *Disciplinary Counsel v. Wise*, 108 Ohio St.3d 381, 2006-Ohio-1194, the Court found that the respondent commingled client money with his own in an IOLTA account for an extended period of time, overdrafted that account on several occasions, kept inadequate records regarding the account, and failed to properly account. There, as here, the respondent had been the subject of a prior suspension. Unlike the Respondent here, Wise did not commit multiple acts of neglect, but, on the other hand, was not entirely cooperative in the disciplinary process.

In *Wise*, the Board had recommended a one-year suspension with six months stayed; however, the Supreme Court found an indefinite suspension to be appropriate. It held that:

{¶ 15} Ten years ago, we stated that it is “of the utmost importance that attorneys maintain their personal and office accounts separate from their clients’ accounts” and that any violation of that rule “warrants a substantial sanction whether or not the client has been harmed.” *Miles*, 76 Ohio St.3d at 577, 669 N.E.2d 831. An in an earlier case, we explained that the “mishandling of clients’ funds either by way of conversion, commingling, or just poor management, encompasses an area of the gravest concern of this court in reviewing claimed attorney misconduct.” *Columbus Bar Assn. v. Thompson* (1982), 69 Ohio St.2d 667, 669, 23 O.O.3d 541, 433 N.E.2d 602.

In another recent case, *Cleveland Metro. Bar Assn. v. Kaplan*, 124 Ohio St.3d 278, 2010-Ohio-167, the Court dealt with a pattern of neglect, non-communication and failing to maintain IOLTA records in three instances. Kaplan had no prior disciplinary record in 43 years of practice, but was uncooperative and evasive in the disciplinary process. The Court agreed with the Board’s recommendation and issued an indefinite suspension.

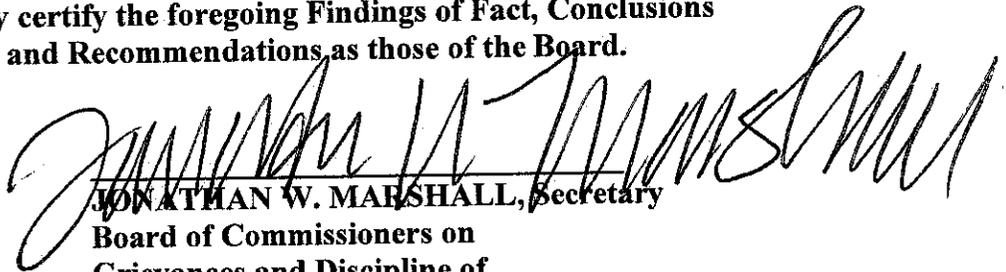
In a case this year in which the respondent had no prior disciplinary record and was fully cooperative in the disciplinary process, the Court imposed an indefinite suspension given that the lawyer had misappropriated at least \$32,600 in client funds. *Columbus Bar Assn. v. Thomas*, 124 Ohio St.3d 498, 2010-Ohio-604.

Therefore, this Panel recommends that Respondent be suspended from the practice of law for two years, with one year of that suspension stayed, and in the second year he is to be monitored by someone who is an expert, or by someone who is knowledgeable, in the area of law office management and maintaining an IOLTA trust account. If the Respondent violates any of the provisions of the monitor's oversight during the second year, he shall immediately be suspended for the second year. Respondent must also make restitution to Danielle Dotters and Marcus Peacock because of his inability to prove what, if any, work he did for them. Costs of this matter should be taxed to Respondent.

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 October 7, 2010. The Board adopted the Findings of Fact and Conclusions of Law of the Panel. After discussion the Board recommends that Respondent, Kenneth Ray Boggs, based on his disciplinary record and inability to conform his practice to the ethical rules, be indefinitely suspended 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**

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

MAY 17 2010

In Re:
The Complaint Against

Kenneth Ray Boggs, Esq. (0025305)
Respondent,

Case No. 09-082

by

Columbus Bar Association
Relator.

FILED

MAY 07 2010

BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

STIPULATION OF FACT AND RULE VIOLATION

GENERAL

1. On October 12, 2009, Relator filed a Complaint against the Respondent with the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio (the Board). Respondent timely filed his Answer. This matter is currently set for a Panel Hearing on February 22, 2010.

2. The Respondent and Relator have entered into this Agreement to Discipline by Consent pursuant to (BCGD) (Proc. Reg. 11).

3. Respondent was duly admitted to the practice of law in 1980 and is currently registered in good standing. He has twice previously been disciplined for professional misconduct. *Columbus Bar Assn v, Boggs*, 39 Ohio St.3d 601, 529 N.E. 2d (1988) (public reprimand); *Columbus Bar Assn. v. Boggs*, 103 Ohio St.3d 108, 2004-Ohio-4657 (one-year stayed suspension for trust account violations).



4. During his career as a lawyer, the Respondent has engaged in private practice, generally as a solo practitioner. He maintains an office in Columbus, and, for part of the time covered by these matters, he had a satellite office in Jackson, Ohio. He is currently registered as "active."

MISCONDUCT

Count One (The Miller Mater)

5. Beginning in August 20, 2007, Ms. Kenna Miller met with Respondent to discuss her representation for dissolution and or a divorce action. Respondent had several telephone discussions of their strategy and financial analysis of her concerns up to and until October 4, 2007.

6. Respondent prepared the appropriate documents to initiate a divorce for Ms. Miller. They met and she paid Respondent \$1,250 on October 4, 2007, finalizing representation, she executed the appropriate documents to initiate divorce proceedings in Pickaway County, Ohio.

7. Respondent deposited all of the funds, a portion of which were for anticipated court costs, directly into his business account, rather than his IOLTA trust account, even though he had not yet filed the case in Court.

8. Sometime after paying the retainer, Ms. Miller terminated the representation and asked for a refund of the money she had paid to Respondent.

9. On December 14, 2007, Ms. Miller filed a grievance against Respondent with Relator requesting assistance in obtaining a refund from Respondent, and Relator directed Respondent to file a response and requested him to agree to fee arbitration with Ms. Miller.

10. On March 14, 2008, Respondent filed a response to the grievance with proof that he and Ms. Miller had agreed to a refund of \$750 to the client which he made by depositing money from his regular business account into his trust account and then sending a trust account check to the client.

11. Respondent did not maintain professional liability insurance during the course of this representation and did not advise the client of this fact in writing.

Count Two (The Goheen Matter)

12. On January 4, 2008, Sharon Goheen paid Respondent \$1,300 for representation in a bankruptcy case. At that time, she was interviewed and provided the necessary information to complete the bankruptcy forms. She also executed the forms that were necessary for her filing and she was informed that the bankruptcy law requires her to complete a consumer credit counseling and debtor education briefing by an approved credit counseling agency prior to filing and also a financial management course after filing per 11 U.S.C. SECTION 109(h) and 11 U.S.C. section 727(a)(11). She did not complete the required courses during the time that she was represented by the Respondent.

13. Respondent deposited the money into his business account.

14. Ms. Goheen from January 4, 2008 until June 12, 2008 did not complete the required consumer credit briefings and became dissatisfied with Respondent's lack of progress on the case over a five month period, so, in June 2008, she terminated the representation and requested a return of the fees paid to Respondent.

15. She subsequently retained other counsel who filed the Bankruptcy.

16. Respondent issued a refund check for \$1,300, on June 12, 2008, from his business account.

17. Respondent did not maintain professional liability insurance during the course of this representation and did not advise the client of this fact in writing.

Count Three (The Stevens Matter)

18. In June 22, 2007, Kevin Stevens retained Respondent's services regarding the custody of his children and a tax matter related thereto.

19. Mr. Stevens paid the Respondent an \$800 fee, and Respondent advised that he would file the necessary paperwork some of which Respondent prepared and had Mr. Stevens sign and he told Mr. Stevens that he would see to it that the papers were filed in the Jackson County Common Pleas Court. once they had located the mother's address and location for service.

20. In August 2008, Mr. Stevens learned that nothing had ever been filed by the Respondent in his case, and he filed a grievance seeking a refund of the fees he had paid and a return of his file.

21. Despite demands by the client, Respondent has not returned any of the fees paid by Mr. Stevens. Respondent provided Mr. Stevens with copies of documents in his file but did not return the originals.

Count Four (The Dotters Matter)

22. Ms. Danielle Dotters met with Respondent on January 20, 2007, to discuss matters involving the death of her father, his probate estate and related issues regarding her father's girlfriend.

23. Ms. Dotters retained Respondent and paid him \$9,700 as a retainer on January 25, 2007, which he deposited in his operating account.

24. Although there was no written fee agreement, Respondent subsequently sent Ms. Dotters a letter in which he referred to the retainer as a "flat fee."

25. Ultimately, Ms. Dotters asked for a written statement of time spent on the case, and a refund of any unused money.

26. Respondent replied that the entire retainer was exhausted.

27. Although the Respondent did perform some work on the case, he filed no legal action and has produced no accounting for time spent on the case.

28. Respondent recently returned all original documents to Ms. Dotters.

Count Five (the Peacock Matter)

29. In November 6, 2007, Marcus Peacock met Respondent to discuss his alleged wrongful termination of employment and left substantial records regarding his removal from employment to be reviewed and analyzed by Respondent.

30. Mr. Peacock paid Respondent to review and pursue a case for wrongful removal from his position. Mr. Peacock paid attorney fees to Respondent of \$4,000 (representing 16 hr. @ 250.00 hr.) which Respondent deposited into an account other than an IOLTA trust account.

31. Mr. Peacock, on his own with the initial advice of Respondent, pursued administrative remedies and arbitration through the Ohio Civil Right Commission and EEOC.

32. Mr. Peacock had union representation during his employers binding arbitration and Respondent was not permitted under his employment contract and union

agreement to represent him at the arbitration hearing. Respondent did contact the union representation and offered his advice and assistance but was advised that was the extent of what was allowed. Mr. Peacock alleges that Respondent did not return his calls during the EEOC and Civil Rights processes.

33. The Grievant also requested that Respondent contact an investigator with OCRC, but Respondent did not honor that request for reasons that were explained to Mr. Peacock at the time of his request.

34.. Respondent ultimately advised Grievant that there was nothing he could do for him as he was awarded his job back but not back pay or benefits and that based upon his review of the case and law the arbitration award was not reversible. He also told the client that no refund of fees would be forthcoming.

35. Respondent has not provided to the Grievant or the Relator an accounting for time spent during the course of this representation.

36. Respondent did not maintain professional liability insurance during this representation and did not inform the client of that fact in writing.

37. Pursuant to Ohio Rule of Evidence 608, the Parties stipulate that Kenneth Boggs did not give a written disclosure of failure to maintain malpractice insurance with an additional client, Matt O'Neil in October, 2007.

RULE VIOLATIONS

38. The Respondent admits that as to Count One (Miller) he has violated the Rule of Professional Conduct 1.4 (c) and 1.15 (a), (c).

39. The Respondent admits that as to Count Two (Goheen) he has violated the Rule of Professional Conduct 1.4 (c) and 1.15 (a), (c).

40. The Respondent admits that as to Count Three (Stevens) he has violated the Rule of Professional Conduct 1.4 (c).

41. The Respondent admits that as to Count Four (Dotters) he has violated the Rule of Professional Conduct 1.4 (c) and 1.15 (a), (c).

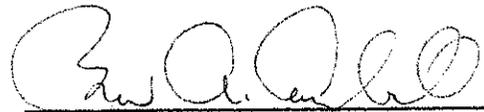
42. The Respondent admits that as to Count Five (Peacock) he has violated the Rule of Professional Conduct 1.4 (a) and (c).

Respectfully submitted,


Kenneth Ray Boggs, Esq. (0025305)

RESPONDENT


Michael L. Close (0008586)


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A. Alysha Clous (0070627)

COUNSEL FOR RELATOR