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**BEFORE THE BOARD OF COMMISSIONERS
ON GRIEVANCES AND DISCIPLINE OF
THE SUPREME COURT OF OHIO**

MAY 23 2014

**BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE**

In re:

Complaint against

**Raymond Leland Eichenberger, Esq.
7544 Slate Ridge Boulevard
Reynoldsburg, OH 43068**

14 - 045

No. _____

Attorney Registration No. (0022464)

Respondent,

COMPLAINT AND CERTIFICATE

**(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

JUN 09 2014

**BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE**

Relator.

Now comes the relator and alleges that Raymond Leland Eichenberger, an Attorney at Law, duly admitted to the practice of law in the state of Ohio, is guilty of the following misconduct:

1. Respondent, Raymond Leland Eichenberger, was admitted to the practice of law in the state of Ohio on November 7, 1980. Respondent is subject to the Code of Professional Responsibility, Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.
2. On May 9, 2013, relator received an overdraft notice from PNC Bank that respondent's IOLTA became overdrawn on May 2, 2013 (account number XX-XXXX-6377).
3. On June 12, 2013, relator sent a letter of inquiry to respondent regarding the May 2, 2013 overdraft.

4. On June 27, 2013, relator received a written response from respondent to the letter of inquiry. The respondent stated that the transaction that caused the overdraft was an unauthorized attempt to make a withdrawal from an account that was not currently being used and was in the process of being closed. Respondent provided no additional details about this transaction that caused the overdraft.
5. Respondent also stated that his IOLTA account numbers XXXXX3339 and XXXXXX6377 are the *same* account but had two account numbers because of the bank's transition from National City Bank to PNC.
6. The overdraft notice from PNC Bank described the transaction causing the overdraft as PAYDAYADV CASHNETUSA in the amount of \$1,275.68, item returned, no charge.
7. Respondent did not provide client ledgers or bank statements as requested by the relator in its letter of inquiry.
8. Respondent stated in his response to relator that he had already discontinued use of IOLTA account number XX-XXXX-6377 because of a security breach in March 2013 where he was made aware of an attempt to make an unauthorized transfer from the account by unknown third persons, but the account was not closed until May 2013.
9. Respondent opened a new IOLTA account at PNC in March 2013 under account number XX-XXXX-1362. Respondent provided to relator only *page 1 of 3* of the March bank statement reflecting the new account number.
10. On July 15, 2013, relator sent a letter to respondent requesting additional information.
11. In its second letter, relator again requested copies of respondent's monthly bank statements on account number XX-XXXX-6377 for the month of the overdraft, the

month before the overdraft, and the month after the overdraft, (i.e., April, May and June 2013).

12. On July 23, 2013, relator received a response from respondent. Respondent stated, in part, "I would once again emphasize to you, and state that you are missing the point, because, 1) this was a fraudulent and unauthorized transaction on an old account that was not even being used at the time, and 2) virtually all of the funds in my trust account at any given time are retainers being earned by me and not client funds".
13. Respondent provided a copy of a letter that he wrote to PNC Bank dated March 13, 2013, reporting a check in the amount of \$30 as being fraudulent and unauthorized activity on his IOLTA account.
14. Respondent provided a partial copy of his IOLTA bank statement for April 2013 for account number XX-XXXX-6377 but redacted the ACH (Automated Clearing House) deductions on page 2.
15. Respondent provided a partial copy of his IOLTA bank statement for May 2013 for account number XX-XXXX-6377.
16. On August 21, 2013, relator sent a letter to respondent requesting additional information.
17. According to respondent, he began using his new IOLTA account number XX-XXXX-1362 exclusively in early April 2013; however, according to bank record activity for his previous IOLTA (account number XX-XXXX-6377), there were deposits totaling \$2,134.48, checks totaling \$2,282.89, and ACH (Automated Clearing House) deductions totaling \$1,191.54, for the month of April, 2013.

18. Relator requested that respondent provide the redacted information from the April 2013 bank statement and client ledgers related to the activity on account number XX-XXXX-6377 for the month of April, 2013.
19. Relator also requested bank statements and client ledgers for respondent's new IOLTA account number XX-XXXX-1362 which was opened in March 2013.
20. Relator asked specifically for a more detailed explanation of the transaction that caused the overdraft in May 2013.
21. On September 5, 2013, relator received a response from respondent.
22. Respondent said that, in response to relator's further inquiry regarding the electronic transfer that caused the overdraft in May 2013, "as this transaction was not initiated by me, in the way of writing a check or personally initiating a withdrawal, it is very unfair to attempt to blame the situation on me, or to attempt to state that I caused a deficiency in the bank account balance". He further stated "the fact that the account was, for all practical purposes closed and dormant at the time of this occurrence, also makes your inquiry more than a little silly".
23. Respondent said that, in response to relator's requests for client ledgers and redacted information from the April 2013 bank statement, "all amounts in the old Trust Account after April 1, 2013 were in fact EARNED fees, and there were not even any funds that were unearned retainers in the Account". He further stated "the electronic transfers that you speak of were transfers of these already earned attorney's fee amounts to other accounts that were owned by me".
24. Respondent refused to cooperate with relator's inquiry, stating "the places where I own accounts and where I made electronic transfers are not relevant to your inquiry".

25. Respondent further stated "I will decline to send you the monthly statements from the new Trust Account, as there are no allegations pending of any problems with the Account". He further stated "I find your threats to subpoena my bank records to be totally out of line and offensive. The authority of your office in this simple and easily explained matter surely cannot extend to such overly broad and invasive limits".
26. Respondent did not provide any bank records or client ledgers for IOLTA account number XX-XXXX-1362 and did not provide any client ledgers or the *un-redacted* bank statements for IOLTA account number XX-XXXX-6377, despite multiple requests from the relator for this information.
27. Due to the lack of information provided by respondent pursuant to relator's investigation, relator obtained respondent's PNC IOLTA bank records pursuant to a subpoena.
28. The bank records obtained by relator demonstrate that, from at least September 1, 2012 through October 8, 2013, respondent used both of his PNC IOLTA accounts as if they were his personal bank accounts and/or his law office operating accounts.
29. Respondent had previously described the transaction that caused the overdraft as "fraudulent and unauthorized".
30. After review of respondent's bank records, relator determined that the transaction was neither fraudulent nor unauthorized. Respondent's bank records reflect monthly ACH (Automated Clearing House) transactions from PAYDAYADV CASHNETUSA with the *same* identifying account number but with varying monthly amounts from September 2012 through May 2013. The transaction that caused the overdraft was a recurring authorized transaction that merely continued as respondent was in the process of closing his old account.

31. From at least September 1, 2012 through October 8, 2013, respondent used his PNC IOLTA accounts as if they were his personal bank accounts and/or his law office operating accounts in the following manner; including, but not limited to:
- On at least twenty-five occasions, respondent wrote checks payable to Columbia Gas, WOW cable, and American Electric Power. These payments totaled approximately \$1,681.58.
 - On at least thirty-nine occasions, respondent issued preauthorized electronic checks or wrote checks payable to Target. These payments totaled \$1,043.84.
 - On twelve occasions, respondent wrote checks payable to DEB group for monthly rent of respondent's law office. These payments totaled \$7,200.
 - On twelve occasions, respondent wrote checks payable to Spare Room Storage for storage units. These payments totaled \$1,057.68.
 - On at least eighty-seven occasions, respondent wrote checks payable to himself. These payments totaled \$7,265.
 - On August 22, 2012, respondent wrote a check payable to Tobacco Road Golf and Travel in the amount of \$486.
 - On April 19, 2013, respondent wrote a check payable to Legacy Golf Packages in the amount of \$640.
 - On May 8, 2013, respondent wrote a check payable to the Memorial Tournament for two tournament badges in the amount of \$315.00.
 - On April 15, 2013, respondent wrote a check payable to the U.S. Treasury in the amount of \$66.67, noting Irvin/Eichenberger and 2012 Form 1040, in the check's memo line, and respondent wrote a check payable to Ohio Treasurer of State in the

amount of \$10.00, noting Irvin/Eichenberger and Form 1040, in the check's memo line.

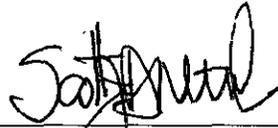
- On November 21, 2012, respondent wrote a check payable to the Columbus Symphony for two tickets in the amount of \$85.75.
 - Monthly payments in the amount of \$56.72 were issued to Protective Life Insurance by way of ACH deductions and checks written by respondent.
 - On August 16, 2013, respondent wrote a check in the amount of \$128.25 to Squared Insurance Agency for partial payment on malpractice insurance premium.
 - On ten occasions, from July 31, 2013 through October 8, 2013, respondent wrote **and** personally endorsed checks to Red Foot Racing Stables, LLC in the amount of \$3,990.
 - On numerous occasions, respondent wrote checks to Kroger, Hallmark, Kohl's, Walgreens, Anthony Thomas, Strader's, Darby Creek Nursery, JC Penney, Bath & Body Works, and Toys R Us.
32. From September 1, 2012 through October 8, 2013, Respondent's IOLTA evidenced what appeared to be client funds being deposited monthly into the account. However, since respondent refused to provide client records or ledgers, whether or not the fees were earned cannot be determined.
33. Respondent's IOLTA account balance for account number XX-XXXX-1362 was \$67.17 as of September 30, 2013.
34. After a thorough review of respondent's PNC IOLTA bank records, relator sent a letter to respondent on March 26, 2014, requesting more information but the letter was returned to

- sender, with a label from the U.S. Postal Service indicating that the forwarding time had expired.
35. Relator subsequently ascertained respondent's new address and sent the letter to respondent's new address on April 1, 2014, requesting an explanation from respondent regarding the use of his IOLTA for personal transactions.
 36. On April 16, 2014, relator received a response from respondent.
 37. Respondent stated that Red Foot Racing Stables is an Ohio LLC which is personally owned by him as its sole member. He stated in his response that "transfers to Red Food once again involve the shifting of my personal income by the way of earned fees".
 38. Respondent stated "I repeat that the funds in my trust account are uniformly almost always retainers that have been or will be earned quickly, and that the funds belong to me personally. The funds are never withdrawn from the account until they are due and payable to me. Therefore, the transactions you mention in your letter are draws of my earned fees, and involve my personal income to use as I see fit".
 39. As a result of the conduct detailed above, respondent commingled funds in his PNC Bank IOLTA accounts, authorized withdrawal of funds in excess of the balance, improperly issued or authorized payments for personal use, failed to maintain an appropriate accounting of client funds deposited into the account, made misrepresentations to relator in response to its inquiries, and failed to cooperate with the disciplinary process.
 40. Respondent's conduct violates Rules of Professional Conduct 1.15(a) [a lawyer shall hold property of clients separate from a lawyer's own property]; 8.1 (b) [a lawyer shall not fail to disclose a material fact or knowingly fail to respond]; 8.4 (c) [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation]; 8.4(d) [a

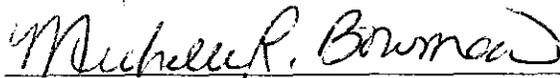
lawyer shall not engage in conduct that is prejudicial to the administration of justice]; and Gov. Bar R. V(4)(G) [failure to cooperate with relator's investigation].

CONCLUSION

Wherefore, pursuant to Gov. Bar R. V, the Code of Professional Responsibility and 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.



Scott J. Drexel (0091467)
Disciplinary Counsel

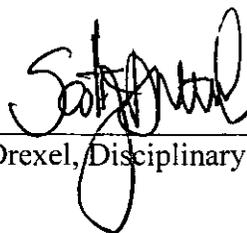


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CERTIFICATE

The undersigned, Scott J. Drexel, Disciplinary Counsel, of the Office of Disciplinary Counsel of the Supreme Court of Ohio hereby certifies that Michelle R. Bowman 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 23, 2014



Scott J. Drexel, Disciplinary Counsel

Gov. Bar R. V, § 4(I) Requirements for Filing a Complaint.

(1) Definition. "Complaint" means a formal written allegation of misconduct or mental illness of a person designated as the respondent.

* * *

(7) Complaint Filed by Certified Grievance Committee. Six copies of all complaints shall be filed with the Secretary of the Board. Complaints filed by a Certified Grievance Committee shall be filed in the name of the committee as relator. The complaint shall not be accepted for filing unless signed by one or more attorneys admitted to the practice of law in Ohio, who shall be counsel for the relator. The complaint shall be accompanied by a written certification, signed by the president, secretary, or chair of the Certified Grievance Committee, that the counsel are authorized to represent the relator in the action and have accepted the responsibility of prosecuting the complaint to conclusion. The certification shall constitute the authorization of the counsel to represent the relator in the action as fully and completely as if designated and appointed by order of the Supreme Court with all the privileges and immunities of an officer of the Supreme Court. The complaint also may be signed by the grievant.

(8) Complaint Filed by Disciplinary Counsel. Six copies of all complaints shall be filed with the Secretary of the Board. Complaints filed by the Disciplinary Counsel shall be filed in the name of the Disciplinary Counsel as relator.

(9) Service. Upon the filing of a complaint with the Secretary of the Board, the relator shall forward a copy of the complaint to the Disciplinary Counsel, the Certified Grievance Committee of the Ohio State Bar Association, the local bar association, and any Certified Grievance Committee serving the county or counties in which the respondent resides and maintains an office and for the county from which the complaint arose.