

FILED
ATTORNEY DISCIPLINE BOARD
17 MAY 19 PM 4:21

State of Michigan
Attorney Discipline Board

**Grievance Administrator,
Michigan Attorney Grievance Commission,**

Case No. 17-59-GA

Petitioner,

v

Harold C. MacDonald, P16912,

Respondent.

Formal Complaint

**Count One
(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 on December 30, 1966 and who has his place of business in the County of Macomb, State of Michigan.

**Count One
(Factual Allegations)**

5. At all times relevant hereto, Respondent was the sole owner and operator of The Law Offices of Harold C. MacDonald, PLLC (hereinafter referred to as "The Law Offices").

6. At all times relevant hereto, Respondent maintained and had sole control of The Law Office's IOLTA account with the Fifth Third Bank, account number XXXXXX4600 (hereinafter referred to as the "IOLTA").

Gerich Family Joint Revocable Living Trust

7. On or about September 29, 2010, a death benefit of \$182,100.96 was paid by Aviva Life and Annuity Company to the Gerich Family Joint Revocable Living Trust, Respondent's client.

8. Shortly, thereafter, Respondent deposited his client's funds of \$182,100.96 in his IOLTA.

9. In the approximately 30 months that followed, disbursements of said funds were made which are not contested herein, such that per Respondent's May 30, 2013 correspondence to the Trust beneficiaries, Susan Rogal and Michael Gerich, the amount of Trust funds held by Responent in his IOLTA was \$21,778.13.

10. On June 1, 2015, the balance in the IOLTA was \$21,895.70.

11. On or about June 3, 2015, the balance in the IOLTA dropped to \$1,895.70 such that Respondent had converted the funds of the Gerich Family Joint Revocable Living Trust.

Estate of Valentina Grimme, Deceased

12. During 2015 and 2016, the Estate of Valentina Grimme, Deceased, was a client of The Law Offices and was being handled on a day-to-day basis by associate counsel Andrew Thomas.

13. In late June or early July 2015, The Law Offices received client funds on behalf of the Estate of Valentina Grimme in the form of a June 30, 2015 check from the Huron Title Company, check no. 16689, in the amount of \$161,684.78.

14. On July 6, 2015, the above-identified check was deposited in its entirety in The Law Offices IOLTA account.

15. On or about July 6, 2015, Respondent wrote a check against the IOLTA payable to "The Law Offices of Harold C. MacDonald" in the amount of \$7,500, causing the balance in the IOLTA to be \$156,080.48 as of July 8, 2015.

16. A disbursement of the Estate of Valentina Grimme funds was made to Douglas Grimme, pursuant to a cashier's check in the amount of \$15,000, dated June 1, 2016, and posted to the IOLTA on June 6, 2016 (bearing the memo: "Estate Distribution").

Conversion of Clients' Funds

17. As of November 1, 2016, Respondent had converted the remaining client funds of the Estate of Valentina Grimme and the Gerich Family Joint Revocable Living

Trust to the point where the balance in the IOLTA dropped to a low of \$74.69 on that date.

18. The total amount Respondent converted from the Estate of Valentina Grimme was approximately \$139,000.

19. The total amount Respondent converted from the Gerish Family Joint Revocable Living Trust was approximately \$21,700.

20. At a meeting in early November 2016, Respondent misrepresented to Ms. Rogal and Mr. Gerish that the amount of Trust funds in the IOLTA which was available to them was \$19,787.08.

21. In November 2016, Leslie R. Miller, who had been employed as Respondent's personal secretary since 2014, asked Respondent if he had taken money related to the Grimme and Gerich matters, to which Respondent replied that he had taken money from both the Grimme and Gerich matters.

22. In November 2016, Respondent met with Associate Counsel Ryan Barr and stated that the firm had no money left in its accounts and would be shutting down.

23. In November 2016, Respondent met with the President of Financial Services of America (hereinafter "FSA"), Richard D. James.

24. FSA was the landlord of The Law Offices, which was located in the same building as where Respondent maintained his law office, and had been referring clients in need of legal services to Respondent since 2008.

25. Respondent admitted to Mr. James that he had converted funds of two clients.

26. In November 2016, Respondent met with Attorney Benjamin T. Vader, of the Law Offices of Benjamin T. Vader, PLLC, in Royal Oak, Michigan, admitted to him that he had misappropriated funds from two clients whose monies were supposed to be held in his IOLTA account, identified as clients Grimme and Gerich.

27. The balance in the IOLTA on November 30, 2016 was \$129.94.

28. In December 2016, Respondent sent a written "Notice of Leave of Absence" to the law firm clients stating that he was taking a leave of absence for personal reasons from the firm and from the practice of law and advised the firm's clients to immediately seek alternate representation, and provided a further referral to Attorney Benjamin T. Vader, PLLC.

29. On information and belief, Respondent has in a storage facility over 1000 client files, many of which include original estate planning documents, which he can no longer access because the landlord of the facility is precluding Respondent's access for non-payment of rent; and he also abandoned approximately 100 client files also containing original estate planning documents, in his prior office space.

(Grounds for Discipline)

30. 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 keep a client reasonably informed about the status of their matter and failed to explain a matter to

the extend reasonably necessary to permit the client to make informed decisions regarding the representation, in violation of MRPC 1.4(a) and (b);

- b. Failed to promptly pay or deliver funds that the client or third person is entitled to receive and failed to promptly render a full accounting of such funds, in violation of MRPC 1.15(b)(3);
- c. Failed to appropriately safeguard client funds by maintaining them in an IOLTA and/or client trust account, and converting the funds, in violation of MRPC 1.15(d);
- d. Failed to appropriately safeguard other client property in the above referenced storage facility and in his former office space, in violation of MRPC 1.15(d).
- e. Upon termination of the representation, failed to return client property consisting of the client's funds to the client, in violation of MRPC 1.16(d);
- f. Engaged in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the 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);

- g. Engaged in conduct prejudicial to the administration of justice, in violation of MCR 9.104(1) and MRPC 8.4(c);
- h. Engaged in conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2); and,
- i. Engaged in conduct contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3).

**Count Two
(Factual Allegations)
(Failure to Answer)**

31. Petitioner repeats and realleges all the allegations of Count One of this Complaint as if stated fully herein.

32. Associate Counsel Andrew Thomas filed a Request for Investigation against Respondent with the Grievance Administrator on or about November 30, 2016, resulting in the opening of AGC File No. 16-1646.

33. On December 1, 2016, the Request for Investigation filed by Andrew Thomas was served on Respondent by regular mail at his address registered with the State Bar of Michigan, with a demand that he file an answer thereto, within 21 days of the December 1, 2016 service, per MCR 9.113(A).

34. On December 1, 2016, Associate Counsel Ryan Barr also filed a Request for Investigation with the Grievance Administrator, and it was added to and consolidated with AGC File No. 16-1646.

35. On December 16, 2016, pursuant to MCR 9.113(A), the Intake Department served Respondent a copy of the Requests for Investigation filed by Andrew Thomas and Ryan Barr by regular mail at his address registered with the State Bar of Michigan, with a demand that he file a written answer thereto, within 21 days of the December 16, 2016 service.

36. On or about January 6, 2017, Respondent telephoned the Grievance Administrator's counsel and requested an extension of time to answer the Requests for Investigation to Friday, January 20, 2017, which was granted.

37. Respondent failed to file an answer to the Requests for Investigation of Ryan Barr and Andrew Thomas on or before the expiration of the extension of time granted to him to do so.

38. On March 16, 2016, Respondent was served with a Final Notice and another copy of the Requests for Investigation that had been filed by Andrew Thomas and Ryan Barr, via regular mail and by registered mail, return receipt requested, pursuant to MCR 9.113, with a demand that he file a written answer thereto, within 10 days thereof.

39. Petitioner's counsel sent Respondent an email on March 16, 2017, as a courtesy notifying him that he had failed to timely file an answer to the Requests for Investigation filed by Ryan Barr and Andrew Thomas, which would be alleged as a separate act of professional misconduct in a formal complaint.

40. On or about January 30, 2017, the Request for Investigation of Susan Rogal was received by the Attorney Grievance Commission, for which file 17-0276 was opened by its Intake Department.

41. On or about February 1, 2017, Susan Rogal's Request for Investigation was served by the Intake Department on Respondent by ordinary mail at his address registered with the State Bar of Michigan, Dequindre Road, Troy, MI, requiring an answer to be filed within 21 days.

42. Following Respondent's failure to file an answer, on or about March 1, 2017, a Final Notice and another copy of the Request for Investigation were served on Respondent's Dequindre Road address as well as on the Miller Dr., Warren, MI address, by certified mail, return receipt requested, requiring an answer be filed within 10 days.

43. On or about February 6, 2017, the Request for Investigation filed by Charles Grimme was received by the AGC, for which file 17-0186 was opened.

44. On or about February 6, 2017, the Request for Investigation filed by Charles Grimme was served on Respondent at his Dequindre Rd., Troy, MI address registered with the State Bar of Michigan, requiring his answer be filed within 21 days.

45. When Respondent failed to properly file an answer, a Final Notice and another copy of the Request for Investigation filed by Charles Grimme was served on Respondent by certified mail, return receipt requested, at his address registered with the State Bar of Michigan, as well as at the Miller Dr., Warren, MI address, on or about March 9, 2017, requiring an answer to be filed within ten days.

46. A summary of the service dates of the Requests for Investigation is as follows:

Complainant	R/I Served on Respondent by Ordinary Mail	R/I Served on Respondent with Final Notice, Certified Mail, Return Receipt Requested
Andrew Thomas	12/16/15	3/16/17
Ryan Barr	12/16/15	3/16/17
Susan Rogal	2/1/17	3/1/17
Charles Grimme	2/6/17	3/9/17

47. To date, Respondent has failed to answer the Requests for Investigation.

(Grounds for Discipline)

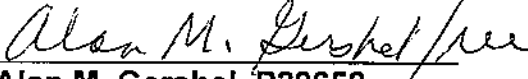
48. By reason of the conduct described in Count Two of this Complaint, Respondent has engaged in the following professional misconduct:

- a. Knowingly failed to respond to a lawful demand for information from a disciplinary authority in violation of MRPC 8.1(a)(2);
- b. Failed to answer a Request for Investigation in conformity with MCR 9.113(A), in violation of MCR 9.104(7);

- c. Engaged in conduct that is violation of the Michigan Rules of Professional Conduct, in violation of MRPC 8.4(a) and MCR 9.104(4);
- d. Engaged in conduct that is prejudicial to the administration of justice, in violation of MRPC 8.4(c) and MCR 9.104(1);
- e. Engaged in conduct that exposes the legal profession to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(2); and,
- f. Engaged in conduct that is contrary to justice, ethics, honesty, or good morals, in violation of MCR 9.104(3).

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

Dated: May 19, 2017


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