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September 8, 2021

PERSONAL AND CONFIDENTIAL
VIA FIRST CLASS U.S. MAIL TRANSMISSION ONLY

Ms. Teri R. Garko (#W084-180)
ORW
1479 Collins Avenue
Marysville, Ohio 43040

Re: Sean Buchanan, Esq.
Our File No. C1-1250

Dear Ms. Garko:

~~Your grievance against Attorney Sean Buchanan is under investigation.~~

Please be advised that all proceedings, documents, and deliberations relating to review, investigation, and consideration of grievances are confidential. *See* Gov.Bar R. V(8)(A)(1). We will contact you if we need additional information. Likewise, we will notify you of our determination after the investigation is complete.

Sincerely,

Kelli C. Schmidt
Assistant Disciplinary Counsel

KCS/ksl

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January 26, 2022

PERSONAL AND CONFIDENTIAL
VIA USPS MAIL ONLY

Ms. Teri R. Garko (#W084-180)
Dayton Correctional Institution
P.O. Box 17399
Dayton, Ohio 45418

Re: Sean Colin Buchanan, Esq.
Our File No. C1-1250

Dear Ms. Garko:

~~Our office received the grievance that you filed against Attorney Sean Buchanan on June 21, 2021. After an investigation of your grievance, we have determined that further disciplinary action is not warranted.~~

Please be advised that the authority of this office is limited to investigating alleged misconduct and violations of the Ohio Rules of Professional Conduct and the Code of Judicial Conduct by attorneys and judges. Every grievance received by this office is treated with the utmost respect and concern. The grievance that you filed against Mr. Buchanan was no exception to our policy.

In disciplinary proceedings against an attorney or judge licensed to practice law in Ohio, this office bears the burden of proving the facts necessary to establish a violation of the Code of Judicial Conduct or the Ohio Rules of Professional Conduct by clear and convincing evidence. *Ohio State Bar Assn. v. Reid*, 85 Ohio St. 3d 327, 1999-Ohio-374, 708 N.E.2d 193, paragraph two of the syllabus. Before a formal complaint is filed, it must first be submitted to a panel consisting of three members of the Board of Professional Conduct that makes an independent determination of whether probable cause exists for the filing of the complaint. Gov.Bar R. V(11)(A). Accordingly, a matter will not proceed beyond the investigative stage unless there is substantial, credible evidence of misconduct. When the evidence consists of the word of one person against another, our office requires corroboration before we will proceed by filing a formal complaint.

As part of our investigation, we sent your original grievance to Mr. Buchanan, who provided a written response. We subsequently requested additional information from you and Mr. Buchanan. We also obtained a complete copy of your file from Mr. Buchanan and reviewed the

contents, which consisted of nearly 3,000 pages, including all of the correction officers' use of force event reports. Additionally, we spoke with Attorney John Prelac, reviewed the dockets in your cases, reviewed all relevant court filings, and obtained and analyzed a copy of all the invoices in this case. We researched relevant case law and advisory opinions from Ohio and other states.

By way of background, you are currently serving an 11-year sentence for assault, attempted murder, and felonious assault based on your conviction in Summit County Common Pleas Court Case Numbers CR11040988 and CR11071790. In addition, you are also serving another almost five-year sentence for several counts of harassment by inmate and assault based on charges you received while incarcerated.

You desired to file a lawsuit against the Ohio Department of Rehabilitation and Correction ("ODRC"). You are the beneficiary of a trust that is being managed by Attorney John Prelac, Trustee ("Mr. Prelac"). In November 2018, Mr. Prelac contacted Mr. Buchanan on your behalf because you wanted to hire Mr. Buchanan to represent you in the lawsuit. You planned to pay Mr. Buchanan using your trust funds. On February 8, 2019, Mr. Buchanan sent you a proposed complaint, and on February 12, 2019, you executed the fee agreement. Per the fee agreement, you paid a \$5,000 retainer to be charged at \$100 per hour, which is one-half of Mr. Buchanan's normal rate. You also agreed to pay Mr. Buchanan a 20% contingency fee of the money that you recovered, which is also one-half his normal contingency fee rate. On March 8, 2019, Mr. Prelac paid Mr. Buchanan a \$5,000 retainer on your behalf.

On February 14, 2019, Mr. Buchanan filed your first complaint, and in it, you alleged claims of excessive force and mistreatment while you were incarcerated at the Ohio Reformatory for Women ("ORW"). *Terri Garko v. Ohio Department of Rehabilitation and Correction*, Court of Claims Case Number 2019-00149JD. In or around August 2019, while this matter was in litigation, Mr. Buchanan met with you in person. During that meeting, you told Mr. Buchanan that your eye was also injured because of this mistreatment. Consequently, Mr. Buchanan discussed with you voluntarily dismissing this first complaint, which you agreed to do. Mr. Buchanan explained that he felt voluntarily dismissing the first complaint was the proper course of action so he could obtain your medical records. On October 11, 2019, Mr. Buchanan filed a notice of voluntary dismissal.

On June 3, 2020, after investigation, Mr. Buchanan sent you another letter explaining that in addition to the previous claims, he believed he could ethically pursue claims that your eye was injured between the dates of June 11, 2019, and June 19, 2019, along with allegations your First Amendment rights were violated when you were denied access to your mail. You asked him to look into pursuing medical malpractice, but he explained to you that he felt the claim was not viable. Mr. Buchanan also asked you to let him know if you disagreed with his plan or wished to seek other counsel. Presumably, you agreed to his proposed procedure because on June 12, 2020, Mr. Buchanan filed the second complaint, and in addition to the previous allegations, included claims that the prison violated your First Amendment rights and that between June 11, 2019, and June 19, 2019, you sustained a traumatic eye injury. *Terri Garko v. Ohio Department of Rehabilitation and Correction*, Court of Claims Case Number 2020-000369JD.

On July 13, 2020, the ODRC filed a motion to partially dismiss your complaint. On August 17, 2020, Mr. Buchanan sent you another letter explaining that he decided to separate your potential First Amendment claim related to your mail so he could focus solely on the eye injury issue in the lower court. He also provided you with a copy of the court's scheduling order, so you had notice of important dates.

On December 14, 2020, in response to ODRC's motion, the court partially dismissed the complaint. In the entry, the court noted that you did not file, through Mr. Buchanan, a response to ODRC's motion to dismiss. The court dismissed parts of your complaint related to violations of your constitutional rights and claims for punitive damages. The court denied ODRC's motion relative to the remaining claims. Mr. Buchanan agrees he did not file a response to this motion.¹ ODRC did not seek to dismiss your claim regarding your eye injury between June 11, 2019, and June 19, 2019.

Subsequently, Mr. Buchanan received discovery from the State. After reviewing the discovery, on January 15, 2021, Mr. Buchanan sent you a letter. He indicated that he had some concerns with your case: first, you have a history of self-harm, and second, you admitted that you had previously made false claims against ODRC officials. He was worried that ODRC may raise these issues, which would be damaging to your eye injury claim. Still, Mr. Buchanan was willing to pursue your case. He explained that in all your records, no specific reports dealt with the timeframe of June 11, 2019, and June 19, 2019. Our investigation confirmed that the State did not provide records from that timeframe that specifically addressed your eye injury. Also on January 15, 2021, Mr. Buchanan provided written proof that he spoke with the State to obtain additional documentation from the prison between June 11, 2019, and June 19, 2019. Specifically, he told the State that

[t]he medical records initially indicate there is no traumatic injury on June 11, 2019. When she is next seen she is diagnosed with a traumatic cornea displacement. This would not be caused by the contact lens issue that caused the initial appointment. . . . Considering that she had other extensive disciplinary records for minor events as well as extensive counseling records, I'm concerned no record exists for the event that was significant enough to require surgery.

close-angle
glaucoma

non removal of
detached lens

At some point between January 15, 2021, and February 8, 2021, you and Mr. Buchanan spoke about your case. According to Mr. Buchanan, during that time, you changed your allegations again. On February 8, 2021, Mr. Buchanan sent you a letter containing his previous correspondence because you told him that you did not recall its contents. He explained again that he agreed to pursue the claim relating to your eye injury, and he stated that your mail issues claim was not supported by the evidence. Further, he stated that he previously explained that he would not pursue a medical malpractice claim, and that

¹ Based on our review of the court's order partially dismissing your case, we agree that it would have been frivolous for Mr. Buchanan to file a response to ODRC's motion to dismiss. The court did not have authority to hear certain claims alleged in your complaint.

Lack of subject matter jurisdiction
Case filed in wrong court