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

BOARD OF PROFESSIONAL CONDUCT

In re: :

ERIE-HURON COUNTY :
BAR ASSOCIATION :
c/o Erie County Law Library :
247 Columbus Avenue, Room 37 :
Sandusky, OH 44870 :

CASE NO. 17-026

CERTIFIED COMPLAINT

Relator, :

Rule V of the Supreme Court
Rules for Government of the Bar of Ohio

-v- :

ROBERT ZELVY :
171 E. Washington Row :
Sandusky, OH 44870 :

FILED

JUN 02 2017

Respondent :

BOARD OF PROFESSIONAL CONDUCT

NOW COMES Relator, Erie-Huron County Bar Association, as, by and through undersigned Trial Counsel and Bar Counsel, and hereby alleges that Respondent Robert Zelvy (Ohio Reg. No. 0032086), Attorney at Law, duly admitted and in good standing to practice law in the State of Ohio, is guilty of the following misconduct.

1. Relator, the Erie-Huron County Bar Association ("EHCBA") is a certified grievance committee authorized to investigate allegations of misconduct by attorneys admitted to practice before the Supreme Court of Ohio and initiate complaints as a result of such investigations in appropriate instances, pursuant to Gov.Bar.R. V.

2. Respondent Robert Zelvy ("Respondent") was admitted to practice by the Ohio Supreme Court on May 3, 1969. His last known business address and attorney registration number are set forth above.

3. Respondent is subject to the Ohio Rules of Professional Conduct and the Ohio Supreme Court Rules for the Government of the Bar.

4. Respondent has not been previously disciplined by the Supreme Court of Ohio and he currently holds active status before the Court.

5. Respondent began his representation of Alvin Stein, his uncle, in May 2015. This representation continued until Mr. Stein's death in March 2016. Respondent also served as Mr. Stein's attorney-in-fact, pursuant to a durable power of attorney ("POA") executed by Mr. Stein.

6. At the onset of the EHCBA's investigation of the grievance filed in relation to Respondent's representation of Mr. Stein, Respondent claimed that Mr. Stein paid him attorney fees "according to our verbal agreement." Respondent claimed that he billed Mr. Stein for 65 hours of work at a discounted rate of \$250/hr. (his usual rate was claimed to be \$350/hr.), for a total bill of \$16,250.00.

7. In response to the EHCBA's initial Letter of Inquiry, the Respondent provided an itemized timesheet for his billing of Mr. Stein and a letter received from the attorney representing Mr. Stein's children, Abbie Echle and Robert Stein. The time sheet is itemized by date, work completed, and time spent, of Respondent's work for Mr. Stein. The letter received by Respondent from Attorney Douglas W. Arthur requested information from Respondent regarding services performed on behalf of Mr. Stein, specifically an itemized invoice for services performed as attorney-at-law and attorney-in-fact, an accounting of Mr. Stein's assets covering Respondent's time as Mr. Stein's attorney-in-fact, and a copy of the ledger for Mr. Stein's checking account.

8. Respondent's timesheet begins on July 20, 2015 and concludes on March 1, 2016, totalling 65 hours. The detail of work completed ranged from legal tasks such as reviewing

contracts for the sale of Mr. Stein's home to conclusory entries like "Full day with Alvin."

Examples of entries of apparent nonlegal work included:

- a. 9/28/15 – Trip to bank and shopping – 1.0 (hours);
- b. 11/16/15 – Full day with Alvin – 8.0;
- c. 11/17/15 – Full day with Alvin – 8.0;
- d. 11/25/15 – Visit bank, hospital, apartment, spoke to George about moving and insurance – 3.0.

9. In a second response to the EHCBA, Respondent explained that he began his "representation and care for my uncle, Alvin Stein" "sometime in May of 2015[.]" Respondent wrote that, "at the beginning of my representation of Mr. Stein he presented me with a large amount of cash to cover my time caring for him[.]" Respondent further wrote that he charged Mr. Stein for 67 hours of legal time but was paid for only 65 hours at the rate of \$250/hr. Respondent wrote, "This amounts to \$16,750.00 and as stated I deposited \$16,249.00 in my escrow account or law office account."

10. Respondent attached seven deposit slips to this response. Each slip was for either Respondent's law office operating account ("Operating Account") or his IOLTA, both held at Civista Bank.¹ The total deposit amounts represented by these slips were \$16,249.28. The first deposit was dated June 2, 2015 and the last was February 17, 2016

11. The EHCBA Investigative Sub-Committee took the deposition under oath of Respondent on December 6, 2016. Respondent was represented by counsel.

12. Respondent testified that he was first contacted to provide assistance to his uncle, Mr. Stein, in June 2015. When he first met with Respondent, Mr. Stein indicated that he wished to update his will, and to enter into a POA, designating Respondent as his agent. Respondent

¹ The slips are marked "Citizens Bank," Civista's previous name.

testified that Mr. Stein desired this arrangement because he did not trust his children, and he needed spending money and his needs attended to.

13. Respondent understood that he was going to work for Mr. Stein as attorney-at-law and attorney-in-fact. Respondent claimed that he had a verbal fee agreement with Mr. Stein for these matters.

14. Respondent testified that Mr. Stein asked him to charge him his usual hourly rate for this representation. Respondent testified that he never discussed the actual amount of that hourly rate.

15. Respondent testified that there was no discussion of charging a separate hourly rate for services rendered as agent or attorney-in-fact, and that it was his understanding that all services would be subject to the same rate.

16. Respondent notarized a POA instrument, executed by Alvin Stein on July 21, 2015. The instrument designated Respondent as agent and his wife, Sandra Zelvy, as alternate agent. In addition to Respondent's notarial acknowledgment, Respondent and Sandra Zelvy signed as witnesses. However, the POA acknowledgment page contained an attestation that the witnesses were not to be related to the principal by blood or marriage.

17. Respondent testified that the services rendered as POA included supervising Mr. Stein's healthcare, and his transfer and transportation between different nursing facilities. Respondent had furnishings and personal effects removed from Mr. Stein's home and had the home prepped for sale.

18. When the representation began, Mr. Stein held a safe deposit box at a branch of Fifth Third Bank in Mayfield Village. Respondent understood that his attorney fees would be paid out of money taken from this safe deposit box.

19. During the representation, and after being appointed Mr. Stein's attorney in fact, Respondent closed the safe deposit box at Fifth Third Bank. At that time, Mr. Stein provided Respondent with two bundles of currency that had been kept in that box. Mr. Stein asked Respondent not to deposit that currency into a bank account.

20. Respondent believed that Mr. Stein asked him not to deposit the currency, because Mr. Stein had not disclosed the existence of those funds on the Medicaid application for his wife's nursing care, and because Mr. Stein desired to avoid drawdown of his funds by Medicaid.

21. Respondent did not inventory the contents of the closed Fifth Third safe deposit box. He did not inventory or create an accounting of the currency he received from Mr. Stein at this time.

22. Respondent became uncomfortable holding this large amount of currency, so he decided to obtain a safe deposit box at Civista Bank in Sandusky. Respondent put the currency in the box. He did not inventory the property placed into the box. He did not recall the amount of currency placed into the box.

23. Respondent was present when Mr. Stein withdrew \$8,500.00 from his checking account at Fifth Third Bank. Respondent placed the cash received in that transaction into the Civista safe deposit box.

24. Respondent testified that cash would be withdrawn periodically by Mr. Stein, and given to Respondent, either for safekeeping or to make payments to friends and family members as directed by Mr. Stein. Respondent did not explain where this cash was kept prior to being distributed.

25. Respondent believed that Mr. Stein withdrew approximately \$55,000 from his checking account between January and October 2015. He testified that he was not present for all of these withdrawals, and that he could not be sure where all of the funds went.

26. Respondent testified that he was paid \$16,250.00 by Mr. Stein. He did not know when this money was paid, and in what form of payment. He believed that it came from the \$55,000 withdrawn by Mr. Stein from his checking account. Respondent further testified that \$12,000 of that total withdrawn sum was paid for movers at Mr. Stein's house.

27. On November 16 and 17, 2015, Respondent billed Mr. Stein for two 8.0 hour entries on the respective days, notated as "Full day with Alvin". Respondent testified that he spent the entire day with his uncle and performed errands on his behalf.

28. When Mr. Stein passed away, Respondent delivered a package containing \$22,000 cash, and seven rolls of coins, to a jewelry store on March 3, 2016.

29. Respondent delivered two checkbooks for Mr. Stein's account to Abbie Echle and Robert Stein after their father died. Respondent states that he did not write any checks from these checkbooks.

30. Respondent testified that he billed Mr. Stein for his services by the hour. He kept track of his time with handwritten notes, which he retained.

31. Respondent's IOLTA and law office operating accounts, at times relevant to this grievance, were maintained at Civista Bank. Respondent testified that over this time period, these accounts were managed and handled by Deborah Lash, his now-retired office manager. Respondent testified that Lash was responsible for preparing and making deposits to these accounts.

32. Respondent testified that he did not have knowledge of whether each of the seven deposits at issue were made with cash or check. However, he testified that he had never deposited a check from Mr. Stein.

33. Although Respondent denied having written any of the deposit slips submitted to the EHCBA, when confronted with one of the slips, he acknowledged writing out that particular slip. The slip was dated October 26, 2015, and it indicated a deposit of \$2,042.28, in the name of "Stein," to the Respondent's law office operating account. The "Stein" notation was in the space reserved for the listing of checks.

34. Respondent was questioned about this deposit, in light of earlier testimony that he had never deposited any checks in relation to his representation of Mr. Stein. Respondent was asked if he had in fact deposited a check for \$2,042.28 on October 26, 2015. He answered as follows:

A: I don't remember, if you were to ask me here, here we go with assumptions, I am assuming that is currency.

Q: Let me interject, it would not have been unusual for you to deal with currency but write a name so you could distinguish who the client was?

A: Absolutely, yes, that is correct that is what I mean.

Deposition, 40:25 – 41:7.

35. Respondent explained that a June 2, 2015 deposit with the listed source of "Zelvy Escrow Key Bank" represented a changeover in Respondent's IOLTA account from Key Bank to Civista Bank. Respondent stated that \$3,457.00 of this deposit covered attorney fees for services rendered to Mr. Stein occurring before June 2015. Respondent testified that these were earned fees, but he did not know why the earned fees would be placed in the IOLTA, other than due to unfamiliarity with IOLTA procedures for non-personal injury matters.

36. Respondent that he did not know when that \$3,457.00 was removed from his IOLTA, but that he was sure that it was withdrawn, and that it was not presently in the account. Respondent was unsure how the sum was withdrawn (i.e. by check or cash), or where it went afterwards.

37. After the deposition, the EHCBA requested Respondent's statements for his IOLTA and law office operating accounts, for months covering the deposits at issue in the Grievance.

38. Respondent provided these documents to the EHCBA on February 24 and 28, 2017. These documents included images of checks deposited, or the computer generated receipts created when cash was received at the time of deposit.

39. The EHCBA's review of the documents found the following apparent inconsistencies with Respondent's previous representations to the Committee during its investigation:

- a. The June 25, 2015 Deposit of \$1,000.00 consisted of a check drawn on the personal checking account of Robert and Sandra Zelvy, made payable to "Robert Zelvy and Assoc.", with no notation in the memo line.
- b. The October 28, 2015 Deposit of \$2,042.28 was a check drawn on the Respondent's IOLTA made payable to the Respondent's Law Office Operating Account. The memo contained the notation "Stein v. Evans."
- c. The February 17, 2016 Deposit of \$4,250.00 was a check drawn on the State Farm Mutual Automobile Insurance Company made payable to "Robert Zelvy and Associates and Caffy **Steen**, a Single Individual." (emphasis added). The

check was jointly endorsed with the signature of Caffy Steen and the deposit stamp for the Respondent's IOLTA.

40. The EHCBA sent a letter to Respondent, dated March 13, 2017, requesting that he clarify issues which had arisen during the investigation, including the Committee's concerns that Respondent had misrepresented facts about his representation of Mr. Stein and in his accounting of deposits associated with that representation.

41. On March 24, 2017, Respondent replied in writing. Regarding the apparent inconsistencies between his recounting of deposits of attorney fees allegedly paid by Mr. Stein and the information gathered from the actual records provided to the EHCBA, Respondent wrote that "We have provided you with all the bank records available to [Respondent] and we have provided you all the information that you have requested on a prompt and thorough basis."

42. Relator believes that restitution may be owed but cannot make a good faith allegation regarding the amount owed without engaging in further discovery.

43. Respondent failed to communicate his fees prior to, or within a reasonable time after commencement of, his representation of Mr. Stein. Respondent never disclosed his hourly fee to Mr. Stein.

44. Respondent charged legal fees for nonlegal services provided to Mr. Stein, including for work performed as attorney-in-fact, and for companionship provided to Mr. Stein.

45. Respondent charged an overall fee of \$16,250.00, which was excessive in light of the character and nature of the work performed for Mr. Stein.

46. Respondent collected fees for some work before performing the work.

47. Respondent failed to hold Mr. Stein's property separate from his own, when he collected attorney fees for some work before that work was performed, and when he failed to deposit those fees into his IOLTA.

48. Respondent failed to provide records of receipt and disbursement of Mr. Stein's funds from the IOLTA.

49. Respondent failed to inventory property received from Mr. Stein and held on his behalf, including cash given to Respondent and property removed from the Fifth Third Bank safe deposit box and placed into the Civista Bank safe deposit box. Respondent further failed to provide an accounting of funds and property received from Mr. Stein, upon request by the attorney for Mr. Stein's estate.

50. Respondent failed to deposit cash received from Mr. Stein into his IOLTA.

51. Respondent misrepresented to the EHCBA that two deposits to his IOLTA and law office operating accounts were for attorney fees paid by Mr. Stein, when in fact they related to other clients.

52. When confronted with evidence that these deposits were not related to his representation of Mr. Stein, Respondent declined to clarify or explain why these deposits had been represented to the EHCBA as transactions related to his representation of Mr. Stein.

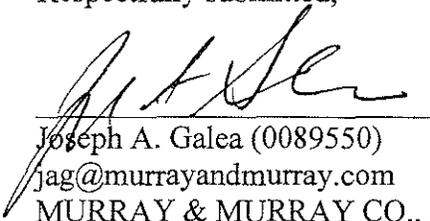
53. Respondent failed to keep an accounting of funds received and disbursed while acting as Mr. Stein's attorney-in-fact pursuant to the durable power of attorney.

54. Respondent used his authority as power of attorney to remit funds obtained from Mr. Stein to his operating account and IOLTA for payment of attorney fees, without otherwise obtaining authorization from Mr. Stein to remit said funds.

55. Respondent's conduct as outlined above violates the following Rules of Professional Conduct:

- a. Prof.Cond.R. 1.5 (prohibiting an illegal or clearly excessive fee), by charging Mr. Stein the same fee for legal and nonlegal work, charging a fee for personal time spent with Mr. Stein, failing to communicate the hourly rate before, or within a reasonable time after, commencement of the representation, charging for legal work before it was performed, and charging an overall excessive fee;
- b. Prof.Cond.R. 1.15 (requiring use of an IOLTA, inventory of client's property), by failing to place Mr. Stein's property in an IOLTA, and failing to inventory that property;
- c. Prof.Cond.R. 8.1 (prohibiting knowingly false misstatements in a disciplinary proceeding), by knowingly misrepresenting that two unrelated deposits were for legal fees paid by Mr. Stein;
- d. Prof.Cond.R. 8.4(d) (prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice), by failing to provide an accounting of transactions as attorney-in-fact, and by using his power as attorney-in-fact to remit Mr. Stein's funds to his own accounts without authorization.

Respectfully submitted,


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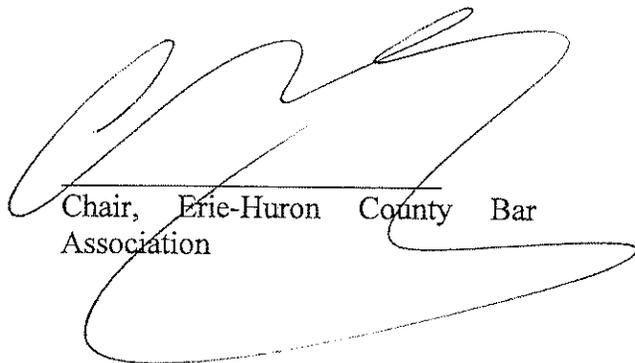
Sandusky, OH 44870

CERTIFICATE OF AUTHORIZATION

The undersigned, Curtis Koch, Chair of the Erie-Huron County Bar Association, hereby certifies that Attorney Joseph A. Galea, Trial Counsel is duly authorized to represent Relator in the premises and has accepted the responsibility of prosecuting this complaint to its conclusion.

After investigation, Relator believes that there is reasonable cause to warrant a hearing on such complaint *in re*: ROBERT ZELVY.

Dated: May 17, 2017



Chair, Erie-Huron County Bar
Association