

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

**In re:**

**Case No. 2015-051**

**Complaint against**

**Charles Gary Mickens  
Attorney Reg. No. 0052024**

**Respondent**

**Disciplinary Counsel**

**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 John R. Willamowski, William H. Douglass, and David W. Hardymon, chair. None of the panel members resides in the district from which the complaint arose.

{¶2} Respondent appeared *pro se*. Scott J. Drexel and Stacy Solochek Beckman appeared on behalf of Relator.

{¶3} The parties have stipulated to the admission of facts, rule facts, rule violations, mitigating and aggravating factors, and recommended sanction. 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 May 20, 1991 and is subject to the Ohio Rules of Professional Conduct and the Supreme Court Rules for the Government of the Bar of Ohio.

{¶5} On July 3, 2002, the estate of Jonathan Harris was opened in the Cuyahoga County Probate Court. *In re: Estate of Jonathan Harris*, Case Number 2002EST64572.

{¶6} In September 2011, James Harris hired Respondent to represent him in connection with the estate of his brother, Jonathan Harris.

{¶7} On September 21, 2011, Respondent filed a motion on behalf of James Harris to appoint James Harris as successor fiduciary.

{¶8} On April 11, 2012, the court granted the motion and appointed James Harris successor fiduciary of his brother's estate.

{¶9} On December 10, 2012, the court removed James Harris as fiduciary of his brother's estate for failing to file a Certificate of Notice of Probate of Will.

{¶10} On January 28, 2013, Respondent filed a motion to reinstate James Harris as fiduciary.

{¶11} In this motion, Respondent explained that James Harris had failed to file a Certificate of Notice of Probate of Will because Respondent's request for service by publication that he submitted to the court was not properly completed.

{¶12} Respondent attached to his reinstatement motion a new notice and request for notice by publication.

{¶13} The court granted the motion to reinstate James Harris as fiduciary on March 12, 2013.

{¶14} Jonathan Harris had bequeathed certain real property to his four surviving daughters. As the fiduciary of his brother's estate, James Harris was required to file a Certificate of Transfer with the Trumbull County Recorder's Office in order to transfer the property in accordance with the bequest.

{¶15} Respondent did not file a Certificate of Transfer on behalf of the estate with the Trumbull County Recorder's Office.

{¶16} As a result, on or about October 3, 2014, because there was an existing tax foreclosure order against the real property, the land was transferred to the Trumbull County Land Reutilization Corporation.

{¶17} Respondent never informed James Harris that he had failed to file the Certificate of Transfer or that the real property had transferred from Jonathan Harris' estate to the Trumbull County Land Reutilization Corporation.

{¶18} James Harris first learned of the transfer of real property when he looked at the case docket in November 2014.

{¶19} As the fiduciary of Jonathan Harris' estate, James Harris was required to file a final accounting of the estate with the court.

{¶20} Respondent did not file a final accounting of the estate with the court on behalf of James Harris.

{¶21} As a result, on April 23, 2013, the court removed James Harris as fiduciary for failure to file a final accounting.

{¶22} On May 22, 2013, Respondent moved the court to reinstate James Harris as fiduciary, but his request was denied the same day.

{¶23} Respondent never informed James Harris that he had failed to file a final accounting for the estate or that, as a result of such failure, that James Harris had been removed as the fiduciary of the estate.

{¶24} James Harris first learned of his removal as the fiduciary of Jonathan Harris' estate when he looked at the case docket in September 2014 and found that the court had appointed a successor fiduciary.

{¶25} The successor fiduciary for the James Harris estate, Timothy A. Boyko, was unable to locate any of the four surviving daughters of Jonathan Harris.

{¶26} Respondent has never maintained professional liability insurance during his 24 years of practice.

{¶27} Respondent failed to provide written notice of his lack of insurance to any of his clients, including but not limited to James Harris, as well as failed to have this notice signed by his clients as required by the Rules of Professional Conduct.

{¶28} Respondent acknowledges that his acts and failures to act as set forth in Count I of the formal complaint violated the Ohio Rules of Professional Conduct, specifically, Prof. Cond. R. 1.3 [a lawyer shall act with reasonable diligence and promptness in representing a client]; and Prof. Cond. R. 1.4(a)(3) [a lawyer shall keep the client reasonably informed about the status of the matter]. The hearing panel finds these violations have been established by clear and convincing evidence.

{¶29} Respondent acknowledges that his failure to act as set forth in Count II of the formal complaint violated Prof. Cond. R. 1.4(c) [a lawyer shall inform a client in writing if the lawyer does not maintain professional liability insurance]. The hearing panel finds this violation has been established by clear and convincing evidence.

{¶30} Relator withdrew the charge of Prof. Cond. R. 1.1 as alleged in Count I. The hearing panel dismisses this alleged violation.

**MITIGATION, AGGRAVATION, AND SANCTION**

{¶31} Relator and Respondent agree, and the panel finds, that the following aggravating factor listed in Gov. Bar R. V, Section 13(B) is present in this matter: multiple offenses.

{¶32} Relator and Respondent agree, and the panel finds, that the following mitigating factors listed in Gov. Bar R. V, Section 13(B) are present in this matter:

- (a) absence of a prior disciplinary record;
- (b) absence of a dishonest or selfish motive;
- (c) full and free disclosure to the Board and cooperative attitude; and
- (d) good character and reputation.

{¶33} Relator and Respondent agree that the appropriate sanction in this matter is a public reprimand. Several cases offer guidance and support for this outcome. Corinne Ryan neglected two client matters, failing to timely file custody papers on her client's behalf in one case and failing to prepare and submit a qualified domestic relation's order in a second case, and failed to effectively communicate with the clients. *Columbus Bar Assn. v. Ryan*, 143 Ohio St.3d 73, 2015-Ohio-2069. Additionally, Ryan neither maintained legal malpractice insurance at the time of the representation of the clients nor did she provide written notice of such to the clients. Finding that the only aggravating factor was a pattern of misconduct and multiple offenses by Ryan and that several mitigating factors existed—absence of a prior disciplinary record, absence of a selfish or dishonest motive, cooperative attitude toward the disciplinary proceedings and evidence of good character—the Court determined that a public reprimand was the appropriate sanction.

{¶34} In *Akron Bar Assn. v. Freedman*, 128 Ohio St.3d 497, 2011-Ohio-1959, the Supreme Court publicly reprimanded Freedman for failing to pursue a bankruptcy on behalf of his clients, failing to return their telephone calls and for failing to advise them that he did not have malpractice insurance. The Court found that Freedman had violated Prof. Cond. R. 1.4, 1.4(c), and 1.5(d)(3).

{¶35} Similarly, the Court publicly reprimanded Rita Johnson for violating DR 1-102 (A)(5), DR 1-104 (A) and (B), DR 6-101 (A)(2) and (A)(3), and DR 7 -101 (A)(1) and (2) when she failed to prosecute a client's civil case and inform the client that she did not maintain malpractice insurance. *Cuyahoga Cty. Bar Assn. v. Johnson*, 123 Ohio St.3d 65, 2009-Ohio-4178. A single aggravating factor, pattern of misconduct, existed and numerous mitigating factors were present, including no prior disciplinary record, full and free cooperation during the disciplinary proceedings, deep remorse for her actions and no selfish motive. The Court, quoting the Board's recommendation, noted:

In weighing the aggravating and mitigating factors in this case, the Panel is of the opinion that this case is analogous to those cases where the sanction was a public reprimand. Given the evidence in [her] case, the fact that it involves a single client and considering the strong factors supporting mitigation, the Panel unanimously recommends that Respondent be given a public reprimand \* \* \*.

*Johnson*, 2009-Ohio-4178, ¶14.

{¶36} Here, as in *Ryan*, *Freedman*, and *Johnson*, Respondent failed to take action on behalf of his client, leading to detrimental results. As James Harris' attorney, Respondent was required to file a Certificate of Transfer with the Trumbull County Recorder's Office to transfer real property in Jonathan Harris' estate to Jonathan Harris' four surviving daughters. Because Respondent failed to file a Certificate of Transfer, the land in Jonathan Harris' estate was transferred, instead, to the Trumbull County Land Reutilization Corporation. Although the

successor fiduciary's inability to locate any of the beneficiaries identified in Jonathan Harris' Will rendered this result inevitable, that does not vitiate Respondent's failure to act. Moreover, because Respondent failed to file a final accounting with the court, the court removed James Harris as fiduciary. As stipulated, Respondent's conduct violated Prof. Cond. R. 1.3.

{¶37} Further, Respondent failed to keep his client informed about significant developments in the estate matter. Respondent did not inform his client that he had failed to file a Certificate of Transfer. It does appear that had a Certificate of Transfer been filed, resulting in the transfer of the real property from the estate and into the names of Jonathan Harris' four surviving daughters, the land nonetheless would have ended up subsequently transferred to the Trumbull County Land Reutilization Corporation, since the daughters could not be located and the real property taxes were not being paid. Respondent also failed to tell his client that he had not filed a final accounting and, as a result, that the court had removed his client as the fiduciary of the estate. As stipulated, Respondent's conduct violated Prof. Cond. R. 1.4(a)(3).

{¶38} Finally, Respondent failed to provide notice to Harris or to any of his clients that he lacked professional liability insurance and he failed to have this notice signed by his clients.

{¶39} Although admittedly wrong, Respondent had no improper or selfish motive for engaging in the conduct alleged and admitted in Counts I and II. Respondent was fully cooperative with the disciplinary process, both during the investigative stage and the formal proceedings. He has offered evidence of his good character for consideration by the panel and he has not previously been disciplined. The purpose of a disciplinary sanction is not to punish the offender, but to protect the public. Relator and Respondent assert that the public's interest will not be compromised by allowing Respondent to continue practicing law and that a public reprimand is an appropriate sanction. The hearing panel agrees.

{¶40} For the foregoing reasons, the hearing 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 June 3, 2016. The Board adopted the findings of fact, conclusions of law, and recommendation of the panel and recommends that Respondent, Charles Gary Mickens, 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**