

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

In re:

Case No. 2015-049

Complaint against

**Steven Bruce Beranek
Attorney Reg. No. 0066847**

Respondent

Medina 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 came before a panel consisting of Judge Karen Lawson, McKenzie Davis, and Charlie Faruki, 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 appeared pro se. Patricia Walker, Melissa Piszczek, and William Steiger II appeared on behalf of Relator.

{¶3} This matter came before the panel on several stipulations, including both facts and rule violations. Based upon the parties' stipulations the panel finds, by clear and convincing evidence, that Respondent engaged in professional misconduct, as described below. Upon consideration of the applicable aggravating and mitigating factors and case law, the panel recommends that Respondent be publicly reprimanded.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶4} Respondent was admitted to the practice of law in the state of Ohio on November 12, 1996 and is subject to the Code of Professional Conduct and the Rules for the Government of the Bar of Ohio.

{¶5} On November 1, 2011, Respondent was suspended for attorney registration violations and was reinstated on November 4, 2011. *In re Beranek*, 2011-Ohio-5627.

{¶6} On October 13, 2015, the parties filed a consent to discipline. In the consent to discipline, Respondent admitted that he was solely responsible for the lack of communication with the McAlpins and admitted to the alleged violations of Prof. Cond. R. 1.4(a)(4) [a lawyer shall comply as soon as practicable with reasonable requests for information from the client] and Prof. Cond. R. 1.4(c) [failure to notify the client of a lack of malpractice insurance].

{¶7} As a result of the fact that Relator's complaint and the proffered consent to discipline did not have sufficient details on the dates of the misconduct, an untreated mental disorder that was referenced in the agreement, and Respondent's subsequent contact with the Ohio Lawyer's Assistance Program (OLAP), the panel chair held a number of telephone conferences with the parties asking for additional information to be furnished. Those telephone conferences included calls on October 15, 2015, October 26, 2015, November 12, 2015, and December 4, 2015.

{¶8} A revised consent to discipline was filed on November 4, 2015. Among other details, the revised consent to discipline recited in ¶11 that "Respondent has worked since September, 2015 with the law firm of Corsaro & Associates. As the Corsaro & Associates law firm has many lawyers and staff people, Respondent has a support system that he did not have at the time of the violations of the Ohio Rules of Professional Conduct." In addition, in the stipulated mitigating factors, the date of death of Respondent's infant son was provided. That paragraph continues: "Respondent reports that he has been able to cope with the death of his son and his mental status has greatly improved."

{¶9} The revised consent agreement also indicated that Respondent has cooperated with the proceedings and has timely responded to any requests for information. Relator has given information about OLAP to Respondent.

{¶10} As the involvement of OLAP was pending, the panel chair asked for the panel to be advised as to the outcome of any such discussions.

{¶11} The consent to discipline was not accepted.

{¶12} On November 19, 2015, the parties filed a document titled supplemental revised stipulation of facts. Notwithstanding the title of the document, there was no previous stipulation of facts; there were only the two consent to discipline filings.

{¶13} In that supplemental revised stipulation of facts, the parties stipulated to the following facts.

{¶14} In 2009, Respondent was retained by the McAlpins for legal advice concerning the collection of money in a partnership dispute. When Respondent was initially engaged, he worked in a firm with other lawyers, and the McAlpins continued to employ Respondent after he left that firm to become a solo practitioner in July 2010.

{¶15} When he became a solo practitioner, Respondent was unable to afford professional liability insurance. Before the grievance was filed, Respondent did not inform his clients that he did not maintain professional liability insurance or that he had let his policy lapse.

{¶16} On February 25, 2015, Respondent sent letters to his clients concerning his lack of professional liability insurance, but did not send such a letter to the McAlpins as Respondent thought that he was not allowed to contact the McAlpins after they filed the grievance against him.

{¶17} In January 2011, Respondent filed suit against several persons including two companies in which the McAlpins had an ownership interest. Both companies filed for bankruptcy

protection on August 14, 2013 before the scheduled trial. Respondent represented the McAlpins in the bankruptcy cases, as well as in the litigation. On March 21, 2014, Respondent met with the McAlpins, but after that date Respondent refused to respond to the McAlpins' numerous and varied attempts to contact Respondent. The McAlpins were forced to track down Respondent at his home in Medina County on August 11, 2014. That was Respondent's last contact with the McAlpins prior to the filing of the complaint in this matter. The McAlpins completed their grievance form on August 11, 2014 and Relator received it shortly thereafter.

{¶18} Eventually the McAlpins were presented with settlement checks from the trustees in the bankruptcy cases. Although the dates on which the McAlpins received those settlement checks are unknown, the McAlpins report that they received the checks in approximately August and December 2014. The McAlpins noticed that their case was closed. Most of the events in the bankruptcies occurred while the McAlpins were unable to contact Respondent. Respondent is solely responsible for the lack of communications with the McAlpins.

{¶19} Respondent believed that he could not communicate with the McAlpins after they filed their grievance.

{¶20} On October 26, 2015, Respondent was informed that he could communicate with the McAlpins.

{¶21} On November 18, 2015, Respondent called the McAlpins to attempt to explain what had happened in their case, but the McAlpins did not answer that call and as of November 19, 2015, the date of the stipulation, the McAlpins have not returned Respondent's call. November 18, 2015 was the first date on which Respondent attempted to talk with the McAlpins since March 21, 2014.

{¶22} Respondent has worked since September 2015 with the law firm of Corsaro & Associates. The Corsaro & Associates law firm has many lawyers and staff people, so that Respondent had a support system that he did not have at the time of the alleged violations.

{¶23} On January 6, 2016, the parties filed a stipulation of facts. In that stipulation of facts, the parties set forth again the story of their representation of the McAlpins. The parties stipulated that Respondent violated Prof. Cond. R. 1.4(a)(4) and Prof. Cond. R. 1.4(c). Following the receipt of these stipulations, the panel chair waived a hearing in this matter on January 28, 2016.

{¶24} The panel finds, by clear and convincing evidence, that Respondent violated Prof. Cond. 1.4(a)(4) and Prof. Cond. R. 1.4(c).

MITIGATION, AGGRAVATION, AND SANCTION

{¶25} In the supplemental revised stipulation of facts, the parties also stipulated to four mitigating factors: (1) the absence of a dishonest or selfish motive; (2) full and free disclosure to the Board and a cooperative attitude toward proceedings; (3) although his depression does not meet the criteria to qualify as a mitigating factor as Respondent did not seek professional help for it before November 2015, Respondent spoke with OLAP on November 16, 2015 and was scheduled for an evaluation by them on December 15, 2015, and Respondent intends to follow-up with all recommendations made by OLAP; and (4) Respondent reports that at this time he is better able to cope with the death of his son and his mental status has greatly improved, and Relator reports that he has cooperated with the proceedings and has timely responded to all requests for information. As the OLAP meeting was scheduled on December 15, 2015, the panel chair asked for a report after that time.

{¶26} The parties further stipulated that although Respondent reports depression caused by a number of factors, including the death of his infant son on April 8, 2011, that depression does not meet the criteria to qualify as a mitigating factor because Respondent did not seek professional help for the depression prior to November 2015. On November 16, 2015, Respondent talked with OLAP and then attended the scheduled evaluation on December 15, 2015. Respondent was found to have a low level of depression. OLAP recommended that Respondent begin therapy and call OLAP twice a week. Respondent intends to follow through with all recommendations made by OLAP. Respondent reports that he is better able to cope with the death of his son and his mental status has greatly improved. The parties stipulated to a recommended sanction of a public reprimand and provided legal authorities supporting that sanction.

{¶27} On January 19, 2016, the parties filed a document titled supplemental stipulation of facts. In addition to a repetition of the previously-stipulated facts, Exhibit A to the supplemental stipulation of facts is a copy of the two-year contract between Respondent and OLAP, signed December 15, 2015. Attached as Exhibit B to the supplemental stipulation of facts is a confidential letter of January 13, 2016 from Kristine M. Carson, LPC, a clinical associate with OLAP, to Relator. That letter explains that Carson met with Respondent on December 15, 2015 to conduct a detailed psychosocial assessment, including both the substance use and mental health evaluation, and that Respondent was engaged and cooperative during the assessment. The letter states that the diagnosis is Adjustment Disorder with Depressed Mood, Persistent. OLAP made five recommendations: (1) individual counseling and following the therapist's treatment recommendations; (2) explore resources at OSUstar.org; (3) engage in self-care by improving management of medical conditions and improving diet, sleep, and exercise; (4) sign a two-year

mental health contract for support and monitoring; and (5) call OLAP twice a week to check in with OLAP. Respondent signed a two-year contract with OLAP on December 15, 2015.

{¶28} In the supplemental revised stipulation of facts, the parties further stipulated to the aggravating factor that there is a prior disciplinary offense of a three-day suspension for failure to timely register as a lawyer. In the January 6, 2016 stipulation of facts, the parties stipulated to the absence of a dishonest or selfish motive, and stipulated that there was full and free disclosure to the Board and a cooperative attitude toward these proceedings.

{¶29} The panel's view is that this incident with the McAlpins was an isolated one, that Respondent now has a plan with OLAP, and that as Respondent is now in a different practice environment—a law firm with support staff—the panel believes that recurrence of similar conduct or of future problems is unlikely.

{¶30} The panel further concurs in the stipulated aggravating factor of prior discipline and the stipulated mitigating factors of no selfish or dishonest motive, full and free disclosure to the Board, and a cooperative attitude toward the proceeding.

{¶31} The panel notes that Respondent reported suffering from depression caused by a number of factors, including the death of his infant son in April 2011. However, condition does not qualify as mitigation pursuant to Gov. Bar R. V, Section 13(C)(7).

{¶32} The panel considered the two cases cited by the parties in support of the agreed sanction of a public reprimand—*Columbus Bar Assn. v. Bhatt*, 133 Ohio St.3d 131, 2012-Ohio-4230 and *Akron Bar Assn. v. Freedman*, 128 Ohio St.3d 497, 2011-Ohio-1959. In addition to these cases, the panel relies on a more recent case decided by the Supreme Court of Ohio, in which the Court unanimously approved a Board recommendation of a public reprimand appropriate for a lawyer who had violated of Prof. Cond. R. 1.3, Prof. Cond. R. 1.4(a)(2), Prof. Cond. R. 1.4(a)(4),

and Prof. Cond. R. 1.16(d). *Columbus Bar Assn. v. Smith*, 143 Ohio St.3d 436, 2015-Ohio-2000.

The Court explained that a public reprimand was “the appropriate sanction” for such misconduct.

Id. at 438-39:

We adopt the stipulations of the parties and find that Smith’s conduct violated Prof. Cond. R. 1.3, 1.4(a)(2), 1.4(a)(3), 1.4(a)(4), and 1.16(d). Because we have imposed public reprimands for comparable misconduct in the past, we agree that a public reprimand is the appropriate sanction in this case. *See, e.g., Disciplinary Counsel v. Dundon*, 129 Ohio St.3d 571, 2011-Ohio-4199, 954 N.E.2d 1186 (publicly reprimanding an attorney who failed to act with reasonable diligence and promptness in representing a client, failed to reasonably consult with a client and keep the client reasonably informed about the status of the client’s legal matter, and failed to comply with the client’s reasonable requests for information), and *Lake Cty. Bar Assn. v. Kubyn*, 121 Ohio St.3d 321, 2009-Ohio-1154, 903 N.E.2d 1215 (publicly reprimanding an attorney who failed to take reasonably practicable steps to protect the client’s interests and failed to promptly return the unearned portion of his fee after the client had discharged him).

{¶33} The panel recommends that Respondent be publicly reprimanded.

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, Steven Bruce Beranek, 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.



RICHARD A. DOVE, Director