

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. 17-24-GA

v

Dan A. Penning, P39322,

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 1986 and who resides or had his last place of business in the County of Leelanau.

Count One

(Factual Allegations)

5. At all times relevant to this Formal Complaint, Respondent was a sole practitioner practicing law under the firm name of The Penning Group Advisors and Attorneys, PLLC.

6. From at least December 1, 2011 through April of 2014, Respondent had an IOLTA in the name of The Penning Group Advisors and Attorneys PLLC at Fifth Third Bank, Account Number XXXXX2705 ("Respondent's IOLTA").

7. From at least December 1, 2011 through April of 2014, Respondent had a business account in the name of The Penning Group Advisors and Attorneys PLLC at Fifth Third Bank, Account Number XXXXX2721 ("Respondent's business account").

8. From at least December 1, 2011 through April of 2014, Respondent had a personal account in the name of Dan A. Penning at Fifth Third Bank, Account Number XXXXX9407 ("Respondent's personal account").

9. During the time period of October of 2012 through at least April of 2014, Respondent, on multiple occasions, deposited his own funds into his IOLTA by online transfers from his business account in amounts ranging from \$2,000 to approximately \$10,000.

10. From December of 2013 through April of 2014, Respondent, on multiple occasions, deposited his own funds into his IOLTA by way of checks written from Respondent's personal account.

11. At all times when Respondent deposited his own funds into his IOLTA, his IOLTA contained client funds or funds in which third parties had an interest and for which Respondent had a fiduciary duty.

(Grounds for Discipline)

12. 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) Engaged in conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2);
- b) Engaged in conduct that is contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3);
- c) Held funds in an IOLTA that were not client or third person funds, in violation of MRPC 1.15(a)(3);
- d) Failed to hold property of clients or third persons in connection with the representation separate from the lawyer's property, in violation of MRPC 1.15(d);
- e) Deposited his own funds into a client trust account in excess of an amount reasonably necessary to pay financial institution service charges or fees, in violation of MRPC 1.15(f); and,
- f) Violated or attempted to violate the rules of professional conduct, knowingly assisted or induced another to do so, or did so through the acts of another, in violation of MRPC 8.4(a).

Count Two

(Factual Allegations)

13. In or about September of 2012, Respondent was handling certain matters pertaining to the estate of Maurice Bolmer, the deceased father of Dr. Amy Bolmer.

14. On September 13, 2012, Respondent deposited into his IOLTA "for deposit only," a \$10,222.17 check payable to his then-client, Dr. Amy Bolmer.

15. The United States Treasury issued the check as payment of Dr. Bolmer's deceased father's insurance benefits, which was endorsed by Dr. Bolmer.

16. On September 13, 2012, Respondent deposited a \$300 check into his IOLTA payable to Dr. Bolmer from a funeral home in regard to her father's estate.

17. Respondent was to hold the \$10,522.17 in his IOLTA pending resolution of the probate matter or until otherwise directed by Dr. Bolmer.

18. On October 24 and 26, 2012, Respondent transferred a total of \$7,500 from his IOLTA into his business account ending in xxxx2721.

19. As of October 29, 2012, the balance in Respondent's IOLTA was \$8,449.74, which was \$2,072.43 less than what Respondent should have been holding in his IOLTA for Dr. Bolmer and/or the Maurice Bolmer estate.

20. After certain deposits and withdrawals, including transfers from Respondent's IOLTA to his business account, on November 8, 2012, the balance in Respondent's IOLTA was \$4,449.74.

21. After other deposits and withdrawals, on December 31, 2012, the balance in Respondent's IOLTA was \$8,427.42, still \$2,094.75 less than what Respondent should have been holding in his IOLTA for Dr. Bolmer and/or the Maurice Bolmer estate.

22. After other deposits and withdrawals, including transfers from Respondent's IOLTA to his business account, on January 25, 2013, the balance in Respondent's IOLTA was \$3,122.17.

23. After other deposits and withdrawals, including a transfer from Respondent's IOLTA to his business account, on February 8, 2013, the balance in Respondent's IOLTA was \$1,622.17.

24. In or about February of 2013, Dr. Bolmer authorized Respondent to use the \$10,522.17, which she believed was in Respondent's IOLTA, to pay the legal fees owed to Respondent.

25. Respondent stated in an invoice, which he produced to the Grievance Administrator, that on March 11, 2013, \$4,768.50 was withdrawn from Respondent's IOLTA to pay Dr. Bolmer's invoice for that amount dated February 25, 2013.

26. At no time between February 25, 2013 and March 11, 2013, was there \$4,768.50 in Respondent's IOLTA, nor were there any withdrawals made other than for service charges and interest remitted to the State Bar of Michigan.

27. On April 1, 2013, the balance in Respondent's IOLTA fell to \$198.60.

28. On April 13, 2013, Dr. Bolmer, in an email to Respondent's staff, authorized the withdrawal of \$1,540 from her funds from Respondent's IOLTA in payment of her March 29, 2013 invoice for legal fees.

29. Respondent stated in an invoice, which he produced to the Grievance Administrator that on April 18, 2013, \$1,540 was withdrawn from his IOLTA to pay for Dr. Bolmer's invoice for that amount.

30. In April of 2013, no withdrawal from Respondent's IOLTA was made in the amount of \$1,540.

31. Again, on May 2, 2013, Dr. Bolmer authorized Respondent's staff in an email to withdraw \$914.50 from Respondent's IOLTA in payment of the April 30, 2013 invoice for legal fees.

32. On May 6, 2013, Respondent's staff emailed Dr. Bolmer that she had a balance remaining of \$3,299.17, and attached a "report indicating the payments and withdrawals from this [trust] account" (referred to as the "transaction report").

33. The transaction report falsely represented that on March 11, 2013, the balance in Respondent's IOLTA of Dr. Bolmer's funds was \$5,753.67, when only \$1,622.17 was in Respondent's IOLTA.

34. The transaction report falsely represented that on April 18, 2013, the balance in Respondent's IOLTA of Dr. Bolmer's funds was \$4,213.67, when only \$2,802.17 was in Respondent's IOLTA.

35. The transaction report falsely represented that on June 20, 2013, the balance in Respondent's IOLTA of Dr. Bolmer's funds was \$3,123.17, when only \$1,448.47 was in Respondent's IOLTA.

36. Respondent knew or should have known that the transaction report and information regarding the balance of Dr. Bolmer's funds in Respondent's IOLTA were false because he had access to his IOLTA bank records.

37. By August of 2013, the total amount of \$10,522.17 of Dr. Bolmer's funds were used to pay Respondent's legal fees.

(Grounds for Discipline)

38. 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:

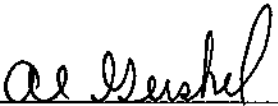
- a) Engaged in conduct that exposes the legal profession or the court to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2);
- b) Engaged in conduct that is contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3);
- c) Failed to promptly render an accurate accounting regarding funds or property in which a client or third person had an interest, upon request by the client or third person, in violation of MRPC 1.15(b) (3);
- d) Failed to hold property of clients or third persons in connection with the representation separate from the lawyer's own property, in violation of MRPC 1.15(d);
- e) withdrew funds from his client trust account, which funds were being held as the advance payment of legal fees and expenses, before the fees were earned or expenses incurred, in violation of MRPC 1.15(g);
- f) engaged in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of criminal law, where such

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

- g) Violated or attempted to violate the rules of professional conduct, knowingly assisted or induced another to do so, or did so through the acts of another, in violation of MRPC 8.4(a).

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

Dated: March 16, 2017



Alan M. Gershel, P29652
Grievance Administrator
Attorney Grievance Commission
535 Griswold, Suite 1700
Detroit, MI 48226
(313) 961-6585