

ORIGINAL

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

11-1016

In Re:

:

Complaint against

:

Case No. 11-021

Michael Motylinski  
Attorney Reg. No. 0071290

:

Findings of Fact,  
Conclusions of Law and  
Recommendation of the  
Board of Commissioners on  
Grievances and Discipline of  
the Supreme Court of Ohio

Respondent

Disciplinary Counsel

Relator

FILED  
JUN 16 2011  
CLERK OF COURT  
SUPREME COURT OF OHIO

DISCIPLINE BY CONSENT

On March 15, 2011, this matter was assigned to a hearing panel consisting of Board members Keith Sommer, Alvin Bell and Stephen Rodeheffer, Chair. None of the panel members is from the appellate district from which the complaint arose or served as a member of the probable cause panel that reviewed Relator's formal complaint. This matter was submitted to the hearing panel as a consent to discipline matter, pursuant to BCGD Proc. Reg. 11.

Pursuant to BCGD Proc. Reg. 11(B), the chair of the hearing panel on April 19, 2011 extended the time for filing a consent to discipline agreement to June 13, 2011. Relator and Respondent filed a consent to discipline agreement on May 26, 2011.

The panel finds that this agreement conforms to BCGD Proc. Reg. 11 and the undersigned members recommend acceptance of the agreement including the Respondent's admission to violating the following provisions of the Ohio Rules of Professional Conduct: Prof.

Cond. R. 1.4(b) (a lawyer shall explain a matter to the extent reasonable necessary to permit the client to make informed decisions); Prof. Cond. R. 1.4(a)(3) (a lawyer shall keep the client reasonably informed about the status of the matter); Prof. Cond. R. 1.4(a)(4) (a lawyer shall comply with reasonable requests for information from the client); Prof. Cond. R. 5.5(a) (a lawyer shall not practice in a jurisdiction in violation of the profession regulations of the jurisdiction); and Prof. Cond. R. 5.5(b)(2) (a lawyer not admitted to practice in a jurisdiction shall not hold himself out or represent that he is admitted to practice in that jurisdiction.)

Respondent, acting as local counsel, failed to inform his law firm or client that he was on inactive status, while negotiating a settlement to a lawsuit.

Further, the panel concurs in the agreed sanction of a six-month suspension from the practice of law with the entire period stayed.

#### **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 9, 2011. The Board voted to accept and adopt the agreement entered into by Relator and Respondent. The agreement sets forth the misconduct and the sanction of a six-month suspension with six months stayed, and this is the recommendation of the Board. 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.**

A handwritten signature in black ink, appearing to read "Richard A. Dove", written over a horizontal line.

**RICHARD A. DOVE, Secretary  
Board of Commissioners on  
Grievances and Discipline of  
the Supreme Court of Ohio**



3. On or about May 4, 2009, The Law Firm forwarded respondent a check in the amount of \$125 for court costs.
4. On May 5, 2009 Respondent filed a lawsuit in the Cuyahoga County Court of Common Pleas on behalf of Roth Industries.
5. On August 26, 2009 respondent participated in a case management telephone conference.
6. From August, 2009 to September, 2009 the Law Firm e-mailed respondent, and left voicemail messages on respondent's cell phone requesting status updates.
7. Respondent voluntarily placed himself on inactive status with the Ohio Supreme Court on September 1, 2009, because he moved to the Virgin Islands, and he remained inactive until June 21, 2010.
8. Respondent did not respond to the Law Firm's messages regarding status updates until September 25, 2009, after the law firm demanded that he return the file.
9. On September 28, 2009, respondent first advised the Law Firm that he was working in the Virgin Islands. He also advised the Law Firm of the status of the Roth Industries case.
10. After several further attempts by the Law Firm to contact the respondent, he finally replied on October 8, 2009 advising that he had filed discovery requests and was waiting for a response and was still attempting to settle the matter.
11. On November 9, 2009 respondent contacted the Law Firm to advise it of a settlement offer he received from the defendant.
12. On November 10, 2009 Roth Industries rejected the settlement offer after reviewing it with the Law Firm.
13. Respondent participated in a telephone conference with the court on December 1, 2009.

14. The Cuyahoga County Court of Common Pleas dismissed the lawsuit without prejudice on December 21, 2009 due to the fact that respondent was not an active attorney in the state of Ohio. Respondent did not advise the Law Firm or Roth Industries that the case had been dismissed.
15. Respondent spoke directly with a representative of Roth Industries on January 21, 22, and February 23, 2010 to further attempt to settle the matter.
16. Respondent never advised the Law Firm or Roth Industries of his inactive status even though he continued to negotiate with defense counsel. The Law Firm discovered respondent was inactive after reviewing Ohio Supreme Court records in February 2010.
17. Respondent's conduct in Count One violates Prof. Cond. R. 1.4(b) (A lawyer shall explain a matter to the extent reasonably necessary to make informed decisions regarding the representation); Prof. Cond. R. 1.4(a)(3) (A lawyer shall keep the client reasonably informed about the status of the matter); Prof. Cond. R. 1.4(a)(4) (A lawyer must comply as soon as practicable with reasonable requests for information from the client); Prof. Cond. R. 5.5(a) (A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction); Prof. Cond. R. 5.5(b)(2)(A lawyer who is not admitted to practice in this jurisdiction shall not hold himself out the public or otherwise represent that he is admitted to practice law in this jurisdiction).

#### **STIPULATED MITIGATION**

1. Respondent has no prior disciplinary record.
2. Respondent provided full and free disclosure to relator during its investigation and has displayed a cooperative attitude toward these proceedings.

3. Absence of a dishonest or selfish motive.

### RECOMMENDED SANCTION

Relator and respondent jointly recommend a six-month suspension, all stayed.

In *Cincinnati Bar Assn. vs. Bucciare*, 121 Ohio St.3d. 274, 2009-Ohio-1156, the respondent received a public reprimand pursuant to a Consent to Discipline Agreement for representing two clients during a year in which he was registered as inactive. The Ohio Supreme Court noted that no aggravating factors were present, and mitigating factors included that respondent had no prior disciplinary record and no dishonest or selfish motive.

The instant case includes additional violations not present in *Bucciare*, all of which involve respondent's failure to properly communicate with his client regarding the status of the matter. An attorney's failure to communicate was also a violation in *Cuyahoga Cty. Bar Assn. vs. Poole*, 120 Ohio St. 3d. 361, 2008-Ohio-6203. In *Poole*, the respondent received a one-year stayed suspension for not communicating with a client, but he was also charged with failure to do promised work, failure to promptly provide refunds to clients, and failure to respond to letters of inquiry during the bar association's investigation. Those additional violations are not present in this case. Due to the differences in the violations committed, the agreed recommended sanction in this case, a six-month stayed suspension, falls between those ordered in *Bucciare* and *Poole*.

**STIPULATED EXHIBITS**

1. Respondent's registration/CLE history
2. Grievance from Attorney Philip Frankel
3. Correspondence from Attorney Philip Frankel
4. Docket, Roth Global Plastics, Inc. vs. Koollaire LLC
5. Deposition of respondent
6. Affidavit of respondent

**CONCLUSION**

The above are stipulated to and entered into by agreement by the undersigned parties on this 26<sup>th</sup> day of May, 2010.



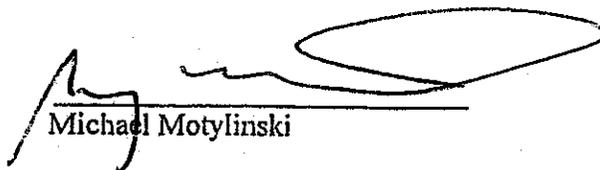
Jonathan E. Coughlan (0026424)  
Disciplinary Counsel  
Supreme Court of Ohio  
250 Civic Center Drive, Suite 325  
Columbus, Ohio 43215  
(614)461-0256  
(614)461-7205(f)

Relator.



Carol A. Costa (0046556)  
Disciplinary Counsel  
Supreme Court of Ohio  
250 Civic Center Drive, Suite 325  
Columbus, Ohio 43215  
(614)461-0256  
(614)461-7205(f)

Counsel for Relator.



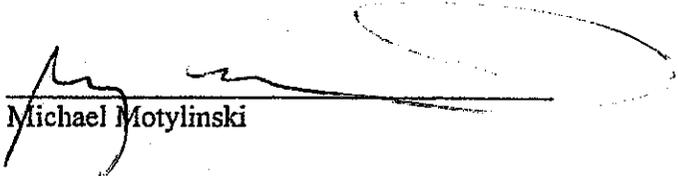
Michael Motylinski

Respondent.



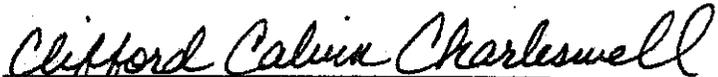
12. I am aware of the implications of these admissions and this Consent Agreement on my ability to practice law in the state of Ohio.
13. I understand that the Supreme Court of Ohio is the final authority to determine the appropriate sanction for the misconduct to which I have admitted.

**FURTHER AFFIANT SAYETH NAUGHT.**

  
Michael Motylinski

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE THIS

25 DAY OF May 2011.

  
Notary Public

My commission expires 6/24/2013

*Clifford Calvin Charleswell*  
My Commission Exp: June 24, 2013  
Notary Commission: NP-035-09  
St. Thomas, U. S. Virgin Islands

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

FILED

FEB 14 2011

In re:

Complaint against

Michael Motylinski  
34-38 Kronprindsens Gade  
St. Thomas, VI 00802

No. \_\_\_\_\_

Attorney Registration No. (0076628)

Respondent,

COMPLAINT AND CERTIFICATE

(Rule V of the Supreme Court Rules for  
the Government of the Bar of Ohio.)

Disciplinary Counsel  
250 Civic Center Drive, Suite 325  
Columbus, Ohio 43215-7411

RECEIVED

FEB 02 2011

Relator.

BOARD OF COMMISSIONERS  
ON GRIEVANCES & DISCIPLINE

Now comes the relator and alleges that Michael Motylinski, an Attorney at Law, duly admitted to the practice of law in the state of Ohio is guilty of the following misconduct:

1. Respondent, Michael Motylinski, was admitted to the practice of law in the state of Ohio on November 10, 2003, and is subject to the Ohio Rules of Professional Conduct and the Supreme Court Rules for the Government of the Bar of Ohio.

COUNT ONE

Roth Industries

2. In April 2009 Roth Industries retained Respondent as local counsel on a contingency fee basis in a collection matter.
3. Roth Industries' New York counsel, Bond, Schoenek, and King PLLC (Law Firm) referred the company to respondent.

4. On or about May 4, 2009, The law firm forwarded respondent a check in the amount of \$125 for court costs.
5. On May 5, 2009 Respondent filed a lawsuit in the Cuyahoga County Court of Common Pleas on behalf of Roth Industries.
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## CONCLUSION

Wherefore, pursuant to Gov. Bar R. V and Ohio Rules of Professional Conduct, relator alleges that respondent is chargeable with misconduct; therefore, relator requests that respondent be disciplined pursuant to Rule V of the Supreme Court Rules for the Government of the Bar of Ohio.



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Jonathan E. Coughlan (0026424)  
Disciplinary Counsel



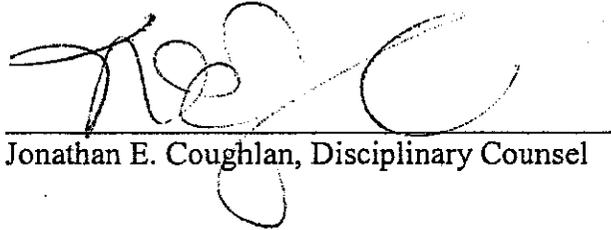
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Carol A. Costa (0046556)  
Assistant Disciplinary Counsel  
250 Civic Center Drive, Suite 325  
Columbus, Ohio 43215-7411  
(614)461-0256

## CERTIFICATE

The undersigned, Jonathan E. Coughlan, Disciplinary Counsel, of the Office of Disciplinary Counsel of the Supreme Court of Ohio hereby certifies that Carol A. Costa is duly authorized to represent relator in the premises and has accepted the responsibility of prosecuting the complaint to its conclusion. After investigation, relator believes reasonable cause exists to warrant a hearing on such complaint.

Dated: February 2, 2011



Jonathan E. Coughlan, Disciplinary Counsel

### **Gov. Bar R. V, § 4(I) Requirements for Filing a Complaint.**

(1) Definition. "Complaint" means a formal written allegation of misconduct or mental illness of a person designated as the respondent.

\* \* \*

(7) Complaint Filed by Certified Grievance Committee. Six copies of all complaints shall be filed with the Secretary of the Board. Complaints filed by a Certified Grievance Committee shall be filed in the name of the committee as relator. The complaint shall not be accepted for filing unless signed by one or more attorneys admitted to the practice of law in Ohio, who shall be counsel for the relator. The complaint shall be accompanied by a written certification, signed by the president, secretary, or chair of the Certified Grievance Committee, that the counsel are authorized to represent the relator in the action and have accepted the responsibility of prosecuting the complaint to conclusion. The certification shall constitute the authorization of the counsel to represent the relator in the action as fully and completely as if designated and appointed by order of the Supreme Court with all the privileges and immunities of an officer of the Supreme Court. The complaint also may be signed by the grievant.

(8) Complaint Filed by Disciplinary Counsel. Six copies of all complaints shall be filed with the Secretary of the Board. Complaints filed by the Disciplinary Counsel shall be filed in the name of the Disciplinary Counsel as relator.

(9) Service. Upon the filing of a complaint with the Secretary of the Board, the relator shall forward a copy of the complaint to the Disciplinary Counsel, the Certified Grievance Committee of the Ohio State Bar Association, the local bar association, and any Certified Grievance Committee serving the county or counties in which the respondent resides and maintains an office and for the county from which the complaint arose.