

IN THE SUPREME COURT OF OHIO

In re: :
Complaint against : **Case No. 2014-078**
Mark Russell Provenza :
Respondent :
Lorain County Bar Association :
Relator :

CERTIFICATION OF DEFAULT

Mark Russell Provenza (0022490)
2550 Broadway Ave.
Lorain, OH 44052
mark.provenza@live.com

Lorain County Bar Association
The Lawyer's Loft
627 W. Broad Street
Elyria, OH 44035

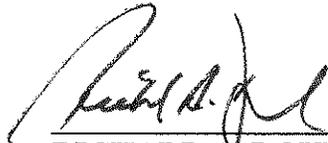
Richard A. Dove (0020256)
Board of Professional Conduct
65 South Front Street, 5th Floor
Columbus, Ohio 43215
(614) 387-9370
rick.dove@sc.ohio.gov

IN THE SUPREME COURT OF OHIO

In re: :
Complaint against :
Mark Russell Provenza :
Respondent : **CERTIFICATION**
Lorain County Bar Association : **Gov. Bar R. V, Section 14**
Relator :

Pursuant to Rule V, Section 14, of the Supreme Court Rules for the Government of the Bar of Ohio, I hereby certify that the respondent in the above-captioned matter has failed to file an answer to the formal complaint certified to the Board of Professional Conduct on October 30, 2014.

Attached to this certification is an affidavit setting forth the attempts to serve the complaint on the respondent and copies of documents referenced in the affidavit.



RICHARD A. DOVE
Director, Board of Professional Conduct
of the Supreme Court of Ohio

STATE OF OHIO

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ss:

COUNTY OF FRANKLIN

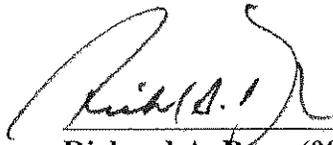
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AFFIDAVIT

I, Richard A. Dove, having been duly sworn according to the laws of Ohio, hereby depose and say:

1. I am the Director to the Board of Professional Conduct of the Supreme Court of Ohio (“Board”). Pursuant to Rule V of the Supreme Court Rules for the Government of the Bar of Ohio, I am responsible for serving certified disciplinary complaints on the parties and maintaining the records of cases certified to the Board.
2. On October 30, 2014, a formal complaint was certified to the Board in the matter of *Lorain County Bar Association v. Mark Russell Provenza*, Board Case No. 2014-078.
3. On October 30, 2014, a notice and copy of the certified complaint were sent via certified mail to the respondent at 2550 Broadway Avenue, Lorain, Ohio 44052. The address to which the certified mail was sent is the respondent’s residence address as reflected in the attorney registration records maintained by the Supreme Court of Ohio, Office of Attorney Services.
4. On November 15, 2014, the Board received a return receipt from the United States Postal Service acknowledging the receipt of the documents at the address referenced in ¶ 3.
5. On December 9, 2014, a notice of intent to certify the respondent’s default was sent to the respondent at the address referenced in ¶ 3.
6. As of the date of this affidavit, the respondent has not filed an answer to the formal complaint pending before the Board or otherwise responded to the certification of the complaint or the notice of intent to certify his default.
7. Attached to this affidavit are true and accurate copies of the following documents contained in the case file that is maintained in the Board offices:
 - a. The formal complaint certified to the Board on October 30, 2014 (Attachment A);
 - b. The return receipt showing the respondent’s receipt on November 15, 2014 of the certified sent to the address referenced in ¶ 3 (Attachment B); and
 - c. The notice of intent to certify the respondent’s default sent to the respondent’s address referenced in ¶ 3 on December 9, 2014 (Attachment C).

FURTHER AFFIANT SAYETH NAUGHT.



Richard A. Dove (0020256)
Director, Board of Professional Conduct

Sworn to before me and subscribed in my presence this 12th day of January, 2015.



Notary Public



MICHELE PENNINGTON
Notary Public, State of Ohio
My Commission Expires 10/10/17

RECEIVED

OCT 01 2014

BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

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

In re:

:

**LORAIN COUNTY BAR ASSOCIATION:
LEGAL ETHICS AND GRIEVANCE
COMMITTEE**

CASE NO.

14 - 078

c/o Lorain County Bar Association
The Lawyer's Loft
627 W. Broad Street
Elyria, Ohio 44035

:

CERTIFIED COMPLAINT

:

:

Relator,

:

-v-

:

MARK R. PROVENZA, ESQ.
2550 Broadway Avenue
Lorain, Ohio 44052
Registration No. 0022490

:

:

:

Respondent.

.....

NOW COMES Relator, Lorain County Bar Association Legal Ethics and
Grievance Committee, by and through the undersigned Bar Counsel, and alleges that
Respondent, Mark R. Provenza (Registration No. 0022490) Attorney at Law, duly
admitted and in good-standing to practice law in the State of Ohio, is guilty of the
misconduct more fully described below.

Attachment A

FILED
OCT 28 2014
COURT CLERK
OF THE SUPREME COURT OF OHIO

INTRODUCTION

1. That Respondent, Mark Russell Provenza (“Respondent”), was admitted to the practice of law in the State of Ohio on May 13, 1985.
2. That Respondent is subject to the Code of Professional Responsibility; The Ohio Rules of Professional Conduct; and, the Ohio Supreme Court Rules for the Government of the Bar.
3. That Respondent has no prior Discipline from the Supreme Court of Ohio.
4. That Respondent’s status as an attorney in the State of Ohio is currently “In Good Standing.”
5. That on April 30, 2014 a Grievance was filed with the Lorain County Bar Association (“LCBA”) by one Robin Maxwell-Smith (“The Smith Grievance.”)
6. That on May 5, 2014 a separate Grievance was filed with the LCBA by one Susan Hughes (“The Hughes Grievance.”)
7. That the LCBA, by and through its Certified Legal Ethics and Grievance Committee (“The Committee”), opened an investigation and assigned both matters to Attorney Leslie A. Gentile (“Attorney Gentile”), a member of The Committee.
8. That on or around May 16, 2014 Attorney Gentile sent Respondent notice of The Smith Grievance and The Hughes Grievance via certified mail and requested that he respond to both matters within twenty (20) days.
9. That on or about June 12, 2014 the certified mail containing both grievances was returned to Attorney Gentile as “unclaimed.”
10. That on or about June 12, 2014 Attorney Gentile attempted to contact Respondent via telephone regarding the Grievances and left Respondent a voicemail.

11. That on June 13, 2014 Attorney Gentile sent a second correspondence to Respondent wherein she re-sent the Smith Grievance and Hughes Grievance via Regular Mail and requested Respondent's timely response.

12. That on June 20, 2014 Attorney Gentile received a voicemail message from Respondent wherein he stated that he received the grievances via regular mail and that he would respond by June 27, 2014.

13. That Respondent failed and refused to respond to the grievances by June 27, 2014.

14. That on July 15, 2014 Attorney Gentile, for the second time, left Respondent a voicemail advising him that he had failed to reply to the grievances and indicated that his time to respond had expired.

15. That Attorney Provenza failed and refused to respond to Affiant's voicemail or submit a response to the grievances.

16. That on July 17, 2014 Attorney Gentile spoke to Respondent via telephone about Respondent's failure to provide a written response to the Grievances.

17. That during that conversation, Respondent attempted to verbally explain his conduct and offer his response orally.

18. That at no time did Respondent explain his failure to provide a written response to Attorney Gentile.

19. That Attorney Gentile stopped Respondent from verbally continuing to discuss the matter and advised him again that the response must be in writing.

20. That Respondent indicated to Attorney Gentile that he would have his written response in to her by July 25, 2014.

21. That Respondent failed to provide a response by Friday, July 25, 2014, nor did he provide any response throughout the weekend or at any time prior to the meeting of The Committee on Monday, July 28, 2014.

22. That based upon the results and findings of Affiant's investigation, including Attorney Provenza's failure to timely and properly respond to the Smith Grievance and the Hughes Grievance, on July 28, 2014, at a regularly scheduled meeting, The Committee found probable cause that Attorney Provenza violated the Ohio Rules of Professional Conduct ("ORPC") and the Ohio Rules For The Government of The Bar ("ORGB.")

23. That following the meeting of The Committee of July 28, 2014 Respondent, in late in the afternoon of July 28, 2014, called Attorney's Gentile office and advised that he had sent his written response on July 25, 2014 via email.

24. That Respondent was advised that the response was not received.

25. That Affiant maintains two email addresses.

26. That Attorney Provenza suggested that Affiant may not have received his response in the email address that Affiant regularly checks.

27. That Affiant advised Attorney Provenza that she regularly checks both of her email addresses; the spam folders for each address, and that she had not received any emails from him at either address.

28. That Respondent and then stated that he would re-send his response.

29. That on July 29, 2014 Affiant contacted Attorney Provenza and again advised him that she had not received any emails from him at either email address and instructed him to place his response to the grievances in the regular mail.

30. That Attorney Provenza failed to transmit his response via any method, whether electronic or regular mail, and failed in any way to communicate further with Affiant following Affiant's message to him of July 29, 2014.

31. That Attorney Provenza has in all regards failed and refused to respond to either The Smith Grievance or The Hughes Grievance.

32. That the matters were assigned to Attorney D. Chris Cook, undersigned, a member of The Committee and Bar Counsel to LCBA, for prosecution.

33. That on September 26, 2014 a Notice of Intent to File with Certified Copy of Complaint was served upon Respondent.

34. That on September 26, 2014 the Investigative Summary with Exhibits in Support was served upon Respondent.

35. That pursuant to the Notice of Intent to File and the local rules of The Committee, Respondent was given the opportunity to appear at a regularly scheduled meeting of The Committee to address the Certified Complaint, Investigative Summary, and allegations contained therein.

36. That Respondent attended the meeting of The Committee on Monday, September 29, 2014.

37. That Respondent confirmed that he did not maintain professional liability insurance for the periods of representation at issue nor did he advise his client's of this fact.

38. That Respondent confirmed that he never provided a written response to the grievances in this matter.

39. That Respondent advised that he did not deposit the fees he received from Robin Maxwell-Smith into his trust account.

FACTUAL ALLEGATIONS I
(ROBIN MAXWELL-SMITH GRIEVANCE)

40. Relator incorporates and realleges the allegations contained in paragraphs 1-39 above as if fully rewritten herein.

41. That the Grievant, Smith, retained the services of Respondent to pursue a divorce.

42. That Smith's representation was based upon a verbal agreement wherein Respondent was to file a Complaint for Divorce on Smith's behalf.

43. That Smith paid Respondent \$300.00 for court costs on December 27, 2013 for the divorce paperwork to be filed.

44. That Respondent did not deposit these funds into his trust account.

45. That on Wednesday, January 8, 2014 Respondent advised Smith via text message that he received the check for court costs and would file the divorce complaint on "Friday."

46. That Smith contacted Respondent on January 27, 2014 and requested a return telephone call to which Respondent did not respond.

47. That on February 3, 2014 Smith again contacted Respondent via text message requesting that Respondent advise her as to when the divorce papers would be "served."

48. That Respondent failed to respond to Smith's February 3, 2014 text message.

49. That Smith sent Respondent a text message once again on February 4, 2014 requesting a receipt for her filing fee and an update on the status of her case.

50. That Respondent responded to Smith's text message by advising her that he would call later that night.

51. That Respondent failed to call Smith as promised.

52. That on Wednesday, February 5, 2014 Respondent advised Smith, for the second time, via text message, that he received the check for court costs and would file the divorce complaint on "Friday."

53. That Respondent further advised Smith to be present in court for an initial hearing on March 31, 2014.

54. That Smith paid Respondent a \$500.00 fee for handling her divorce on February 20, 2014.

55. That Respondent did not deposit this fee into his trust account.

56. That Respondent did not advise Smith in writing that she may be entitled to a refund of some or all of her fee if Respondent did not complete the representation.

57. That Smith sent Respondent text messages on March 1, 2014; March 6, 2014 and March 10, 2014 imploring Respondent to contact her to discuss that status of her case.

58. That Respondent failed and refused to contact Smith following each of her text messages.

59. That on March 21, 2014 Smith sent Respondent a text message asking "Are we still meeting at the courthouse on Monday?"

60. That Respondent failed to respond to Smith's text message.

61. That on March 30, 2014 Smith sent Respondent another text message asking “Are we meeting at the courthouse tomorrow?”

62. That Respondent again failed to respond to Smith’s text message.

63. That Smith appeared for the initial hearing on March 31, 2014.

64. That on March 31, 2014 at 9:11 a.m. Smith sent Respondent a text message stating, “Hey I’m at the courthouse!”

65. That on March 31, 2014 at 9:21 a.m. Smith sent Respondent a text message stating, “Hey what’s up I took the day off to meet with [you] where are you at did you file the divorce papers?”

66. That on March 31, 2014 at 9:35 a.m. Smith sent Respondent a text message stating, “I just seen you come into the building.”

67. That Respondent did not acknowledge Smith upon seeing her at the courthouse or respond to any of her text messages.

68. That Smith had to have the court page Respondent as he could not be located for the hearing.

69. That upon meeting with Respondent, he advised Smith that he had not filed any divorce pleadings on her behalf and had forgotten he told her to appear in court for a hearing.

70. That Smith verified with the Clerk of Court that no filings had been made on her behalf.

71. That on April 23, 2014 Smith sent Respondent a “Client Attorney Agreement Cancellation Notice” wherein she demanded *via* Certified Mail, Return Receipt Requested, a full refund of the \$800.00 paid to Respondent for his failure to file her divorce paperwork.

72. That despite being paid in full to draft divorce papers, Respondent did not complete the work he was paid to do and did not return any of Smith’s filing fee or retainer.

73. That Smith over-paid Respondent \$800.00 by way of checks No. 1004 and No. 1048 on December 27, 2013 and February 20, 2014, respectively, for preparation and filing of divorce paperwork.

74. That Respondent never refunded the \$800.00 over-payment to Smith.

75. That despite repeated and multiple efforts to contact Respondent, he failed and refused to return Smith’s calls and text messages, meet with her, file her documents, or address Smith’s concerns.

76. That Respondent never provided Smith with a written fee agreement.

77. That during the course of his representation of Smith, Respondent did not at all times carry professional liability insurance or advise Smith in writing of this fact.

78. That Respondent failed to deposit the cost and fees he received into his Trust Account.

COUNT ONE
(ORPC 1.4(a)(2-4) – *COMMUNICATION*: INFORMED)

79. Relator incorporates and realleges the allegations contained in paragraphs 1-78 above as if fully rewritten herein.

80. That Respondent failed to properly and adequately communicate with his client as a result of the following:

- A. Failing to reasonably consult with his client about the status of her case.
- B. Failing to return telephone calls, text messages or schedule appointments.
- C. Failing to comply with Smith's request that Respondent forward a receipt for her filing fee.

81. That Respondent's failure to properly and adequately communicate with his client constitutes a violation of ORPC 1.4(a)(2-4).

COUNT TWO

(ORPC 1.5(a) – *FEES AND EXPENSES: EXCESSIVE FEE*)

82. Relator incorporates and realleges the allegations contained in paragraphs 1-81 above as if fully rewritten herein.

83. That Respondent charged Smith an excessive fee by:

- A. Accepting payment of a fee for drafting and filing a Complaint for Divorce and failing to complete or file same.
- B. Over-charging Smith for the alleged preparation of the Complaint for Divorce and failing to provide Smith a refund of her fees and costs.

84. That by charging Smith an excessive fee, Respondent has violated ORPC 1.5(a).

COUNT THREE

(ORPC 1.4(c) – *INSURANCE*)

85. Relator incorporates and realleges the allegations contained in paragraphs 1-84 above as if fully rewritten herein.

86. That at all times relevant hereto, Respondent was required by the Ohio Rules of Professional Conduct to either maintain professional liability insurance or to inform his client in writing that he did not.

87. That at all times relevant hereto, Respondent failed to either maintain professional liability insurance or inform his client in writing that he did not.

88. That Respondent's failure to either maintain professional liability insurance or inform his client in writing that he did not constitutes a violation of ORPC 1.4(c).

COUNT FOUR
(ORPC 1.1 - *COMPETENCE*)

89. Relator incorporates and realleges the allegations contained in paragraphs 1-88 above as if fully rewritten herein.

90. That Respondent entered into an agreement with Smith to file a Complaint for Divorce on her behalf.

91. That Respondent was paid a fee of \$500.00 for his services and \$300.00 for court costs.

92. That despite being paid to draft divorce papers, Respondent did not complete the work he was paid to do and never filed any documents on Smith's behalf.

93. That as a direct and proximate result of Respondent's acts of incompetence, his client was harmed by Respondent's failure to file suit on her behalf and the failure of Respondent to refund her filing fee and retainer.

94. That Respondent's incompetent representation of his client constitutes a violation of ORPC 1.1.

COUNT FIVE
(ORPC 1.3 – *DILIGENCE*)

95. Relator incorporates and realleges the allegations contained in paragraphs 1-94 above as if fully rewritten herein.

96. That all as outlined above, Respondent failed to diligently represent his client by failing to do anything on her behalf despite being paid to draft and file divorce paperwork.

97. That Respondent never prepared or filed Smith's Complaint for Divorce.

98. That as a direct and proximate result of Respondent's failure to act diligently, his client was harmed as Smith's lawsuit was never filed and her fees and costs were not refunded.

99. That Respondent's failure to diligently represent his client constitutes a violation of ORPC 1.3.

COUNT SIX
(ORPC 8.4(c) – *MISCONDUCT*)

100. Relator incorporates and realleges the allegations contained in paragraphs 1-99 above as if fully rewritten herein.

101. That Respondent affirmatively represented to his client that he filed a complaint for divorce for her when he did not.

102. That Respondent never prepared or filed any pleadings for Smith.

103. That Respondent advised Smith to meet him at court for a hearing when no hearing was scheduled.

104. That when Smith took a day off from work to attend a non-existing hearing, Respondent did not acknowledge her presence or advise her that there was in fact no hearing scheduled.

105. That Respondent's affirmative misrepresentations to his client constitute a violation of ORPC 8.4(c).

COUNT SEVEN
(ORPC 1.15 – *SAFEKEEPING FUNDS AND PROPERTY*)

106. Relator incorporates and realleges the allegations contained in paragraphs 1-105 above as if fully rewritten herein.

107. Respondent accepted \$800.00 in fees and costs from Smith and failed to safeguard her funds as follows:

- A. He failed to keep Smith's funds separate from his own.
- B. He failed to maintain a record of Smith's funds and/or bank statements, deposit slips, cancelled checks, etc.
- C. He failed to deposit unearned fees into his trust account.

108. That Respondent's failure to safeguard his client's funds constitutes violations of ORPC 1.15(a), 1.15(a)(2), 1.15(a)(4), and 1.15(c).

COUNT EIGHT
(ORPC 1.5(d)(3) – FEES AND EXPENSES: *FLAT FEE ADVISORY OF REFUND*)

109. Relator incorporates and realleges the allegations contained in paragraphs 1-108 above as if fully rewritten herein.

110. That Respondent accepted a flat fee of \$500.00 to prepare and file Smith's divorce complaint.

111. That Respondent did not have a written fee agreement with Smith.

112. That Respondent did not advise Smith in writing that if he did not complete the representation for any reason, Smith might be entitled to a refund of all or part of the fee.

113. That Respondent's failure to provide this written advisory to his client is a violation of ORPC 1.5(d)(3).

COUNT NINE

(ORPC 8.1(b) & GOV. BAR R V§4(G) – *DUTY TO COOPERATE*)

114. Relator incorporates and realleges the allegations contained in paragraphs 1-113 above as if fully rewritten herein.

115. That Respondent failed on multiple occasions to cooperate with the investigation by The Committee.

116. That examples of Respondent's failure to cooperate include, but are not limited to:

- A. Respondent failed to claim Attorney Gentile's June 12, 2014 certified mail containing The Smith Grievance;
- B. Respondent failed to respond by June 27, 2014 despite informing Attorney Gentile on June 20, 2014 that he had received The Smith Grievance by regular mail and would respond by said date;
- C. That Respondent failed to email his response to either of Attorney Gentile's email addresses despite suggesting he had done so;
- D. That despite repeated efforts to compel Respondent to provide information and respond to allegations (and ample opportunities for him to do so), he failed and refused to timely respond or provide any of the information sought regarding his handling of the Smith matter;
- E. That Respondent has never replied to The Smith Grievance.

117. That Respondent's failure to cooperate in a disciplinary investigation constitutes violations of ORPC 8.1(b) and Gov. Bar R V§4(G).

FACTUAL ALLEGATIONS II
(SUSAN HUGHES GRIEVANCE)

118. Relator incorporates and realleges the allegations contained in paragraphs 1-117 above as if fully rewritten herein.

119. That in March, 2014 Attorney Mark R. Provenza ("Attorney Provenza") was court-appointed to represent Susan Hughes ("Hughes") for a Contributing to Truancy case in the Lorain County Court of Common Pleas, Juvenile Division.

120. That Hughes had a court appearance scheduled for April 9, 2014.

121. That Hughes attempted to contact Attorney Provenza on several occasions upon being advised that he was her court-appointed attorney to discuss the status of her case and her upcoming hearing.

122. That Attorney Provenza failed and refused to return Hughes's telephone calls or make any attempt to contact Hughes.

123. That on April 9, 2014 Hughes contacted the Clerk of Courts for the Juvenile Division to request a continuance as she was ill and had yet to be contacted by Attorney Provenza.

124. That the Clerk of Court advised Hughes that she would notify the Magistrate but that she should contact her lawyer.

125. That Hughes again attempted to contact Attorney Provenza on April 9, 2014 however, Attorney Provenza failed and refused to return Hughes's telephone call or make any attempt to contact her.

126. That over the next few weeks, Hughes continued her attempts to contact Attorney Provenza but Attorney Provenza failed and refused to return Hughes's telephone calls or make any attempts to contact her.

127. That Attorney Provenza never advised Hughes of her new court date or contacted her regarding her case.

128. That on April 16, 2014 Hughes, while in the courthouse on another matter, contacted the Juvenile Clerk and inquired about her new court date.

129. That Hughes was advised that there was no new court date and that she should contact Attorney Provenza.

130. That Hughes again attempted to contact Attorney Provenza on multiple occasions but he failed and refused to return her calls or otherwise contact her.

131. That as a result of Hughes's failure to attend her hearing, and Attorney Provenza's failure to contact Hughes or the court, a *capias* warrant was issued for Hughes' arrest.

132. That on May 5, 2014 the Lorain County Sheriff's Department came to Hughes' home while she was away and attempted to serve a warrant upon her for her failure to appear for her court date.

133. That upon learning of the warrant, Hughes immediately contacted the Sheriff's Department and the Clerk of Court to find out what was going on.

134. That on May 5, 2014 after the Sheriff's Deputy departed, Hughes's mother, Linda Hughes ("Linda"), attempted to contact Attorney Provenza three times and left messages regarding the circumstances and the warrant.

135. That the Clerk of Court advised Hughes to contact her lawyer.

136. That Hughes and Linda again attempted to contact Attorney Provenza by contacting his old law firm and numerous family members.

137. That Hughes also contacted Attorney Doug Merrill, one of Hughes' other attorneys, who promises he would assist Hughes with tracking-down Attorney Provenza.

138. That Linda also contacted the Lorain County Bar Association and the Lorain County Prosecutor's Office who both advised to contact the judge and request new representation.

139. That on May 6, 2014 Linda contacted the judge's office on Hughes's behalf and on the same day Linda and Hughes again attempted to contact Attorney Provenza.

140. That also on the same day, Hughes requested a new court-appointed attorney but was told by the court that she could not have a new attorney.

141. That on May 7, 2014 Hughes again attempted to contact Attorney Provenza to no avail.

142. That on the same day, Hughes was advised by the judge's staff that they too left messages for Attorney Provenza and that he did not return their calls.

143. That on May 8, 2014 Hughes learns from the judge's staff that the court date would be rescheduled but that the warrant would not be recalled.

144. That Hughes was advised by the court to contact Attorney Provenza to get the new court date.

145. That Hughes again attempted to contact Attorney Provenza to no avail.

146. That as Hughes had no communication with Attorney Provenza, she contacted the Clerk of Court and learned that the new court date was May 15, 2014.

147. That on May 13, 2014 for the first time, Attorney Provenza contacted Hughes to discuss the case.

148. That Attorney Provenza was unaware of the new court date, unaware that there was a warrant for Hughes's arrest, and was unaware of any of the facts or circumstances of Hughes's case.

149. That Attorney Provenza did not schedule a meeting with Hughes and simply advised her that he would see her in court on the 15th.

150. That Hughes met Attorney Provenza at court for the first time on May 15, 2014 in the hearing room.

151. That Attorney Provenza did not discuss the case with Hughes in advance of the hearing but advised her that he had a "deal" for her.

152. That Attorney Provenza spend approximately five (5) minutes with Hughes before advising her to take the deal.

153. That Hughes felt coerced to plead and take the deal as she knew that she could not get another court-appointed attorney, was in tears about the situation, and felt as if she had no other options.

COUNT TEN

(ORPC 1.4(a)(2-4) – *COMMUNICATION: INFORMED*)

154. Relator incorporates and realleges the allegations contained in paragraphs 1-153 above as if fully rewritten herein.

155. That Respondent failed to properly and adequately communicate with his client as a result of the following:

- A. Failing to reasonably consult with his client about the status of her case or notify his client of upcoming court dates.

- B. Failing to return any telephone calls or schedule an appointment following his court-appointment.
- C. Failing to properly discuss her case prior to advising his client to accept a plea deal.

156. That Respondent's failure to properly and adequately communicate with his client constitutes a violation of ORPC 1.4(a)(2-4).

COUNT ELEVEN
(ORPC 1.3 – *DILIGENCE*)

157. Relator incorporates and realleges the allegations contained in paragraphs 1-156 above as if fully rewritten herein.

158. That all as outlined above, Respondent failed to diligently represent his client by:

- A. Failing to do anything on her behalf despite being court-appointed to represent her in a juvenile court matter and recommending she take a plea-deal at the first pre-trial.
- B. Contacting Hughes only once.
- C. Never scheduling any appointments with her.
- D. Never advising her of upcoming court dates.
- F. Never researching her defenses or reviewing her paperwork.
- G. Failing to review the docket to obtain the court date or warrant information.
- H. Requesting discovery or reviewing in detail the State's case prior to recommending a plea deal.

159. That as a direct and proximate result of Respondent's failure to act diligently, his client was harmed as a warrant was issued for Hughes' arrest for failure to appear at a court hearing and she took a plea-deal that she felt coerced and unprepared to take.

160. That Respondent's failure to diligently represent his client constitutes a violation of ORPC 1.3.

COUNT TWELVE
(ORPC 1.4(c) – *INSURANCE*)

161. Relator incorporates and realleges the allegations contained in paragraphs 1-160 above as if fully rewritten herein.

162. That at all times relevant hereto, Respondent was required by the Ohio Rules of Professional Conduct to either maintain professional liability insurance or to inform his client in writing that he did not.

163. That at all times relevant hereto, Respondent failed to either maintain professional liability insurance or inform his client in writing that he did not.

164. That Respondent's failure to either maintain professional liability insurance or inform his client in writing that he did not constitutes a violation of ORPC 1.4(c).

COUNT THIRTEEN
(ORPC 8.4(c) – *MISCONDUCT*)

165. Relator incorporates and realleges the allegations contained in paragraphs 1-164 above as if fully rewritten herein.

166. That Respondent never drafted or completed a written response to the Smith or Hughes grievances.

167. That Respondent affirmatively represented to Attorney Gentile that he had sent her his written response when he had not.

168. That Respondent's affirmative misrepresentations to Attorney Gentile, the investigator, constitute a violation of ORPC 8.4(c).

COUNT FOURTEEN

(ORPC 8.1(b) & GOV. BAR R V§4(G) – *DUTY TO COOPERATE*)

169. Relator incorporates and realleges the allegations contained in paragraphs 1-168 above as if fully rewritten herein.

170. That Respondent failed on multiple occasions to cooperate with the investigation by The Committee.

171. That examples of Respondent's failure to cooperate include, but are not limited to:

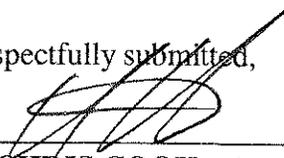
- A. Respondent failed to claim Attorney Gentile's June 12, 2014 certified mail containing The Hughes Grievance;
- B. Respondent failed to respond by June 27, 2014 despite informing Attorney Gentile on June 20, 2014 that he had received The Hughes Grievance by regular mail and would respond by said date;
- C. That Respondent failed to email his response to either of Attorney Gentile's email addresses despite suggesting he had done so;
- D. That despite repeated efforts to compel Respondent to provide information and respond to allegations (and ample opportunities for him to do so), he failed and refused to timely respond or provide any of the information sought regarding his handling of the Hughes matter;
- E. That Respondent has never replied to The Hughes Grievance.

172. That Respondent's failure to cooperate in a disciplinary investigation constitutes violations of ORPC 8.1(b) and Gov. Bar R V§4(G).

WHEREFORE, pursuant to Gov. Bar R V, Relator alleges that Respondent, Attorney Mark R. Provenza, has violated the Ohio Rules of Professional Conduct and the Ohio Rules for the Government of the Bar.

As such, Relator respectfully requests that the Board proceed accordingly; certify this matter for prosecution; and allow this matter to progress forthwith.

Respectfully submitted,



D. CHRIS COOK, #0061073
Attorney for Relator & Bar Counsel
Lorain County Bar Association
Legal Ethics and Grievance Committee
520 Broadway, Third Floor
Lorain, OH 44052
PH: (440) 246-2665
FX: (440) 246-2670
email: cooklaw@centurytel.net

CHAIRMAN'S AUTHORIZATION

The undersigned, Michael Illner, Chairman of the Lorain County Bar Association Legal Ethics and Grievance Committee, hereby certifies that Attorney D. Chris Cook, Bar Counsel, is duly authorized to represent Relator in the premises and has accepted the responsibility of prosecuting this complaint to its conclusion. After investigation, Relator believes reasonable cause exists to warrant a hearing on such complaint *in re*: MARK R. PROVENZA

Dated: September 24, 2014.



MICHAEL ILLNER
Chairman, LCBA Legal Ethics and
Grievance Committee

PROOF OF SERVICE

The undersigned represents that a copy of the foregoing Complaint was served upon the following via Hand-Delivery and/or Fed-Ex this 20th day of September, 2014:

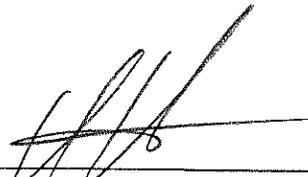
Richard Dove, Esq.
Secretary of the Board of Commissioners
on Grievance and Discipline
65 S. Front Street, 5th Floor
Columbus, OH 43215-3431

Scott Drexel, Esq.
Supreme Court of Ohio
Office of Disciplinary Counsel
250 Civic Center Drive, #325
Columbus, OH 43215-7411

Ohio State Bar Association
c/o Eugene P. Whetzel, Esq.
Certified Grievance Committee
1700 Lakeshore
Columbus, OH 43204

Lorain County Bar Association
627 W. Broad Street
Elyria, Ohio 44035

Mark R. Provenza, Esq.
2550 Broadway Avenue
Lorain, OH 44052
Respondent



D. CHRIS COOK
Attorney for Relator & Bar Counsel
Lorain County Bar Association
Legal Ethics and Grievance Committee

<p>2. Article Number</p>  <p>7160 3901 9849 1364 9130</p>	COMPLETE THIS SECTION ON DELIVERY	
<p>3. Service Type CERTIFIED MAIL</p>	<p>A. Received by (Please Print Clearly) <i>Mark Provenza</i></p>	<p>B. Date of Delivery <i>11-15-14</i></p>
<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	<p>C. Signature <i>x Mark Provenza</i> <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:</p> <p style="text-align: center;">↓</p> <p>Mark R. Provenza 2550 Broadway Avenue Lorain, OH 44052</p>	<p>D. Is delivery address different from item 1? If YES, enter delivery address below: <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p style="text-align: center;"><u>Reference Information</u></p> <p>14-078 Provenza Pc Materials</p> <p>Boc/g&d</p>		
<p>PS Form 3811, January 2005</p>		<p>Domestic Return Receipt</p>

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES & DISCIPLINE

65 SOUTH FRONT STREET, 5TH FLOOR, COLUMBUS, OH 43215-3431

Telephone: 614.387.9370 Fax: 614.387.9379

www.supremecourt.ohio.gov

DAVID E. TSCHANTZ
CHAIR

PAUL M. DE MARCO
VICE-CHAIR

RICHARD A. DOVE
SECRETARY

D. ALLAN ASBURY
SENIOR COUNSEL

HEIDI WAGNER DORN
COUNSEL

December 9, 2014

Mark Russell Provenza
2550 Broadway Avenue
Lorain, OH 44052

Re: Lorain County Bar Association v. Mark Russell Provenza, Case No. 2014-078

Dear Mr. Provenza:

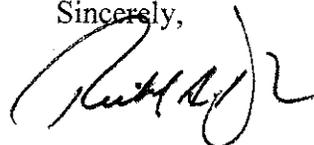
On October 30, 2014, the Board of Commissioners on Grievances and Discipline certified a formal complaint naming you as the respondent in the above-captioned disciplinary matter. A copy of the enclosed complaint was sent to you via certified mail and service was completed on November 15, 2014. As of the date of this letter, the Board has not received your answer to the formal complaint or a motion to extend the time for filing an answer.

Pursuant to Gov. Bar R. V, Section 6a, you are hereby notified that the Board will certify your default to the Supreme Court thirty days from the date of this letter. To avoid certification of default, you must file an answer to the formal complaint with the Board prior to the expiration of the thirty-day period. No extension of time to file an answer is authorized by the rule.

Please note that the certification of default may result in your immediate suspension from the practice law by the Supreme Court of Ohio.

If you have questions regarding this matter, please contact the Board of Commissioners on Grievances and Discipline at (614) 387-9370.

Sincerely,



Richard A. Dove

Enclosure

cc: D. Chris Cook, Bar Counsel
Michael Illner, Chair

Attachment C