

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

**In re:**

**Case No. 2015-040**

**Complaint against**

**Parker Lee Clifton  
Attorney Reg. No. 0081815**

**Respondent**

**Warren County Bar Association**

**Relator**

**Findings of Fact,  
Conclusions of Law, and  
Recommendation of the  
Board of Professional Conduct  
of the Supreme Court of Ohio**

**OVERVIEW**

{¶1} This matter was heard on December 21, 2015 in Columbus before a panel consisting of Tim L. Collins, Lawrence A. Sutter III, and David L. Dingwell, 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 Brian M. Spiess. Kenneth E. Peller appeared on behalf of Relator.

{¶3} The parties entered into 17 written stipulations of fact. Ten joint exhibits were admitted into evidence at the hearing. Respondent was the only witness to testify at the hearing. The panel finds the following facts to have been proven by clear and convincing evidence.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

{¶4} Respondent was admitted to the practice of law in the state of Ohio on May 14, 2007 and is subject to the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio. He is also admitted to the practice of law in the state of Kentucky. Respondent has no prior discipline.

{¶5} In February 2012, Respondent was employed by the Lavin Law Group LLC in Lebanon, Ohio.

{¶6} On February 28, 2012, Respondent met with Franklin Henry to discuss the preparation of estate planning documents for Franklin's father, Frank Henry. Frank Henry had three children: Franklin Henry; Joanna Davis; and Steve Henry.

{¶7} On March 14, 2012, Respondent met with both Franklin Henry and his father, Frank Henry, regarding the preparation of estate planning documents for Frank Henry.

{¶8} Following the March 14, 2012 meeting, Respondent prepared a Trust Intake Sheet ("Sheet"). Joint Ex. 1. On the Sheet, Respondent listed Frank Henry's children as Franklin Henry and Steven Henry. Respondent inadvertently failed to list Joanna Davis as a child of Frank Henry on the Sheet.

{¶9} The Sheet that inadvertently listed only two of the three children was used to prepare the Pour-Over Will of Frank E. Henry ("Pour-Over Will"). Joint Ex. 2. The Pour-Over Will included the correct distribution of Frank Henry's probate estate into the Frank E. Henry Family Preservation Trust ("Trust").

{¶10} The Pour-Over Will also correctly listed Franklin Henry as executor.

{¶11} However, the Pour-Over Will incorrectly stated that Frank Henry had two children, Franklin Henry and Steven Henry. The Pour-Over Will inadvertently excluded Joanna Davis because the information was taken from the Sheet on which Respondent failed to list Joanna Davis.

{¶12} The inadvertent omission of Joanna Davis' name as one of Frank Henry's children on the Pour-Over-Will did not affect any of the distributive provisions or fiduciary appointments in any of Frank Henry's estate planning documents.

{¶13} Frank E. Henry's intention was to leave his entire estate to his son, Franklin Henry. Hearing Tr. 16-17.

{¶14} Neither Joanna Davis nor Steven Henry (Frank's other son) were beneficiaries of either the Pour-Over Will or the Trust that was the sole beneficiary designated in the Pour-Over Will. Hearing Tr. 40-41.

{¶15} Steven Henry was designated only as a contingent beneficiary of the Trust, but Joanna was disinherited entirely. *Id.*

{¶16} Frank Henry signed the Pour-Over Will on April 2, 2012 without noticing the inadvertent omission of Joanna Davis' name.

{¶17} Frank Henry passed away on February 1, 2013. From April 2, 2012 through February 1, 2013, no one noticed the inadvertent omission of Joanna Davis' name. Hearing Tr. 38-39.

{¶18} In May 2013, Respondent was retained by executor Franklin Henry to open the Frank Henry estate for probate.

{¶19} After being retained by Franklin Henry to assist with the administration of Frank Henry's estate, Respondent first noticed that Joanna Davis' name was omitted from the provisions on the Pour-Over Will that identified Frank Henry's children.

{¶20} Prior to filing documents with the probate court to admit Frank Henry's Pour-Over Will to probate, Respondent altered page 1 of the Pour-Over Will so that the provision that identified Frank Henry's children now identified all three children and not just Franklin and Steven.

{¶21} Respondent altered the Pour-Over Will without consulting with his client, Franklin Henry, about the alteration. Hearing Tr. 33-34. Respondent also did not disclose the alteration to either Joanna or to Steven. *Id.* The altered Pour-Over Will was admitted as Joint Ex. 3.

{¶22} On August 12, 2013, Respondent prepared an application (Form 2.0, Warren County Probate Court) to probate the altered Pour-Over Will. Joint Ex. 4. The application was signed by Franklin Henry, as the executor, and Respondent.

{¶23} On August 15, 2013, Respondent filed the application to probate the Pour-Over Will in the probate court of Warren County. The filing attached the Pour-Over Will (Joint Ex. 3) that contained the alteration Respondent made to page 1 of the Pour-Over Will to add the name Joanna Davis to the list of children.

{¶24} Nothing contained in any of the documents filed with the probate court disclosed that Respondent had altered page 1 of the Pour-Over Will.

{¶25} Following his submission of the Pour-Over Will, Respondent was contacted by William H. Kaufman, attorney for Joanna Davis, who questioned the accuracy of the documents filed in the court.

{¶26} Joanna Davis had come into possession of a copy of the original, unaltered Pour-Over Will executed by her father. Joint Ex. 2. Her possession of a copy of the unaltered document led her counsel to question the altered Will that was admitted to probate. Joint Ex. 3.

{¶27} As a consequence, Respondent filed a motion to withdraw as counsel for executor Franklin Henry on November 26, 2014. Joint Ex. 5. In the motion, Respondent fully disclosed to the probate court that he added Joanna Davis' name to the provision on page 1 of the Pour-Over Will, explained why he did so, and explained that he sought withdrawal so that he could provide testimony regarding the alteration.

{¶28} Respondent's testimony regarding why he improperly altered the Pour-Over Will was as follows:

Obviously frustration. I think embarrassment. I have had another case -- I do some estate administration. I had a case where -- it was probably six months prior to this, maybe longer -- but where it was a similar type of Will, not one that I drafted, and it was submitted with incorrect family information, ended up causing a lot of confusion with the Court. And I was, I guess, being selfish in trying to stay ahead of that confusion.

Hearing Tr. 23.

{¶29} Neither the original drafting error nor the subsequent alteration had any impact on the disposition of Frank Henry's estate assets.

{¶30} There was no claim by Joanna or anyone else that Frank Henry was mentally incompetent, coerced, or under any duress when he executed the Pour-Over Will or the trust instrument that designated Franklin Henry as the sole beneficiary of Frank Henry's estate.

{¶31} Accordingly, there is no dispute that the alteration was anything other than Respondent's misguided attempt to avoid personal embarrassment of having made the original drafting error.

{¶32} Respondent also selfishly sought to avoid the inconvenience of responding to the probate court's questions about the discrepancy between the page 1 provision of the Pour-Over Will (that did not list Joanna as one of Frank's children) and Standard Probate Court Form 1.0 that would have listed Joanna Davis as one of Frank Henry's surviving children.

{¶33} On January 12, 2015, Respondent self-reported his misconduct when he prepared a letter to an investigator for Relator explaining the facts regarding the Pour-Over Will, his error and his efforts to alter the Pour-Over Will. Joint Ex. 6.

{¶34} On June 11, 2015, Respondent waived a determination of probable cause by a panel of the Board of Professional Conduct. Joint Ex. 7.

{¶41} Although the parties stipulated that Respondent did not act from a selfish motive, the panel rejects this stipulation based upon Respondent’s candid testimony that he did act out of a selfish motive. Hearing Tr. 23.

{¶42} Relator and Respondent stipulated to a recommended sanction of a public reprimand.

{¶43} The Supreme Court of Ohio has held that “[w]e will not allow attorneys who lie to courts to continue practicing law without interruption.” *Disciplinary Counsel v. Rohrer*, 124 Ohio St.3d 65, 2009-Ohio-5930 at ¶41, quoting *Cleveland Bar Assn. v. Herzog*, 87 Ohio St.3d 215, 217, 1999-Ohio-30.

{¶44} However, the Court has also recognized that mitigating circumstances, even in light of an attorney’s “filing false and misleading statements” to a court, may warrant a sanction less than an actual suspension from the practice of law. *Akron Bar Assn. v. Groner*, 131 Ohio St.3d 194, 2012-Ohio-222 at ¶26.

{¶45} In support of the stipulated sanction, the parties cite the following cases: *Columbus Bar Assn. v. Craig*, 131 Ohio St.3d 364, 2012-Ohio-1083; *Disciplinary Counsel v. Mezacapa*, 101 Ohio St.3d 156, 2004-Ohio-302; and *Disciplinary Counsel v. Wilson*, 142 Ohio St.3d 439, 2014-Ohio-5487.

{¶46} The three cases cited by the parties in support of the proposed sanction of a public reprimand all involve attorneys that improperly signed other persons’ names to written instruments and then falsely notarized those documents prior to submitting them for recording or for use in court proceedings.

{¶47} In all three of those cases, similar rule violations were charged and found to be violated. In all three cases, the Court sanctioned the attorneys with a public reprimand.

{¶48} The panel, having reviewed the cases submitted by the parties, as well as giving very careful consideration to the Court's decisions in both *Rohrer* and *Groner*, agree with the parties that a public reprimand is the more appropriate sanction in this instance.

{¶49} In *Rohrer*, unlike this case, the attorney made multiple misrepresentations to a court arising out of his representation of a juvenile, including violating a court order. The Court, based upon that conduct, determined that an actual six-month suspension from the practice of law was appropriate.

{¶50} In *Groner*, the attorney filed a pleading with a probate court that contained misrepresentations and false accusations against an individual who applied to administer an estate. The Court, based on the mitigating circumstances, held that a stayed six-month suspension was appropriate.

{¶51} In this case, the facts are far less egregious than in *Rohrer* and *Groner*. There was absolutely no prejudice caused by the misrepresentation. The alteration of the Pour-Over Will changed nothing in the outcome of who was to inherit Frank Henry's estate.

{¶52} Accordingly, the panel believes that this case is more closely analogous to the three cases cited by the parties, especially considering the other mitigating factors that present themselves in this case.

{¶53} The panel is mindful of the need to protect the public. Respondent's conduct following his improper alteration of the document, along with his cooperation and remorseful attitude during the hearing, demonstrates that he fully understands the potential severity of this type of conduct so that it will never occur again.

{¶54} The panel, having considered the case law cited, the violations, the lack of any aggravating factors, and the mitigating factors and circumstances present here, recommends that Respondent receive a public reprimand.

**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 12, 2016. The Board adopted the findings of fact, conclusions of law, and recommendation of the panel and recommends that Respondent, Parker Lee Clifton, be publicly reprimanded and 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.**



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RICHARD A. DOVE, Director