

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

10-2140

In Re:	:	
Complaint against	:	Case No. 10-011
Eric R. Fink	:	Findings of Fact,
Attorney Reg. No. 0071059	:	Conclusions of Law and
	:	Recommendation of the
Respondent	:	Board of Commissioners on
	:	Grievances and Discipline of
Akron Bar Association	:	the Supreme Court of Ohio
	:	
Relator	:	

¶1. The hearing was heard in Columbus, Ohio, on October 14, 2010. The Board panel consisted of Judge Joseph J. Vukovich of Youngstown, Walter Reynolds of Dayton, and panel Chair, Keith A. Sommer, of Martins Ferry, Ohio.

¶2. The hearing on the merits was conducted pursuant to Gov. Bar R. V(6)(G). None of the panel members resides in the appellate district from which the complaint originated or served as a member on the probable cause panel that certified this matter to the Board.

¶3. Representing Relator were Kevin R. Sanislo and John F. Herman. Representing Respondent was Donald S. Varian, Jr.

FILED
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 CLERK OF COURT
 SUPREME COURT OF OHIO

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Stipulations

¶4. Relator Akron Bar Association and Respondent entered into stipulations attached hereto and marked Exhibit A.

¶5. A summary of pertinent stipulations are as follows:

- (1) Eric R. Fink ("Respondent") is an attorney at law licensed to practice in Ohio since November 1999, Registration No. 0071059, with his business address registered with the Supreme Court of Ohio as 217 N. Water St., Kent, OH 44240.
- (2) Mr. and Mrs. Robert Ashcraft ("Ashcrafts") are former clients of Respondent and original complaining witnesses herein.
- (3) In September 2008, the Ashcrafts were notified by previous counsel that Respondent would be representing them concerning an eviction action in the Akron Municipal Court.
- (4) Respondent represented the Ashcrafts on September 30, 2008, at trial in the Akron Municipal Court.
- (5) The Ashcrafts filed a grievance complaint with Relator on or about May 18, 2009, alleging that Respondent failed to notify them of the outcome of the hearing on September 30, 2008, and deny receiving a copy of the judgment entry of the Akron Municipal Court or being advised of appeal rights. Respondent states that he provided a letter which was forwarded to the Ashcrafts and to their previous counsel, advising of the Magistrate's ruling.

- (6) On August 28, 2009, Relator notified Respondent of said complaint via regular and certified US mail. Certified mail was accepted by Respondent on September 9, 2009 (Exhibit 1). Respondent failed to respond to the allegations.
- (7) Relator then mailed a reminder letter to Respondent via regular and certified US Mail on October 13, 2009. Certified mail was accepted by Respondent on October 14, 2009 (Exhibit 2). Again, Respondent failed to respond to the allegations.
- (8) On November 10, 2009, a subpoena duces tecum was served upon Respondent at his business office. Respondent's legal assistant accepted service of the subpoena (Exhibit 3).
- (9) Respondent failed to appear for a deposition scheduled on November 17, 2009, as ordered on the subpoena duces tecum.
- (10) On January 7, 2010, a second subpoena duces tecum was served upon Respondent. Respondent personally accepted service of the subpoena (Exhibit 4).
- (11) Respondent again failed to appear for a deposition scheduled on January 13, 2010, as ordered on the subpoena duces tecum.
- (12) The underlying complaint filed by the Ashcrafts was dismissed as to Respondent and their prior counsel based on information received from sources other than Attorney Fink.

- (13) On March 5, 2010, Respondent went to the Akron Bar Association and agreed to submit a written response.
- (14) On March 9, 2010, Respondent requested additional time to respond.
- (15) On March 19, 2010, Respondent provided an Answer to the Complaint.
- (16) On March 17, 2010, Respondent sent a letter outlining the facts of the Complaint to the Akron Bar Association Grievance Committee.
- (17) On March 18, 2010, Respondent met with representatives of the Grievance Committee of the Akron Bar Association and answered all of their questions.

Respondent Testimony

¶6. Respondent testified that he was employed by the Portage County, Ohio, Prosecutor's Office and left in 2007 to go into solo practice.

¶7. Respondent testified that he forwarded a copy of the Ashcraft judgment to their prior counsel and the Ashcrafts and represented them without charge.

¶8. Respondent admitted that he did not respond to any of the certified mail from the Akron Bar Association. He testified that he simply did not recall opening the certified mail and did not realize the gravity of the situation.

¶9. Another Akron lawyer advised Respondent of the gravity of the situation and advised him to take immediate action. Respondent then contacted the Akron Bar Association and asked what he should do. He met with the Akron Bar Association representatives and admitted to the facts set forth in the stipulations, excepting he denied that he failed to forward a letter to the Ashcrafts and their prior counsel advising them of the Magistrate's ruling.

¶10. Respondent testified that he realizes that it was necessary to respond immediately and the situation was of the highest importance. He testified that he now reads all correspondence he receives and has taken an online video course concerning the day-to-day practice of a sole practitioner.

¶11. Respondent stated that he meets with a representative of the Ohio Lawyer's Assistance Program to discuss practice issues and this is a continuing relationship.

¶12. Respondent testified that he has a part-time job with the City of Kent and wants to continue his solo practice and has no mental health issues or alcohol or substance abuse problems.

¶13. Respondent repeatedly stated that has no excuse for not responding to the Akron Bar Association grievance committee's correspondence and failing to cooperate with the Akron Bar, and his failure to respond to the subpoenas was a terrible mistake.

¶14. Respondent acknowledged the violations charged by Relator and the necessity to respond in the future.

¶15. Respondent appears to be very talented and competent even though he had no excuse for the failure to open the Akron Bar correspondence and subpoenas.

¶16. Respondent expressed a desire to continue his legal career.

Conclusions of Law

¶17. The Akron Bar Association charged Respondent with the following violations:

Gov. Bar R. V(4)(G)- No attorney shall neglect or refuse to assist or testify in an investigation.

Prof. Cond. R. 8.4(d)- Conduct that is prejudicial to the administration of justice.

¶18. The panel finds by clear and convincing evidence that the Relator has proven the violations of Gov. Bar R. V(4)(G) and Prof. Cond. R. 8.4(d).

Mitigation and Aggravation

- ¶19. In mitigation, the panel finds by clear and convincing evidence the following:
- (1) absence of prior disciplinary record;
 - (2) absence of a dishonest or selfish motive;
 - (3) no harm or monetary loss to a client;
 - (4) good character references;
 - (5) no mental problems, alcohol or drug abuse;
 - (6) Respondent acknowledges rule violations and necessity to respond in the future; and
 - (7) Respondent eventually cooperated with Akron Bar Association after the initial failure to cooperate.

Recommended Sanction

¶20. Relator recommended a public reprimand. Counsel for Respondent urged the sanction not exceed a public reprimand.

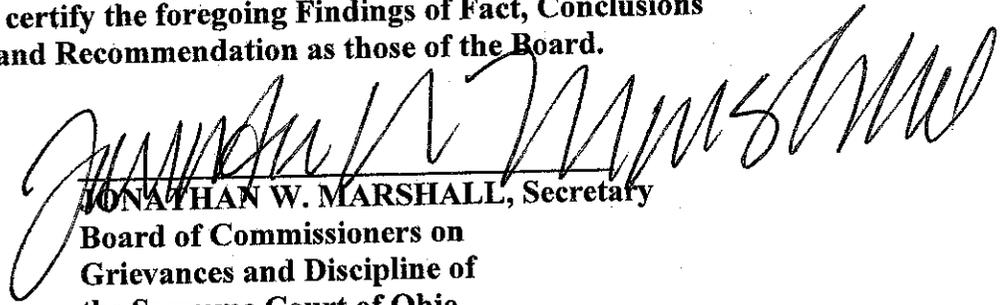
¶21. Based upon all of the foregoing, it is the panel's recommendation that Respondent receive a public reprimand.

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 December 3, 2010. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Panel and recommends that Respondent, Eric Fink, be publicly 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 Recommendation 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
ERIC R. FINK

* **CASE NO. 10-011**

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*
RESPONDENT

AKRON BAR ASSOCIATION

* **STIPULATIONS**
* **(Rule V of The Supreme Court**
* **Rules for the Government of The**
* **Bar of Ohio)**

*
RELATOR

FILED
SEP 24 2010
BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

* * *

STIPULATIONS

Now comes the Relator, Akron Bar Association, and alleges that Eric R. Fink, an Attorney at Law, Registration No. 0071059, duly admitted to the practice of law in the State of Ohio, and stipulate to the following:

1. The Akron Bar Association ("Relator"), is a Certified Grievance Committee under Gov.Bar R.V(3)(C). Relator has been authorized by the Board of Commissioners on Grievances and Discipline for the Supreme Court of the State of Ohio to investigate allegations of misconduct by attorneys and initiate complaints as a result of investigations under the provisions of the Rules for the Government of the Bar as promulgated in the State of Ohio.
2. Erik R. Fink ("Respondent") is an attorney at law licensed to practice in Ohio since November 1999, Registration No. 0071059, with his business address registered with the Supreme Court of Ohio as 217 N. Water St., Kent, OH 44240.
3. Mr. and Mrs. Robert Ashcraft, (Ashcrafts)," are former clients of Respondent and original complaining witnesses herein.
4. On or about April 2008, the Ashcrafts retained the services of Attorney Brian J. Coffman ("Coffman") to represent them in a tenant eviction case in Akron Municipal Court.

5. Shortly thereafter, Coffman referred the matter to Attorney Gerald Leb ("Leb"). Leb attended an eviction hearing on behalf of the Ashcrafts.
6. In September 2008, the Ashcrafts were notified by Coffman the Respondent would be representing them.
7. Respondent represented the Ashcrafts on September 30, 2008 at trial in the Akron Municipal Court.
8. The Ashcrafts filed a complaint with Relator on or about May 18, 2009 alleging that neither Coffman nor Respondent notified them of the outcome of the hearing on September 30, 2008. The Ashcrafts deny receiving a copy of the judgment entry of Akron Municipal Court or being advised of appeal rights. Respondent states that he provided a letter which was forwarded to Mr. Coffman and to the Ashcraft's advising them of the Magistrate's ruling.
9. After an initial investigation by Relator's Investigative Subcommittee, a three member panel of Relator's Certified Grievance Committee was assigned to investigate Coffman's, Leb's, and/or Respondent's involvement in the Ashcrafts' case.
10. On August 28, 2009 Relator notified Respondent of said complaint via regular and certified U.S. mail. Certified mail was accepted by Respondent on September 9, 2009 (Exhibit 1). Respondent failed to respond to the allegations.
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18. On March 9, 2010 Respondent requested additional time to respond.
19. On March 19, 2010 Respondent provided an Answer to the Complaint.
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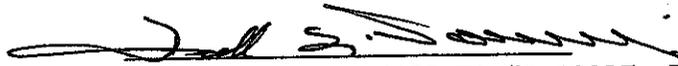
Respondent acknowledges that he violated **Gov. Bar V(4)(G) Duty to Cooperate:**

The Board, the Disciplinary Counsel, and president, secretary, or chair of a Certified Grievance Committee may call upon any justice, judge, or attorney to assist in an investigation or testify in a hearing before the Board or panel for which provision is made in the rule, including mediation and ADR procedures, as to any matter that he or she would not be bound to claim privilege as an attorney at law. No justice, judge, or attorney shall neglect or refuse to assist or testify in an investigation or hearing;

And has violated the Ohio Rules of Professional Conduct as follows:

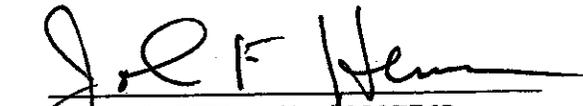
ORPC 8.4(d) Misconduct: It is a professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

Respectfully submitted,



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