

State of Michigan
Attorney Discipline Board

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ATTORNEY DISCIPLINE BOARD
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Grievance Administrator,
Michigan Attorney Grievance Commission,

Petitioner,

Case No. 17-50-GA

v

Daniel J. Rust, P32856,

Respondent.

Formal Complaint

(Parties and Jurisdiction)

1. Petitioner, Grievance Administrator, is authorized by MCR 9.109(B)(6) to prosecute this Formal Complaint by the Attorney Grievance Commission, which is the prosecution arm of the Supreme Court for the discharge of its constitutional responsibility to supervise and discipline Michigan attorneys.
2. As a licensed Michigan attorney, Respondent is subject to the jurisdiction of the Supreme Court and the Attorney Discipline Board as set forth in MCR 9.104.
3. Michigan attorneys have a duty to conduct themselves personally and professionally at all times in conformity with the standards imposed on members of the bar as a condition of the privilege to practice law.
4. Respondent is a Michigan attorney who was licensed in 1981 and who has his place of business in the County of Wayne, State of Michigan.

(Factual Allegations)

5. On or about August 18, 2010, Shawn Delano Brown was convicted in the Calhoun County Circuit Court of manslaughter and second-degree child abuse. *People v Brown*, Calhoun County Circuit Court Case No. 10-001368-FC.

6. On or about September 13, 2010, Mr. Brown was sentenced as a third-habitual offender to concurrent terms of imprisonment of 100 to 360 months for the manslaughter conviction and 36 to 96 months for the second-degree child abuse conviction.

7. On or about October 25, 2010, the trial court appointed Respondent as Mr. Brown's appellate counsel.

8. On or about November 2, 2010, Respondent filed a claim of appeal on Mr. Brown's behalf in the Court of Appeals, Docket No. 300939.

9. On or about April 18, 2011, Respondent filed a brief on appeal in Mr. Brown's matter.

10. On or about January 24, 2012, the Court of Appeals issued its opinion affirming Mr. Brown's convictions and sentences.

11. On or about November 19, 2013, Tuesday Watson, an acquaintance of Mr. Brown, contacted the Calhoun County Circuit Court stating that she had reviewed the trial transcripts but could not find certain testimony. This led to the court's discovery that the August 13, 2010 trial transcript had not been transcribed.

12. On or about December 10, 2013, the Calhoun Circuit Court Administrative Services Manager sent a letter addressed to Respondent and the Court of Appeals stating that the portion of the trial held on August 13, 2010 had not been transcribed with the other transcripts.

13. On or about January 17, 2014, Respondent sent a letter to Mr. Brown stating that a day of his trial had not been transcribed.

14. Other than calling the Court of Appeals, Respondent did not attempt to correct the error of filing an appeal brief without reviewing all the trial transcripts.

15. The trial transcript that was not transcribed contained, among other testimony, an argument of Mr. Brown's trial counsel that the court should pay for a medical expert witness, which was denied by the trial court.

16. As a consequence of not having the August 13, 2010 trial transcript, Respondent did not present the above-stated preserved issue on appeal.

17. On or about August 11, 2016, attorneys for the Michigan Innocence Clinic filed a motion to reissue judgment and reinstate direct appeal or, in the alternative, for relief from judgment on Mr. Brown's behalf in the Calhoun County Circuit Court.

18. On or about February 23, 2017, Calhoun Circuit Court Judge Sarah Lincoln issued an opinion finding that Respondent's appellate representation was ineffective assistance of counsel in accordance with *United States v Cronin*, 466 US 648 (1984). Specifically, the court stated in its opinion, "Based upon the content of the missing transcript as well as the numerous references to the testimony during closing argument; it is inconceivable that Defendant's appellate attorney could have given this instant case even a cursory review without noticing that there were significant gaps in the record."

19. In an order entered on March 10, 2017, the trial court ordered that Mr. Brown's sentence be reissued and that his right to a direct appeal be reinstated.


(Grounds for Discipline)

20. By reason of the conduct described above in this Formal Complaint, Respondent has committed the following misconduct and is subject to discipline under MCR 9.104 as follows:

- a) failed to provide competent representation to a client, in violation of MRPC 1.1;
- b) handled a legal matter without preparation adequate in the circumstances, in violation of MRPC 1.1(b);
- c) failed to seek the client's lawful objectives through reasonably available means permitted by law, in violation of MRPC 1.2(a);
- d) violated or attempted to violate the Rules of Professional Conduct, in violation of MRPC 8.4(a); and,
- e) engaged in conduct prejudicial to the administration of justice, in violation of MRPC 8.4(c) and MCR 9.104(1).

Wherefore, Respondent should be subjected to such discipline as may be warranted by the facts or circumstances of the misconduct.

Dated: May 2, 2017



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