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JUN 23 2017

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

BOARD OF PROFESSIONAL CONDUCT

IN RE:
COMPLAINT AGAINST

Jonell Rae Glitzenstein, Esq.
P.O. Box 19059
Akron OH 44319

No. 17-033

COMPLAINT AND CERTIFICATE

Attorney Registration No. 0061889

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

RESPONDENT,

Akron Bar Association
57 South Broadway Street
Akron, Ohio 44308

FILED

JUN 29 2017

BOARD OF PROFESSIONAL CONDUCT

RELATOR.

Now comes the Relator and alleges that Jonell Rae Glitzenstein, an Attorney at Law, Registration No. 0061889, duly admitted to the practice of law in the State of Ohio, has engaged in the following misconduct:

PARTIES

1. The Akron Bar Association ("Relator"), is a Certified Grievance Committee under Gov. Bar R. V(3)(C). Relator has been authorized by the Board of Professional Conduct for the Supreme Court of the State of Ohio to investigate allegations of misconduct by attorneys and initiate complaints as a result of investigations under the provisions of the Rules for the Government of the Bar as promulgated in the State of Ohio.
2. Jonell Rae Glitzenstein ("Respondent") was admitted to the practice of law in the state of Ohio on November 8, 1993. Respondent is subject to the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

3. On or about May 6, 2016, Relator received a grievance from Marlene M. Chinchar (“Chinchar”), a former client of Respondent.
4. On or about November 1, 2016, Relator received a grievance from Darlene Miheli (“Miheli”), a former client of Respondent.
5. On or about October 7, 2016, Relator received a grievance from A.C. Whitsette, Jr. (“Whitsette”), a former client of Respondent.

COUNT ONE

6. On March 16, 2017, the Relator’s Certified Grievance Committee voted to dismiss the underlying allegations made by Chinchar and Whitsette. It voted that day to proceed on the underlying allegations made by Miheli, described in Count Two below. On May 11, 2017, the Committee voted to proceed on the subsequently arisen allegations concerning Chinchar that are described in Count Three below.
7. During the course of the investigation of the underlying grievances of Chinchar, Miheli and Whitsette, the Relator discovered that Respondent violated the Ohio Rules of Professional Conduct concerning the use of an IOLTA account, as set forth below.
8. Respondent maintained a general law practice, wherein she collected client retainers and cost payment advances, which should have been deposited into her IOLTA account because they were unearned fees and unexpended cost payments.
9. Respondent at all relevant times maintained an IOLTA account. However, from at least January of 2013 through March 21, 2017, Respondent failed to deposit client retainers and cost advances into her IOLTA Account, which had an unchanging balance of \$24.82. A deposit of \$1,000.00 was made into the IOLTA account on March 22, 2017.
10. Respondent put no part of the following described funds into an IOLTA account: \$3,000.00

retainer paid by Chinchar on December 13, 2013; filing fee advance of \$200.00 paid on May 28, 2014, on behalf of Chinchar by her mother, Irene Chinchar; further retainer payment of \$2,000.00 paid on or about July 24, 2015 on behalf of Chinchar by her mother; the further retainer payment of \$4,000.00 paid on February 9, 2016 on behalf of Chinchar by her mother; or the further retainer payment of \$2,000.00 paid on March 1, 2016, on behalf of Chinchar by her mother.

11. Respondent put no part of the following described funds into an IOLTA account: \$1,500.00 retainer paid in cash by Miheli on August 28, 2014, until April 6, 2017, when Respondent claims that she deposited "the Miheli funds" (presumably the remaining balance of \$430.75 owed to Miheli).
12. Respondent put no part of the following described funds into an IOLTA account: \$750.00 retainer paid by Whitsette on August 14, 2015; \$300.00 paid by Whitsette on September 10, 2015, used by Respondent to reimburse a \$200.00 filing fee advance and the balance for retainer.
13. Respondent received at least \$150,000.00 in client fees in the years 2013-2015, including but not limited to funds paid to Respondent by Chinchar, Miheli and Whitsette. On information and belief, based on her description of her practice, Respondent received at least \$30,000.00 in client fees in 2016 and at least a commensurate proportion of that annual amount during January-mid March of 2017. A substantial portion of the funds received by Respondent from clients were for unearned retainers and unpaid costs. None of the funds received were deposited into Respondent's IOLTA account.
14. Respondent did not maintain a record for each client on whose behalf funds were held that sets forth all of the following: (i) the name of the client; (ii) the date, amount, and source

of all funds received on behalf of such client; (iii) the date, amount, payee, and purpose of each disbursement made on behalf of such client; (iv) the current balance for such client.

15. Respondent did not maintain a record for each bank account that sets forth all of the following: (i) the name of such account; (ii) the date, amount, and client affected by each credit and debit and (iii) the balance in the account.

16. With respect to Count One, Relator alleges that as a result of the above, Respondent's conduct violates the following Rules of Professional Conduct, specifically:

- By failing to deposit unearned retainers and unpaid costs into Respondent's IOLTA account, Respondent violated Prof. Cond. R. 1.15(a) [A lawyer shall hold property of clients separate from a lawyer's own property] and Prof. Cond. R. 1.15(c) [A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred];
- By failing to maintain a record for each client on whose behalf funds were held, Respondent violated Prof. Cond. R. 1.15(a)(2) [A lawyer shall maintain a record for each client on whose behalf funds are held that sets forth the following: (i) the name of the client; (ii) the date, amount, and source of all funds received on behalf of such client; (iii) the date, amount, payee, and purpose of each disbursement made on behalf of such client; (iv) the current balance for such client];
- By failing to maintain a record for Respondent's IOLTA account, Respondent violated Prof. Cond. R. 1.15(a)(3) [A lawyer shall maintain a record for each bank account that sets forth all of the following: (i) the name of such account; (ii) the date,

amount, and client affected by each credit and debit;(iii) the balance in the account].

COUNT TWO

17. Respondent was retained to represent Miheli in a divorce that Miheli was contemplating.
18. On August 28, 2014, Miheli and Respondent entered into an oral agreement whereby Miheli paid Respondent a \$1,500.00 cash retainer and Respondent would bill her at \$175.00 per hour.
19. Respondent did not deposit any portion of the retainer into any bank account. According to Respondent, she put the cash into a safe in her home.
20. Between August 28, 2014 and November 17, 2016, Respondent from time to time withdrew a total of \$1,069.25 from the Miheli cash retainer for her personal use, leaving a cash balance of \$430.75. There are no records of the dates and amounts of the withdrawals.
21. Respondent contends that she had earned fees equal to the amounts of the withdrawals when she took the funds. No record of the fees claimed to have been earned was made by Respondent until November 17, 2016, when she prepared an invoice as part of her response to Miheli's grievance. The invoice was not sent to Miheli by Respondent until April 6, 2017, the date Respondent received initial notice of the intention of Relator to file this Complaint.
22. The invoice shows a refund of retainer fee due in the amount of \$430.75. Respondent did not pay the refund to Miheli until April 6, 2017, the date Respondent received initial notice of the intention of Relator to file this Complaint.
23. In or about April of 2015, Miheli decided not to proceed with a divorce.
24. On April 9, 2015; in May, August and September of 2015; and on June 1, August 12 and

August 22, 2016, Miheli sent Respondent email messages telling Respondent she did not want to proceed with the divorce and requesting a refund of at least a portion of her retainer payment.

25. Beginning in October of 2015, Miheli several times left voicemail messages for Respondent saying she did want to proceed with the divorce and requesting a refund of at least a portion of her retainer payment.
26. Respondent did not respond to any of Miheli's messages. She expressly admits receiving Miheli's email on August 12, 2016 and disregarding it.
27. At least as early as August 12, 2016, Respondent had withdrawn from the representation of Miheli. Respondent did not refund any part of the \$430.75 fee paid in advance that had not been earned until April 6, 2017, the date Respondent received initial notice of the intention of Relator to file this Complaint.
28. At least as early as August 12, 2016, Respondent's representation of Miheli had terminated. Respondent did not return the cash in the amount of \$430.75 that was the property of Miheli until April 6, 2017, the date Respondent received initial notice of the intention of Relator to file this Complaint.
29. Respondent acted dishonestly by intentionally keeping Miheli's money despite Miheli's repeated requests for it.
30. Respondent admits that she failed to deposit in any bank account retainers paid in cash by Miheli and some other clients and withdrew the cash from time to time, without maintaining records of the transactions or determining expressly that fees had by then been earned in the amounts withdrawn.
31. By holding Miheli's and other retainers in cash and withdrawing portions of it from time

to time without any records and without specific determinations of the fees that had by then been earned, Miheli engaged in misconduct not otherwise described in the Rules of Professional Conduct that adversely reflects on her fitness to practice law.

32. With respect to Count Two, Relator alleges that as a result of the above, Respondent's conduct violates the following Rules of Professional Conduct:

- By failing to refund at least a portion of the retainer paid to her by Miheli, Respondent violated Prof. Cond. R. 1.16(d) [As part of the termination of representation, a lawyer shall take steps, to the extent reasonably practicable to protect a client's interest, including delivering to the client all property to which the client is entitled. Client property shall promptly be delivered to the client.] and Prof. Cond. R. 1.16(e) [A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned];
- By failing to respond to any of Miheli's messages, Respondent violated Prof. Cond. R. 1.4(a)(4) [A lawyer shall comply as soon as possible with reasonable requests for information from the client];
- By intentionally keeping Miheli's money despite Miheli's repeated requests for a refund, Respondent violated Prof. Cond. R. 8.4(c) [It is professional misconduct for a lawyer to engage in conduct involving dishonesty]; and
- By failing to deposit in any bank account retainers paid in cash by Miheli and other clients, and withdrawing the cash from time to time, without maintaining records of the transactions or determining expressly that fees had by then been earned in the amounts withdrawn, Respondent violated Prof. Cond. R. 8.4(h) [It is professional misconduct for a lawyer to engage in conduct that adversely reflects

on Respondent's fitness to practice law].

COUNT THREE

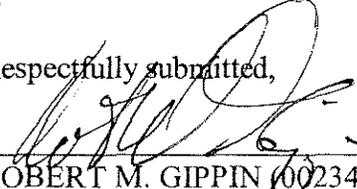
33. During the investigation of the Chinchar grievance, Relator was informed by Chinchar that Chinchar wished to have Respondent return to her the original documents that she had provided to Respondent. Chinchar had previously requested Respondent to do so, but Respondent had not sent the documents to her.
34. However, Relator requested of Chinchar and received her consent that she allow the original documents to remain with Respondent during the investigation of Chinchar's grievance. Relator requested Respondent to retain the documents on that basis.
35. On or about March 21, 2017, the Chinchar investigation was completed. On that date, Relator advised Respondent that Relator had no further need for Respondent to retain the original Chinchar documents and that Chinchar still wished to have them returned to her. Relator asked Respondent to let the investigators know when the documents had been sent to Chinchar.
36. Respondent replied on March 22, 2017, that she would advise when the Chinchar documents had been sent.
37. On April 6, 2017, Respondent sent Relator's investigators a message stating that she had received the Notice of Intent to File that day and would be retaining the Chinchar documents.
38. The documents have not to date been returned to Chinchar.
39. Respondent has no right to retain Chinchar's original documents, regardless of the pendency of these proceedings.

40. With respect to Count Three, Relator alleges that as a result of the above, Respondent's conduct violates the following Rule of Professional Conduct:

- By failing to return the Chinchar original documents to her, Respondent violated Prof. Cond. R. 1.16(d) [As part of the termination of representation, client papers and property shall be promptly delivered to the client.]

Wherefore, Relator asks that such discipline be administered to Respondent as may be deemed appropriate following a hearing on the merits.

Respectfully submitted,



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CERTIFICATE

The undersigned, Sharyl Ginther, Chair of the Akron Bar Association Certified Grievance Committee, hereby certifies that Robert M. Gippin and Deborah L. Ruby are 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: June 15, 2017

Sharyl N. Ginther
Sharyl Ginther, Chair
Certified Grievance Committee