

**BEFORE THE BOARD OF PROFESSIONAL CONDUCT  
OF THE SUPREME COURT OF OHIO**

|   |   |   |
|---|---|---|
| <b>In Re:</b>   | : | <b>Case No. 2014-061</b>                |
| <b>Complaint against</b>                                      | : |   |
| <b>David John Gerchak</b><br><b>Attorney Reg. No. 0069060</b> | : | <b>Findings of Fact,</b>                |
|   | : | <b>Conclusions of Law, and</b>          |
| <b>Respondent</b>   | : | <b>Recommendation of the</b>            |
|   | : | <b>Board of Professional Conduct of</b> |
| <b>Mahoning County Bar Association</b>                        | : | <b>the Supreme Court of Ohio</b>        |
|   | : |   |
| <b>Relator</b>  | : |   |

**OVERVIEW**

{¶1} This matter was heard on January 23, 2015, in Columbus before a panel consisting of commissioners McKenzie K. Davis, Lawrence R. Elleman, and Patricia A. Wise, 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 pursuant to Gov. Bar R. V, Section 11.

{¶2} Respondent was present at the hearing represented by John J. Juhasz. David C. Comstock, Jr. appeared on behalf of Relator.

{¶3} This case involves allegations of professional misconduct arising from Respondent's representation of a client who was seeking a pardon from the Governor. Approximately three years prior to the representation that gave rise to this disciplinary complaint, Respondent represented the client in the criminal proceedings that resulted in the conviction from which the client wished to be pardoned.

{¶4} Prior to the hearing in this matter, the parties submitted stipulations of fact. The parties stipulated to three violations charged in the formal complaint and the dismissal of two

violations. The parties further stipulated to aggravating and mitigating factors and a sanction of a two-year suspension, stayed in its entirety upon conditions.

{¶5} Based upon the parties' stipulations and evidence presented at the hearing, the panel finds, by clear and convincing evidence, that Respondent engaged in professional misconduct, as outlined below. Upon consideration of the applicable aggravating and mitigating factors and case precedents, the panel recommends that Respondent be suspended for a period of two years, with the suspension stayed in its entirety upon conditions set forth below.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

{¶6} Respondent was admitted to the practice of law in the state of Ohio on May 11, 1998 and is subject to the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio

{¶7} Respondent was previously sanctioned for violating Prof. Cond. R. 8.4(c) and Prof. Cond. R. 8.4(d) and was suspended for one year, with the entire suspension stayed on the condition that he comply with the terms of a three-year contract with the Ohio Lawyers Assistance Program. *Disciplinary Counsel v. Gerchak*, 130 Ohio St.3d 143, 2011-Ohio-5075.

{¶8} Respondent also was suspended on May 24, 2007 based on his failure to complete CLE requirements for the 2004-2005 reporting period. *In re Gerchak*, 2007-Ohio-2487. Respondent was reinstated to the practice of law on June 11, 2007. *In re Gerchak*, 2007-Ohio-2818.

{¶9} On September 3, 2014, a disciplinary complaint filed by Realtor was certified to the Board. The complaint charges Respondent with the following rule violations in connection with his representation of Jeff Blanche: Prof. Cond. R. 1.3 [diligence]; Prof. Cond. R. 1.5(a) [charging an illegal or clearly excessive fee]; Prof. Cond. R. 1.5(b) [failure to communicate to

the client regarding the nature and scope of representation and the basis or rate of fees and expenses]; Prof. Cond. R. 1.15(a) [failure to hold the funds or property of a client in connection with a representation separate from the lawyer's own property]; and Prof. Cond. R. 1.15(c) [failure to deposit fees paid in advance in an IOLTA].

### **Blanche Matter**

{¶10} The parties entered into stipulations of fact that were accepted by the panel and are incorporated by reference in this report.

{¶11} Respondent had represented Jeff Blanche in 2008 in connection with Blanche's indictment for felony assault on a police officer. Blanche eventually entered a plea of guilty to four counts of assault on a police officer and, in September 2008, was sentenced to three years of community control with conditions.

{¶12} In August 2011, Blanche consulted with Respondent about the possibility of having his criminal convictions expunged or sealed. Respondent advised Blanche that Blanche was not eligible to pursue an expungement and that his only recourse was a gubernatorial pardon.

{¶13} On or about August 15, 2011, Blanche paid Respondent \$750 to pursue the pardon. Respondent did not deposit the \$750 in his IOLTA. No fee agreement was reduced to writing.

{¶14} Respondent provided Blanche with a form to obtain fingerprints and with other instructions to collect information to pursue the pardon. On at least one occasion, Respondent provided Blanche with a duplicate form. Blanche never returned the form or other information to Respondent, and Respondent took no steps to secure the pardon. Respondent kept no time records regarding this representation.

{¶15} Blanche was arrested for OVI on November 20, 2012 and contacted Respondent

to represent him in connection with the OVI charges.

{¶16} Blanche and Respondent agreed that the \$750 previously paid by Blanche in relation to the pardon would now be applied to Respondent's representation of Blanche on the OVI arrest. Blanche subsequently made three additional payments to Respondent: (a) \$250 on or about December 4, 2012; (b) \$200 on or about December 6, 2012; and (c) \$200 on or about December 21, 2012. Thus, Blanche paid Respondent a total of \$1,400 for representation in the OVI matter.

{¶17} Respondent deposited none of these payments in his IOLTA, and there was no written fee agreement between Respondent and Blanche.

{¶18} Blanche terminated the representation on or about December 21, 2012. Prior to that time, Respondent and Blanche had a number of telephone conversations about the OVI case, and Blanche came to Respondent's home office.

{¶19} Although his representation of Blanche had been terminated by the client, Respondent filed a motion for discovery with the county court in which the OVI charge was pending.

{¶20} Blanche later entered a plea of guilty to the OVI charge with another attorney who did not enter an appearance or file pleadings on behalf of Blanche.

{¶21} With regard to his representation of Blanche in the OVI matter, Respondent did not provide Blanche with a monthly statement or reconciliation of time spent on the case, the portion of the \$1,400 disbursed, or any portion of the fee remaining. As of the date of the hearing, even though Respondent had performed some work on the OVI matter, Respondent reimbursed the entire \$1,400 to Jeff Blanche.

{¶22} Based on the parties stipulations and the evidence presented, the panel finds, by

clear and convincing evidence, that Respondent violated Prof. Cond. R. 1.5(b), Prof. Cond. R. 1.15(a), and Prof. Cond. R. 1.15(c). Upon recommendation of Relator, the panel dismisses the alleged violations of Prof. Cond. R. 1.3 and Prof. Cond. R. 1.5(a).

### **MITIGATION, AGGRAVATION, AND SANCTION**

{¶23} The parties stipulated to, and the panel finds, the following aggravating factor: prior disciplinary offenses. With regard to prior discipline, the panel notes that Respondent was sanctioned for misconduct by the Supreme Court in 2011 and also was suspended in 2007 for noncompliance with CLE requirements. See ¶¶7-8, *supra*.

{¶24} The parties stipulated to, and the panel finds, the following mitigating factors: full reimbursement of fees paid, even though some work was performed; absence of a selfish or dishonest motive; full and free disclosure to the Board and a cooperative attitude toward the proceedings; acknowledgment of wrongdoing; acceptance of the benefit of mentoring; community involvement; and evidence of good character or reputation.

{¶25} The parties have submitted a joint sanction recommendation and have filed separate briefs citing case law in support of the recommended sanction. The parties recommend that Respondent be suspended from the practice of law for a period of two years, with the suspension stayed in its entirety on the following conditions: a two-year period of probation during which Respondent would be required to work with a monitoring attorney and obtain a minimum of three hours of CLE annually on law office management; pay the costs of this proceeding.

{¶26} The panel reviewed three cases in considering the recommended sanction. In *Akron Bar Assn. v. Tomer*, 138 Ohio St.3d 302, 2013-Ohio-5494, respondent violated Prof. Cond. R. 1.3 and 1.15, although the incidents were more and varied than in this matter, and there

were other rule violations. Nevertheless, the Court imposed a two-year suspension, stayed with the conditions of monitored probation, 12 hours of office management CLE and no further misconduct

{¶27} In *Disciplinary Counsel v. Dockry*, 133 Ohio St.3d 527, 2012-Ohio-5014, the respondent had multiple violations of Prof. Cond. R. 1.15(a) as well as violations of Prof. Cond. R. 8.4(c) and Prof. Cond. R. 8.4(h). There were significant mitigating factors including cooperation in the proceedings, payment of restitution, and good character and reputation and, as here, only one aggravating factor; one-year suspension. In *Dockry*, the Court imposed a one-year suspension stayed on conditions of monitored probation and no further misconduct.

{¶28} In *Disciplinary Counsel v. Doellman*, 127 Ohio St.3d 411, 2010-Ohio-5990, the Court concluded that a twelve-month suspension, stayed on conditions, was appropriate for a sole practitioner where the misconduct did not involve deception and dishonesty and there were no aggravating factors. In addition, Doellman had signed a four-year contract with the Ohio Lawyers Assistance Program.

{¶29} Based upon the foregoing, the panel recommends that Respondent be suspended from the practice of law for a period of two years, with the suspension stayed in its entirety on the following conditions: a two-year period of probation during which Respondent shall work with a monitoring attorney and obtain a minimum of three hours of CLE annually on law office management; pay the costs of this proceeding; and commit no further misconduct.

#### **BOARD RECOMMENDATION**

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct of the Supreme Court of Ohio considered this matter on February 13, 2015. The Board adopted the findings of fact, conclusions of law, and recommendation of the panel and recommends that

Respondent, David John Gerchak, be suspended from the practice of law for a period of two years, with the suspension stayed in its entirety on the conditions set forth in ¶29 of this report, and that Respondent be ordered to pay the costs of these proceedings.

**Pursuant to the order of the Board of Professional Conduct of the Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendation as those of the Board.**

  
\_\_\_\_\_  
RICHARD A. DOVE, Director