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ATTORNEY DISCIPLINE BOARD
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State of Michigan
Attorney Discipline Board

Grievance Administrator,
Michigan Attorney Grievance Commission,

Case No. 17-53-GA

Petitioner,

v

C. Daniel Harry, P 33990,

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.

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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 1982 and who resides or has his place of business in the County of Oakland.

(Factual Allegations)

5. At all times relevant to this complaint, Respondent has held an IOLTA with Comerica Bank titled the "C. Daniel Harry Attorney at Law IOLTA Account," account number xxx xxx 0996 (hereafter IOLTA).

6. Effective September 15, 2010, financial institutions approved by the State Bar of Michigan must provide notification to the Attorney Grievance Commission when an IOLTA has a negative balance or when an instrument is presented against an IOLTA containing insufficient funds, as provided by MRPC 1.15A.

7. On or about September 1, 2011, Comerica Bank issued a Report of Overdrafts and Returned Items concerning Respondent's IOLTA.

8. On or about September 7, 2011, Comerica Bank issued a Report of Overdrafts and Returned Items concerning Respondent's IOLTA.

9. On or about September 13, 2011, Comerica Bank issued a Report of Overdrafts and Returned Items concerning Respondent's IOLTA.

10. On or about October 21, 2011, Comerica Bank issued a Report of Overdrafts and Returned Items concerning Respondent's IOLTA.

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11. On or about December 19, 2011, Comerica Bank issued a Report of Overdrafts and Returned Items concerning Respondent's IOLTA.
12. On or about February 28, 2012, Respondent attended the seminar titled "Lawyer Trust Accounts: Management Principles and Recordkeeping Resources," sponsored by the State Bar of Michigan.
13. On or about June 12, 2012, Comerica Bank issued a Report of Overdrafts and Returned Items.
14. On or about June 25, 2013, Respondent again attended the "Lawyer Trust Accounts: Management Principles and Recordkeeping Resources" seminar sponsored by the State Bar of Michigan.
15. At the trust accounting seminar presentations attended by Respondent in February 2012 and June 2013, the presenters discussed the impropriety of issuing checks drawn on an IOLTA in payment of personal or business expenses.
16. At the trust accounting seminar presentations attended by Respondent in February 2012 and June 2013, the seminar materials contained a Money Management Map concerning the proper handling of funds received in a lawyer's practice and referencing the concept that earned fees are to be promptly removed from a trust account when they are earned and that a lawyer must not remove earned fees in a piecemeal fashion by paying personal and business expenses directly from trust or otherwise "spending down" the earned fees.
17. On or about August 26, 2016, Comerica Bank issued a Report of Overdrafts and Returned Items concerning Respondent's IOLTA. This was the seventh such report issued on Respondent's IOLTA.

18. The August 26, 2016 Notice concerned Check Number 0996, drawn against the IOLTA in the amount of \$500, which was presented for payment on August 24, 2016 but returned, unpaid, because there were insufficient funds in the IOLTA to cover the check.

19. On or about September 15, 2016, a Grievance Administrator's Request for Investigation was served on Respondent asking him to explain the facts and circumstances relating to Comerica Bank's issuance of the August 26, 2016 Report of Overdrafts and Returned Items and to supply copies of three months of IOLTA records.

20. On or about October 11, 2016, Respondent's Answer to the Grievance Administrator's Request for Investigation was received at the Attorney Grievance Commission in which he acknowledged giving a client access to deposit already earned fees directly into the IOLTA.

21. A review of Respondent's IOLTA records revealed that between May 1, 2016 through October 31, 2016, Respondent's handled his IOLTA improperly, as follows:

- (a) On or about September 22, 2016 a check payable to Malichan Miller, drawn on the account of J.J.B. Hillard, W.L. Lyons, LLC in the amount of \$3,063.32, was deposited into Respondent's IOLTA.
 - (i) Respondent was in a personal relationship with Malichan Miller and, upon receipt of the funds into his IOLTA, he split the funds between himself and Ms. Miller.
 - (ii) Respondent drew Check #3527 payable to Cash in the amount of \$2,776.50 which he retained for himself, Check #3528 payable to Ms. Miller in the amount of \$268.82, and Check #3529 payable to C. Daniel Harry in the amount of \$50.00.
 - (iii) Respondent then used his portion of the funds to "catch up" on the payment of his mortgage for his lake house.

- (b) Respondent allowed access to client who owed him earned fees, to endorse over and directly deposit checks into the IOLTA, which checks were made payable to the client from third parties unrelated to Respondent's representation.
 - (i) From these deposited funds, Respondent then made payments to his firm and credited the payments against the client's outstanding account balance (i.e., earned fees Respondent was owed by the client).
 - (ii) Respondent deposited earned fees into the IOLTA. Sums which were to be credited against the client's bill (i.e., funds representing earned fees when received) were deposited into the IOLTA and paid out to Respondent from there.
- (c) On August 9, 2016, Respondent paid Consumer's Energy, in the amount of \$394.77, directly from his IOLTA. A convenience fee of \$6.25 was deducted from the IOLTA as well.
- (d) On October 11, 2016, Respondent deposited a check received from Conifer Insurance Company into the IOLTA. The check was payable to Christine Fotineas, as conservator for Phillip Frank Fortineas, a protected person. The check was related to a settlement in Oakland County Circuit Court Case No. 2016-154545-CH in which Respondent represented Plaintiffs Philip Frank Fotineas and Christine Fotineas.
- (e) On October 11, 2016, Respondent deposited a check received from Landmarc Building Development, Inc. into the IOLTA. The check was payable to Christine Fotineas, individually and as conservator for Phillip Frank Fotineas. The check was related to a settlement in Oakland County Circuit Court Case No. 2016-154545-CH in which Respondent represented Plaintiffs Philip Frank Fotineas and Christine Fotineas.

22. Respondent knew, or should have known, that the Michigan Court Rules and Michigan Rules of Professional Conduct prohibit an attorney from depositing or maintaining personal funds, including earned fees, into an IOLTA. Further, those issues were discussed at the trust accounting seminars which Respondent attended in February 2012 and June 2013.

23. Respondent knew, or should have known, that the Michigan Court Rules and Michigan Rules of Professional Conduct prohibit an attorney from paying personal and/or business obligations directly from their IOLTA.

(Grounds for Discipline)

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

- a) held funds other than client or third person funds in an IOLTA, in violation of MRPC 1.15(a)(3);
- b) deposited his own funds in an IOLTA in excess of the amount reasonably necessary to pay financial institution services charges or fees or to obtain a waiver of service charges or fees, in violation of MRPC 1.15(f);
- c) engaged in conduct that is contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3); and,
- d) engaged in conduct in violation of the Rules of Professional Conduct, in violation of MRPC 8.4(a).

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

Dated: May 5, 2017



Alan M. Gershel, P 29652
Grievance Administrator
Attorney Grievance Commission
535 Griswold, Suite 1700
Detroit, MI 48226
(313) 961-6585

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