

BEFORE THE BOARD OF PROFESSIONAL CONDUCT
SUPREME COURT OF OHIO

FILED

MAY 14 2015

BOARD OF PROFESSIONAL CONDUCT

IN RE:)	No. 2015-030
)	
COMPLAINT AGAINST)	
)	
VIRGINIA MARY ANN BARBORAK, ESQ.)	
)	AMENDED
)	COMPLAINT
)	
RESPONDENT,)	
)	
)	
COLUMBIANA COUNTY BAR ASSOCIATION)	
CERTIFIED GRIEVANCE COMMITTEE)	
)	(Rule V of the Supreme Court
)	Rules for the Government of the
RELATOR.)	Bar of Ohio)

Now comes the Relator, the Columbiana County Bar Association Certified Grievance Committee and in this Amended Complaint alleges that Virginia M. Barborak, an Attorney at Law, duly admitted to the practice of Law in the State of Ohio is guilty of the following misconduct:

1. Respondent, Virginia M. Barborak was admitted to the practice of law in the State of Ohio on November 10, 1997. Respondent is subject to the Ohio Rules of Professional Conduct and the Supreme Court Rules for the Government of the Bar of Ohio.
2. At all times relevant to the allegations contained herein, Respondent engaged in the practice of law at the following address, 120 S. Market Street, Lisbon, Ohio 44432.
3. Respondent, Virginia M. Barborak's present business address is 120 S. Market Street, Salem, Ohio 44432. Respondent's Attorney Registration Number is 0068601.

Background

4. James R. Patsey was a friend and former neighbor of Respondent.

5. Respondent drafted James R. Patsey's will which was executed on September 12, 2011. The will provided that after payment of debts, funeral expenses and administration expenses the "first fifty thousand (\$50,000.00) dollars of my estate shall go to maintain and fund the J.J. Patsey Scholarship Fund, in memory of my son J.J. Patsey who died in 1989." The Scholarship fund was being administered by the Lisbon Alumni Association. James R. Patsey's will provided that the remainder of his estate go to Sean M. Patsey, his only son and the executor of the estate.

6. James R. Patsey died on February 4, 2013 according to the Application to Probate Will filed with the Trumbull County Probate Court. James R. Patsey resided at 7491 Warren Sharon Road, Brookfield, Ohio in Trumbull County.

7. Sean R. Patsey, the deceased's son and sole heir, engaged Respondent to handle the James R. Patsey probate estate in March 2013.

8. On March 7, 2013 Sean R. Patsey wrote a Fifty-One Thousand Dollar (\$51,000.00) check to Barborak Law Offices and delivered it to Respondent. According to Respondent the money was "to pay for expenses of the estate, including but not limited to, the specific bequest of \$50,000.00 for the scholarship fund."

9. On March 8, 2013 the Fifty-One Thousand Dollar (\$51,000.00) check was deposited into the Barborak Law Trust Account at 1st National Community Bank, Account Number 1 ("Trust Account"). The Trust Account is designated as an IOLTA/IOTA.

Trust Account Activity - March 2013

10. The beginning balance in the Trust Account on March 1, 2013 was Two Hundred Sixty-Eight and 68/100 Dollars (\$268.68).

11. On March 8, 2013 the Sean R. Patsey check was deposited in the Trust Account bringing the account balance to Fifty-One Thousand Two Hundred Sixty-Eight and 68/100 Dollars (\$51,268.68).

12. Respondent signed Check No. 1646, dated March 8, 2013, for Five Thousand Dollars (\$5,000.00) payable to Barborak Law Offices which was deducted from the Trust Account on March 11, 2013.

13. Respondent signed Check No. 1647, dated March 8, 2013, for Five Hundred Dollars (\$500.00) payable to Client 1 which was deducted from the Trust Account on March 11, 2013.

14. Respondent signed Check No. 1652, dated March 14, 2013, for Twenty-Two Thousand Dollars (\$22,000.00) payable to Cash which was deducted from the Trust Account on March 18, 2013. The memo line of the check lists "Jennifer Angle" who is employed by Respondent.

15. Respondent signed Check No. 1653, dated March 11, 2013, payable to Client 2 for Four Thousand Seven Hundred Twenty-Nine and 85/100 Dollars (\$4,729.85) which was deducted from the Trust Account on March 20, 2013.

16. Respondent signed Check No. 1654, dated March 11, 2013, payable to Client 3 for Three Thousand Nine Hundred Ninety-Nine and 76/100 Dollars (\$3,999.76) which was deducted from the Trust Account on March 25, 2013.

17. Respondent signed Check No. 1656, dated March 20, 2013, payable to Virginia Barborak for One Thousand Five Hundred Dollars (\$1,500.00) which was deducted from the Trust Account on March 21, 2013.

18. On March 28, 2013 Respondent directed, by her signature on a Debit Transaction Slip, that Ten Thousand Dollars (\$10,000.00) be withdrawn from the Trust Account and the withdrawn funds were deposited in Account Number 2 at 1st National Community Bank. A Ten Thousand Dollar (\$10,000.00) Cashier's Check was then prepared with the Remitter being Virginia Barborak and the Cashier's Check was payable to Client 4.

19. There were only two others deposits made into the Trust Account in March 2013: (1) for One Hundred Fifty Dollars (\$150.00) and; (2) Nine Hundred Dollars (\$900.00) and one other check was written being Check No. 1655 dated March 18, 2013 payable to Client 5 for One Hundred Fifty Dollars (\$150.00).

20. The ending balance on the Trust Account on March 31, 2013 was Four Thousand Four Hundred Thirty-Nine and 07/100 Dollars (\$4,439.07).

Probate Court Case

21. On May 13, 2013 Respondent filed, with the Trumbull County Probate Court, an Application to Probate Will, an Application to Administer Estate, and the necessary accompanying forms to open a probate estate for James R. Patsey.

22. On May 20, 2013 an entry appointing Sean R. Patsey as fiduciary ("Executor") was signed by Probate Court Judge Swift.

23. On September 24, 2013 Respondent filed the Schedule of Assets and Inventory and Appraisal with the Probate Court.

24. The Schedule of Assets listed three vehicles, three parcels of real estate, a Primerica Life Insurance Policy for \$51,000.00 and miscellaneous refund checks for \$1,248.73. The Schedule of Assets did not list the \$51,000.00 Respondent had already received.

25. The final account was due to be filed on November 18, 2013.

26. On February 6, 2014 Judge Swift issued a Citation for Delinquent Final Account or Application to Extend Administration and Notice of Hearing ordering the appearance of Respondent and the Executor before the Court on March 12, 2014 to show cause why the Executor should not be removed for the failure to file the final account.

27. On February 18, 2014 Respondent filed an Application to Extend Administration which was granted by Judge Swift with the final account due March 24, 2014.

28. On March 31, 2014 Respondent filed a Fiduciary's Account and Final Receipts and Disbursements.

29. Respondent signed the Fiduciary's name to the Final Account and the Receipts and Disbursements.

30. The Receipts and Disbursements filed on March 31, 2014 stated that \$50,000.00 was distributed to the Lisbon Alumni Association for the J.J. Patsey Scholarship Fund which was false as the funds had not been distributed.

31. Respondent on June 12, 2014 issued Check No. 1132 for Twenty-Five Thousand Dollars (\$25,000.00) payable to the Lisbon Alumni Association from an IOLTA in the name of Virginia M. Barborak, Account Number 3 at 1st National Community Bank.

32. Respondent on June 23, 2014 issued Check No. 1138 for Seventeen Thousand Dollars (\$17,000.00) to the Lisbon Alumni Association from her IOLTA account number 3 .

33. Respondent on July 2, 2014 issued Check No. 1146 for Eight Thousand Dollars (\$8,000.00) to the Lisbon Alumni Association from her IOLTA account number 3 .

34. On June 5, 2014 Respondent filed a Motion for Instructions for Final Distribution. An Amended Fiduciary's Account and Amended Receipts and Disbursements are attached to the Motion for Final Distribution.

35. The Amended Receipts and Disbursements lists a Twenty-Five Thousand Dollar (\$25,000.00) distribution to Lisbon Alumni Association for the J.J. Patsey Scholarship Fund which is false as the funds had not been distributed.

36. The Probate Court set the Motion for Instructions and Amended Final Account for a hearing on July 2, 2014.

37. On July 2, 2014 attorney William M. Flevaris ("Flevaris") entered his appearance as counsel for Respondent.

38. During the July 2, 2014 hearing Respondent was discharged by the Executor as Counsel for the James R. Patsey Estate.

39. On July 8, 2014 Probate Court Judge Swift appointed Walter J. Bradley as a special commissioner to investigate the James R. Patsey Probate Court case.

40. On August 16, 2014 Respondent filed an Application to Approve Attorney Fees seeking payment of Six Thousand Five Hundred Sixty-Seven and 82/100 Dollars (\$6,567.82).

41. On November 17, 2014 Respondent, in response to an order of the Probate Court, filed a Proof of Filing of Trust Account Records and Motion to File Under Seal.

42. On January 20, 2015 the Probate Court set Respondent's Application to Approve Attorney Fees for hearing on February 25, 2015.

43. On January 28, 2015 Respondent filed a Notice of Withdrawal of Application for Attorney Fees.

44. The hearing was conducted by Probate Court Judge Clunk, sitting by assignment, on February 25, 2015 at which Respondent and her paralegal Jennifer Angle testified.

45. On March 4, 2015 Judge Clunk filed an Order stating inter alia as follows:

- Specifically, the filings by opposing counsel on February 24th and February 25th, 2015 are in conflict and require further proceedings to ascertain whether at any time between March 8, 2013 and June 12, 2014, the trust account of Attorney Barborak contained less than \$50,000.00.
- There was also inconclusive testimony relative to Fiduciary's Account filed June 23, 2014 as to the attorney fees reported as being paid in the amount of \$1,516.73 and then a repayment to the estate of 9-16-15 (sic) in the same amount.
- Therefore, the Court orders that the matters discussed in this Order shall be considered at a further hearing to be held on March 25, 2015 at 9:00 a.m. It is the further Order of this Court that Attorney Virginia Barborak shall present her trust account records for the period between March 8, 2013 and June 12, 2014 for an in camera examination by the Court at the above scheduled hearing.

46. On March 10, 2015, Flevares and current counsel for the James R. Patsey estate met in chambers with Probate Court Judge Clunk for an in camera review of the Trust Account Records.

47. None of the Respondent's Trust Account records were left with Judge Clunk initially.

48. Subsequently, upon request of Judge Clunk the Trust Account bank statement for March 2013 was delivered to Judge Clunk and filed with the Probate Court on March 10, 2015.

49. The beginning balance on the Trust Account, according to the March 2013 statement submitted to the Probate Court by Respondent was One Hundred Three Thousand Two Hundred Sixty-Eight and 68/100 Dollars (\$103,268.68). The true and accurate starting balance on the Trust Account on March 1, 2013 was actually Two Hundred Sixty-Eight and 68/100 Dollars (\$268.68).

50. The ending balance on the Trust Account, according to the March 2013 statement submitted to the Probate Court by Respondent was One Hundred Seven Thousand Four Hundred Thirty-Nine and 07/100 Dollars (\$107,439.07). The true and accurate ending balance of the Trust Account on March 31, 2013 was actually Four Thousand Four Hundred Thirty-Nine and 07/100 Dollars (\$4,439.07).

51. The March 2013 Trust Account statement submitted by Respondent to the Probate Court Judge and filed with the Probate Court is a forgery designed to mislead and misinform the Probate Court.

52. On April 6, 2015 Judge Clunk conducted what was scheduled to be an evidentiary hearing in the Patsey probate case.

53. Respondents counsel, William Flevaris, brought to the hearing all of the bank statements that he had given to Judge Clunk to review on March 10, 2015.

54. Judge Clunk ordered that the bank statements, that Respondent had submitted to him for review on March 10, 2015, be turned over to the Court.

55. The forged bank statements submitted to Judge Clunk on March 10, 2015 for his review included the March, April, May, June and July 2013 Statements of Account for Account 1.

56. Each Statement of Account given to Judge Clunk had been altered and tampered with by Respondent by adding One Hundred Three Thousand Dollars (\$ 103,000.00) to the actual balances in the account to make it appear that the balance and each entry on each Statement of Account was One Hundred Three Thousand Dollars (\$ 103,000.00) higher than the actual balance or entry.

57. The March, April, May, June and July 2013 Trust Account statements submitted to Probate Court Judge Clunk and filed with the Probate Court are forgeries designed to mislead and misinform the Probate Court.

58. Further, the forged bank statements submitted to Judge Clunk on March 10, 2015 for his review included the August, September, October, November and December 2013 and January, February, March, April, May, June, July and August 2014 Statements of Account for Account 2.

59. Each Statement of Account given to Judge Clunk had been altered and tampered with by Respondent by adding Eighty-Two Thousand Dollars (\$82,000.00) to the actual balances on the account to make it appear that the balance and each entry on each Statement of Account was Eighty-Two Thousand Dollars (\$82,000.00) higher than the actual balance or entry.

60. The conduct of Respondent constitutes a violation of Rule 1.15 of the Ohio Rules of Professional Conduct in that Respondent has failed to properly account for and handle funds of a client held in her IOLTA.

61. The conduct of Respondent constitutes a violation of Rule 3.3(a)(1) of the Ohio Rules of Professional Conduct in that a lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to

the tribunal by the lawyer. Note 3 of Rule 3.3 of the Ohio Rules of Professional Conduct further clarifies the prohibited conduct by stating that an assertion purporting to be to be on the lawyer's own knowledge...may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. Under this standard, Respondent knowingly made a false statement to the Trumbull County Probate Court with the filing of the March 31, 2014 Receipts and Disbursements and Fiduciary Accounting and the submission of her Trust Account records to Judge Clunk for review on March 10, 2015.

62. The conduct of Respondent constitutes a violation of Rule 3.3(a)(3) of the Ohio Rules of Professional Conduct in that a lawyer shall not knowingly offer evidence that the lawyer knows to be false. Under this standard Respondent knowingly offered evidence to the Trumbull County Probate Court when she submitted the Receipts and Disbursements and Fiduciary Account on March 31, 2014, when she filed an Amended Fiduciary Account and Amended Receipts and Disbursements on June 5, 2014 and when she presented to the Probate Court the forged Trust Account records on March 10, 2015.

63. The conduct of Respondent constitutes a violation of Rule 8.4(a) of the Ohio Rules of Professional Conduct, which states that it is misconduct for a lawyer to violate or attempt to violate the Ohio Rules of Professional Conduct, knowingly assist or induce another to do so through the acts of another by Respondents submission of false and misleading documents to the Probate Court and submission of forged Trust Account statements to the Probate Court.

64. The conduct of Respondent constitutes a violation of Rule 8.4(c) of the Ohio Rules of Professional Conduct, which states that it is misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation by Respondents submission of

false and misleading documents to the Probate Court and submission of forged Trust Account statements to the Probate Court.

65. The conduct of Respondent in this matter constitutes a violation of Rule 8.4(d) of the Ohio Rules of Professional Conduct, which requires a lawyer to not “engage in any other conduct that is prejudicial to the administration of justice.”

66. The conduct of Respondent in this matter constitutes a violation of Rule 8.4(h) of the Ohio Rules of Professional Conduct, which requires a lawyer to not “engage in any other conduct that adversely reflects on the lawyers fitness to practice law”. Respondent’s conduct in submitting documents to the Probate Court where the executor’s signature is forged and where distributions are listed as having been made that were not made and the forgery of Trust Account bank statements to mislead and misinform a Probate Court Judge are particularly egregious in this case and a violation of 8.4(h).

67. Relator is not aware of any restitution owed by Respondent and a review of Respondent’s attorney registration with the Ohio Supreme Court indicates that Respondent has had no disciplinary actions filed against her.

WHEREFORE, Relator alleges that Respondent is chargeable with misconduct as an Attorney at Law, and requests that Respondent be disciplined pursuant to Rule V of the Rules for the Government of the Bar of Ohio.

Respectfully submitted,

COLUMBIANA COUNTY
BAR ASSOCIATION
CERTIFIED GRIEVANCE COMMITTEE



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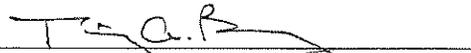
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Attorney for the Relator

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was sent by regular U.S. Mail and electronic mail this 13th day of May, 2015 to John B. Juhasz, Esq., at 7081 West Boulevard, Suite 4, Youngstown, Ohio 44512-4362 and Jbjuhasz@gmail.com.



Timothy A. Barry (#0039076)