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BEFORE THE BOARD OF PROFESSIONAL CONDUCT  
OF  
THE SUPREME COURT OF OHIO

MAY 16 2017

BOARD OF PROFESSIONAL CONDUCT

In re:

Complaint against

Robert Morris Owens, Esq.  
Owens Law Office  
46 North Sandusky Street, Suite 202  
Delaware, Ohio 43015

No. 17-025

17-025

Attorney Registration No. (0069866)

COMPLAINT AND CERTIFICATE

Respondent,

(Rule V of the Supreme Court Rules for  
the Government of the Bar of Ohio.)

Disciplinary Counsel  
250 Civic Center Drive, Suite 325  
Columbus, Ohio 43215-7411

FILED

MAY 30 2017

Relator.

BOARD OF PROFESSIONAL CONDUCT

Now comes relator, Disciplinary Counsel, and alleges that respondent, Robert Morris Owens, an Attorney at Law, duly admitted to the practice of law in the State of Ohio, is guilty of the following misconduct:

1. Respondent was admitted to the practice of law in the State of Ohio on November 9, 1998.
2. As an attorney, respondent is subject to the Ohio Rules of Professional Conduct and the Supreme Court Rules for the Government of the Bar of Ohio.

**Background**

3. On January 6, 2012, Dolores I. Bittner filed for divorce from Edward J. Bittner. The case was filed in the Delaware County Court of Common Pleas and was docketed as Case No. 2012 DR B 01 0010.

4. At all relevant times, Dolores was represented by Attorney Douglas Warnock or Attorney Jay Wagner, and Edward was represented by respondent.
5. On November 6, 2012, the court issued a final divorce decree. Per the decree, Edward was ordered to pay Dolores \$8,000 in spousal support each month for the next 144 months. The decree also ordered that Edward and Dolores cooperate with each other in splitting the proceeds of various joint accounts.
6. On October 8, 2013, Dolores filed a Motion for Contempt alleging that Edward had failed to pay spousal support and that he was \$26,378.71 in arrears. The motion was set for hearing on January 21, 2014; however, it was continued three times – twice at respondent's request and once at the court's request. The hearing was ultimately held on April 14, 2014.
7. On April 18, 2014, the magistrate issued a decision finding Edward to be in arrears by \$60,861.47 and ordered that Edward's former employer, Ariel Corporation, allocate that amount, plus 2% in administrative fees, to Dolores from Edward's retirement plan.
8. Edward, Dolores, and Ariel all filed objections to the magistrate's decision. A hearing on the objections was held on January 23, 2015.
9. On February 5, 2015, Judge J. Timothy Campbell ordered that Edward be found in arrears in the amount of \$60,861.47, that a QDRO be prepared and submitted to the court ordering Ariel to allocate \$62,078.69 (arrearage plus 2%) to Dolores from Edward's retirement plan, that Edward be found in contempt for failure to pay spousal support, and that Edward be sentenced to 30 days in jail for the contempt. Judge Campbell stated, however, that Edward could purge himself of the contempt by bringing all arrearages current within 30 days of the order.

10. On March 6, 2015, Edward appealed Judge Campbell's February 5, 2015 order.
11. On September 28, 2015, and while the appeal was still pending, Edward filed a Motion for Contempt against Dolores claiming that she had failed to cooperate in the splitting of various joint accounts. *See* Paragraph 5.
12. On November 10, 2015, the 5<sup>th</sup> District Court of Appeals affirmed Judge Campbell's February 5, 2015 order.
13. On January 28, 2016, Judge Campbell scheduled a hearing for April 4, 2016 on Edward's Motion for Contempt. Judge Campbell further ordered that the parties file any motions that they wanted to be heard at the April 4, 2016 hearing by March 21, 2016.
14. On February 16, 2016, Dolores filed a motion with a number of requests regarding Edward's support obligation including, but not limited to, requests regarding a QDRO that was necessary to effect Judge Campbell's February 5, 2015 order. *See* Paragraph 9.
15. On March 21, 2016, Edward filed a Motion for Modification of Spousal Support, as well as a Motion for Relief pursuant to Civil Rule 60(A).
16. The April 4, 2016 hearing was later continued until July 29, 2016.
17. By June 30, 2016, Edward's spousal support arrearage had reached \$228,362.71.
18. Prior to the hearing on July 29, 2016, the parties reached an agreement whereby Dolores would keep all of the proceeds in the joint accounts, and Edward's arrearage would be reduced by the amount he would have received from the accounts. This stipulation reduced the amount of Edward's arrearage to \$58,242.93 as of June 30, 2016.
19. On July 29, 2016, Judge Campbell found Edward to be \$58,242.93 in arrears and ordered him to immediately serve 30 days in jail (in contempt) for failing to pay the arrearage

pursuant to his February 5, 2015 order. Judge Campbell ordered, however, for Edward to be released from jail upon payment of \$58,242.93.

### Misconduct

20. Edward was remanded to jail at 2:17 PM on Friday, July 29, 2016.
21. After Edward was taken into custody, respondent immediately went to Fidelity Federal Savings and Loan Association, where he maintained his IOLTA, and requested a counter check for \$58,242.93.
22. At the time this check was requested, respondent had \$79,070.03 in his IOLTA, of which \$73,918.64 was being held in trust for 19 other clients. Respondent was not holding any funds in trust for Edward.
23. Respondent then delivered the counter check to the Delaware County Child Support Enforcement Agency (CSEA) as payment of Edward's arrearage; however, he failed to disclose to CSEA that the funds belonged to other clients.
24. CSEA accepted respondent's IOLTA check and gave him a receipt for the payment. Respondent presented the receipt to the Delaware County Jail, which in turn caused the court to issue an entry ordering that Edward be released from jail. Edward was released from jail at approximately 3:15 PM, and he immediately returned to New York, where he was living at the time.
25. On Monday, August 1, 2016, Edward's wife, Yulia Nedelko, transferred \$60,000 from a savings account into her checking account. She then issued a check to respondent for \$58,242.93 and overnighted it to him.
26. Respondent received Nedelko's check on August 2, 2016. Upon receipt of this check, respondent placed a stop payment order on his July 29, 2016 counter check.

27. On August 2 or 3, 2016, respondent went to the Delaware County CSEA. Respondent advised Joyce Bowens, the CSEA Director, that there “might be an issue” with his July 29, 2016 check, and he gave Bowens Nedelko’s check as a replacement. Respondent had signed Nedelko’s check over to Child Support Payment Central (CSPC), the agency that processes all support payments.
28. Bowens immediately advised respondent that CSPC would not accept a check that had been signed over to CSPC. Bowens then checked to see whether respondent’s July 29, 2016 check had been processed, and she called CSPC to determine the best way to handle the situation.
29. While Bowens was on the phone with CSPC, respondent abruptly stated that he needed to leave. He left Nedelko’s check with Bowens and asked her to call him on his cell phone.
30. On August 3, 2016, Bowens called respondent, left him a message, and requested that he return her call. Respondent did not return Bowens’ call.
31. On August 8, 2016, Bowens called respondent, left another message, and again requested that he return her call. Respondent returned Bowens’ call on August 9, 2016 at 8:56 AM.
32. On August 9, 2016, Bowens advised respondent that CSPC had attempted to process his July 29, 2016 IOLTA check, but that it had been returned due to the stop payment order. She informed him that there were a number of ways he could re-present payment; however, because each of these ways took a considerable amount of time, she suggested that respondent wire money to CSEA’s account and stated that upon receipt, CSEA would immediately record it as a cash payment.

33. In response, respondent requested CSEA's account number and routing information. He also stated that he would need to pick up Nedelko's check so that he could deposit it into his account and make the wire transfer to CSEA.
34. Shortly after their conversation, at 10:27 AM, Bowens sent an email to respondent with CSEA's account number and routing information.
35. On August 11, 2016, and because respondent had not yet picked up Nedelko's check or wired money to CSEA, Bowens called respondent. She left him a message and requested a return phone call. Respondent did not return Bowens' call.
36. On August 12, 2016, Dolores, through counsel, filed a Motion to Impose Sentence and Motion for Attorney Fees and Sanctions due to Edward's failure to pay \$58,242.93 as ordered by Judge Campbell on July 29, 2016. The matter was set for hearing on September 6, 2016.
37. On August 16, 2016, Bowens left respondent a second message regarding Nedelko's check. Respondent did not return Bowens' call until August 18, 2016.
38. On August 18, 2016, respondent apologized for not returning Bowens' calls, and he informed her that Edward was working on resolving the matter regarding payment.
39. On the same day, however, Bowens got a call from Edward claiming that he did not know there was an issue with his spousal support payment.
40. Respondent never picked up Nedelko's check, so on August 22, 2016, Bowens had a court deputy deliver the check to respondent.
41. On August 23, 2016, CSEA received a second check directly from Nedelko for \$58,242.93. CSEA forwarded this check to CSPC; however, as of September 6, 2016, the check had not yet cleared.

42. During the hearing on September 6, 2016, Judge Campbell stated that Edward was still in contempt because the \$58,242.93 had not been paid. Moreover, there was testimony that Edward had accumulated an additional \$24,000 in arrearages because he had not paid spousal support in July, August, or September 2016. Edward was not present at the September 6, 2016 hearing.
43. On or about September 16, 2016, Nedelko's second check cleared and \$58,242.93 was credited towards Edward's spousal support arrearage.
44. On September 19, 2016, Judge Campbell issued an order remanding Edward to jail for 30 days and stating that a warrant would be issued for his arrest. Consistent with his February 5, 2015 order, Judge Campbell stated that Edward could purge himself of the contempt "if he brings all spousal support as of this date current." Finally, Judge Campbell held respondent and Edward jointly and severally liable for \$1,809.60 in attorney fees that Dolores had incurred since July 29, 2016.
45. On October 4, 2016, respondent filed an appeal of Judge Campbell's September 19, 2016 order, which stayed the matter. The appeal is currently pending with oral arguments scheduled for May 30, 2017.
46. Respondent's conduct as outlined above violates the Ohio Rules of Professional Conduct, specifically:
  - Prof. Cond. R. 8.4(c) (prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation) by representing to CSEA and the court on July 29, 2016, through his presentment of a check drawn on his IOLTA, that Edward had paid his spousal support arrearage when he had not;
  - Prof. Cond. R. 8.4(d) (prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice) by setting into motion and participating in a series of events that deprived Dolores of long-overdue spousal support for an additional month and which necessitated the filing of another motion, as well as another hearing, regarding Edward's failure to pay spousal support; and

- Prof. Cond. R. 8.4(h) (prohibiting a lawyer from engaging in conduct that adversely reflects on his fitness to practice law) by placing funds belonging to 19 of his clients in danger for the sole purpose of having Edward released from jail.

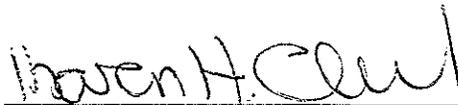
### CONCLUSION

Wherefore, pursuant to Gov. Bar R. V and the Ohio Rules of Professional Conduct, relator alleges that respondent is chargeable with misconduct; therefore, relator requests that respondent be disciplined pursuant to Rule V of the Rules of the Government of the Bar of Ohio.



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Scott J. Drexel (0091467)  
Disciplinary Counsel



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**CERTIFICATE**

The undersigned, Scott J. Drexel, Disciplinary Counsel, of the Office of Disciplinary Counsel of the Supreme Court of Ohio hereby certifies that Karen H. Osmond is duly authorized to represent relator in the premises and has accepted the responsibility of prosecuting the complaint to its conclusion. After investigation, relator believes reasonable cause exists to warrant a hearing on such complaint.

Dated: May 16, 2017

A handwritten signature in black ink, appearing to read "Scott J. Drexel", is written over a horizontal line.

Scott J. Drexel, Disciplinary Counsel