

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. 17-39-GA

v

John P. Lozano, P52862,

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 1995 and who resides or has his place of business in the County of Saginaw.

Count One

(Factual Allegations)

5. On or about August 8, 2012, Patrick Reece retained Respondent and paid a \$2,500 retainer to file a civil lawsuit on behalf of Mr. Reece's company, PowerVRS, LLC.
6. On or about December 20, 2012, Respondent filed a civil lawsuit in the Genesee Circuit Court entitled *PowerVRS, LLC v Communication Access Center for the Deaf and Hard of Hearing, Inc (CAC), et al*, docket number 12-099592-CH.
7. During the course of the civil action, CAC filed a counterclaim against PowerVRS.
8. During the course of the civil action, the three other named defendants were dismissed.
9. In or around September 2015, CAC's counsel, Shaun Neal, communicated with Respondent about a possible settlement of the matter.
10. On or about September 24, 2015, Attorney Neal sent an e-mail to Respondent about resolution of the matter.
11. Respondent, in a September 28, 2015 e-mail to Attorney Neal, stated falsely that Mr. Reece agreed to a mutual dismissal if CAC reimbursed the costs of the litigation, which totaled \$3,250.
12. Respondent had not obtained Mr. Reece's authority or consent to settle the matter as outlined in the September 28, 2015 e-mail.
13. After obtaining authority to settle the matter from CAC, Attorney Neal sent an October 8, 2015 letter enclosing a release and stipulated order of dismissal to Respondent.
14. On or about October 19, 2015, the court was informed that the case had settled.

15. On or about November 20, 2015, Respondent requested more time from the court to file the closing documents.
16. Respondent did not file any closing documents.
17. Because Attorney Neal did not receive the executed closing documents from Respondent, Attorney Neal filed a motion to enforce the settlement agreement on March 28, 2016.
18. Respondent did not respond to the motion to enforce settlement agreement.
19. A hearing was held on April 4, 2016, but Respondent did not appear.
20. The trial court granted the motion to enforce the settlement agreement.
21. Because Attorney Neal continued to receive no response from Respondent about the settlement, Attorney Neal filed a motion to set aside the settlement agreement and dismiss the complaint with prejudice on July 25, 2016.
22. Respondent did not respond to the motion to set aside the settlement agreement and dismiss the complaint with prejudice.
23. A hearing was held on August 15, 2016, but Respondent did not appear.
24. The trial court granted the motion and dismissed the case with prejudice.
25. Respondent did not inform Mr. Reece about the dismissal.
26. Between September 2015 and June 2016, Respondent sent multiple notices of taking deposition to Mr. Reece, but Respondent would cancel the scheduled deposition immediately before the date. These notices led Mr. Reece to believe that his lawsuit was still pending and active in a manner in which it was not.

27. Between September 2015 and June 2016, Respondent made repeated false statements to Mr. Reece in text and e-mail messages about the status of the case.

28. Mr. Reece learned that the lawsuit had been dismissed through Attorney Neal.

(Grounds for Discipline)

29. By reason of the conduct described above in Count One of this formal complaint, Respondent has committed the following misconduct and is subject to discipline under MCR 9.104 as follows:

- a) neglected a legal matter entrusted to him, in violation of MRPC 1.1(c);
- b) failed to seek the client's lawful objectives through reasonably available means permitted by law, in violation of MRPC 1.2(a);
- c) failed to notify the client of all settlement offers, in violation of MRPC 1.4(a);
- d) failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation, in violation of MRPC 1.4(b);
- e) in the course of representing a client, knowingly made a false statement of material fact to a third person, in violation of MRPC 4.1;
- f) engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, where such conduct reflects adversely on

the lawyer's honesty, trustworthiness, or fitness as a lawyer,
in violation of MRPC 8.4(b);

- g) violated or attempted to violate the rules of professional conduct, in violation of MRPC 8.4(a);
- h) engaged in conduct prejudicing the administration of justice, in violation of MRPC 8.4(c) and MCR 9.104(1);
- i) engaged in conduct that exposes the legal profession of the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2); and,
- j) engaged in conduct that is contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3).

Count Two

(Factual Allegations)

30. On or about August 29, 2016, Patrick Reece filed a Request for Investigation at the Attorney Grievance Commission (AGC File No. 16-0959) against Respondent.

31. On or about September 9, 2016, the Request for Investigation was served on Respondent at his address of record with the State Bar of Michigan in accordance with MCR 9.112(C)(1)(b).

32. On or about September 30, 2016, Respondent requested and received a one-week extension of time to answer the Request for Investigation.

33. On or about October 7, 2016, Respondent requested and received a second extension of time to answer, with the answer being due by October 20, 2016.

34. On or about October 20, 2016, Respondent sent a letter by facsimile to Petitioner's office stating that due to illness and the unavailability of staff, his answer could not be sent and he requested an additional two days to answer.

35. On or about November 7, 2016, because no answer had been received, a final notice, with the Request for Investigation enclosed, was served on Respondent by certified mail, return receipt requested at Respondent's address of record with the State Bar.

36. As of the date of this formal complaint, Petitioner has received no answer from Respondent regarding the Request for Investigation.

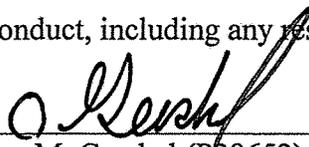
(Grounds for Discipline)

37. By reason of the conduct described above in Count Two of this formal complaint, Respondent has committed the following misconduct and is subject to discipline under MCR 9.104 as follows:

- a) failed to answer a request for investigation, in violation of MCR 9.104(7), MCR 9.113(A), (B)(2); and,
- b) engaged in conduct prejudicing the administration of justice, in violation of MRPC 8.4(c) and MCR 9.104(1).

Wherefore, Petitioner respectfully requests that Respondent be subjected to the discipline that is warranted by the facts or circumstances of such misconduct, including any restitution owed.

Dated: April 13, 2017



Alan M. Gershel (P29652)
Grievance Administrator
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