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

NOV 30 2015

In re:

BOARD OF PROFESSIONAL CONDUCT

Complaint against

**Alan Jack Rapoport, Esq.
25700 Science Park Drive, Suite 270
Beachwood, OH 44122-7312**

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No. _____

Attorney Registration No. (0017926)

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

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Relator.

BOARD OF PROFESSIONAL CONDUCT

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

1. Respondent, Alan Jack Rapoport, was admitted to the practice of law in the state of Ohio on November 7, 1975. Respondent is subject to the Code of Professional Responsibility, the Rules of Professional Conduct, and the Rules for the Government of the Bar of Ohio.
2. In the fall of 2009, a long-time friend and client, David Tomazic, informed respondent that he had cancer and wanted to complete his estate plan.
3. Respondent drafted an initial will and a trust, which Tomazic executed. However, Tomazic quickly decided that he wanted all of his assets to pass into the trust upon his death. As a result, respondent drafted a new will, defining the trust as the sole

beneficiary, and modified the trust. Tomazic executed both documents in September 2009.

4. Respondent was named executor of the estate and trustee of the trust.
5. There were several beneficiaries: Tomazic's ex-wife, his nephew, his grandchildren, and his only daughter, Jennine Tomazic.
6. Under the terms of the trust, Jennine's share of the trust would be distributed to her when she attained the age of thirty-five "[p]rovided, however, that if in the sole and unlimited discretion of my Trustee, my said daughter is not of sufficiently sound mind and character on the date on which she has attained her age of thirty five (35) years, there shall be no distribution to her of any kind thereafter and her interest in the trust shall permanently and completely terminate in the same manner as if she had died."
7. On November 16, 2009, Tomazic died.
8. Upon his death, the trust was funded with Tomzic's assets, which included two homes.
9. One of the homes required extensive repairs, which were not completed until the summer of 2011. At that time, respondent sold the home.
10. Respondent hired several companies to rehab the home, including A&C Construction Services LLC, Hughes Contracting Service LLC, and Liberatore Landscape Construction LLC.
11. Respondent had previously hired both A&C Construction Services LLC and Hughes Contracting Service LLC to work on his personal residence. Additionally, respondent was hired to help incorporate A&C Construction Services LLC and Liberatore Landscape Construction LLC.
12. During the renovation, respondent allowed Jennine to reside, rent-free, in the other home.

13. Respondent failed to provide an annual accounting of the trust assets to the beneficiaries as required by R.C. 5808.13(C).
14. On September 9, 2011, respondent sent a letter to Jennine, offering to deed the house to her as her full and final distribution from the trust. Respondent included a release which would have protected respondent from any liability personally, as executor, and as trustee.
15. Jennine responded advising respondent that she believed that he overvalued the house. After she questioned the value of the home and the release respondent provided, respondent stated that he could terminate her interest in the trust. Jennine retained counsel.
16. After speaking with Jennine, respondent consulted with a broker and confirmed that the house was worth less than he originally estimated.
17. On November 15, 2011, Jennine filed a complaint for declaratory judgment, removal of trustee, for an accounting, and for surcharge. Jennine alleged that respondent breached his fiduciary duty, had a conflict of interest, and asked that respondent “be foreclosed from the...opportunity to exercise discretion under the Trust.”
18. Jennine’s attorney requested an accounting from respondent. In response, respondent provided Jennine with a “guesstimate” accounting.
19. On November 28, 2011, respondent, through counsel, sent a letter to Jennine’s attorney threatening her with eviction if she did not either agree to take the home as part of her distribution, or agree with him on a date to vacate the premises. In the same letter, respondent also reminded Jennine that he had “complete and unfettered discretion” to

decline to distribute trust assets to her if she was not of sound mind and character, and he informed her that he would require her to undergo a mental health evaluation.

20. On November 30, 2011, Jennine filed a Motion for Restraining Order and Preliminary Injunction, seeking to restrain respondent from evicting her from the residence, or selling, transferring, bargaining away, or otherwise disposing of or encumbering the property in any way. Jennine stated in the motion that,

“If [she] accepts [respondent’s] offer, she is financially harmed by accepting less than what she is entitled to under the terms of the trust and if she does not accept [respondent’s] offer, she is harmed by the loss of her residence and subject to [respondent’s] retaliatory actions with regard to her distribution under the terms of the Trust.”

21. Counsel for Jennine and respondent met with Judge Gallagher, and Judge Gallagher declined to enter an emergency restraining order based upon representations that respondent would take no action adverse to Jennine pending full hearing on the motion. The hearing was scheduled for December 13, 2011.
22. Jennine turned 35 years of age on December 9, 2011.
23. At the hearing on December 13, 2011, the parties agreed, through counsel, to avoid any action adverse to Jennine pending further discovery, time to plead, and a full hearing on the restraining order and injunction rescheduled for January 11, 2012.
24. On December 20, 2011, Jennine issued subpoenas to A&C Construction Services, LLC, Liberatore Landscape Construction LLC, and Hughes Contracting Service LLC, seeking company records related to any work done on respondent’s personal residence and the properties owned by the trust.

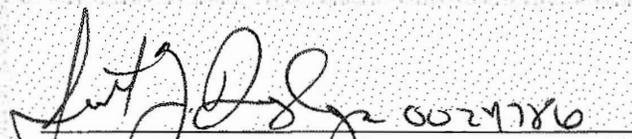
25. On December 30, 2011, respondent, as the statutory agent for A&C Construction Services, LLC, accepted service of the subpoena on the company's behalf. The subpoenas commanded the companies to produce the records by January 6, 2012 at 4:00 p.m.
26. Respondent represented each company with regard to the subpoenas.
27. On January 6, 2012, respondent issued a letter to Jennine advising her that he concluded that she was not of sufficiently sound mind and character and terminated her interest in the trust.
28. On the same date, respondent filed two motions. Respondent filed a Motion to Dismiss for lack of standing, arguing that because he terminated her interest in the trust, she was no longer a beneficiary and lacked standing as a result. Respondent also filed a Motion for Protective Order seeking an order that "discovery not be had in connection with" the subpoenas Jennine issued.
29. In response, Jennine immediately filed an emergency motion seeking to remove respondent as trustee of the trust.
30. The matter was heard on January 11 and 18, 2012, and on January 23, 2012, Judge Gallagher granted Jennine's Motion for Removal and her Motion for Restraining Order and Preliminary Injunction. Judge Gallagher found that respondent committed a serious breach of trust and that he only disqualified Jennine to protect his own interests and not in furtherance of the terms of the trust.
31. On February 9, 2012, Jennine was forced to file a Motion to Compel in an effort to obtain the records she had previously subpoenaed.

32. On February 10, 2012, respondent appealed Judge Gallagher's January 23rd Judgment Entry which removed him as trustee.
33. In April 2012, under the estate case, Jennine again issued subpoenas to A&C Construction Services, LLC, Liberatore Landscape Construction LLC, and Hughes Contracting Service LLC, seeking company records related to any work done on respondent's personal residence and the properties owned by the trust.
34. Respondent again represented the three companies, advised them not respond, and filed a Motion to Quash.
35. Jennine was forced to file a response, and the Motion to Quash was denied and dismissed on August 16, 2012. The companies were then forced to provide the subpoenaed records to Jennine, approximately nine months after issuing her original subpoenas.
36. On September 27, 2012, The Eight District Court of Appeals affirmed Judge Gallagher's decision, finding, in part, that the record "clearly and convincingly demonstrated that [respondent] committed a serious breach of trust," and stated that, "[respondent] attempted to disqualify Jennine as a Trust beneficiary in order to deprive her of standing to proceed with her lawsuit against him" and "to protect his own interests, and not in furtherance of the terms of the Trust."
37. Under R.C. 5808.13(A), respondent was required to keep Jennine reasonably informed about the administration of the trust and of the material facts necessary for her to protect her interests.
38. Respondent's conduct, as alleged in this complaint, violates the following Rules of Professional Conduct: Prof. Cond. Rule 1.7(a)(2) [A lawyer shall accept or continue representation if there is a substantial risk that the lawyer's judgment will be materially

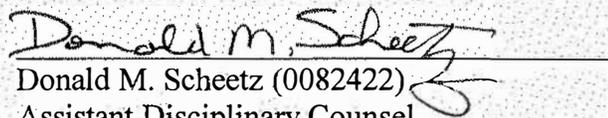
limited by the lawyer's responsibilities to another client, a former client, or a third person, or by the lawyer's personal interests]; Prof. Cond. Rule 1.15(d) [Upon request, a lawyer shall promptly render a full accounting of funds or property]; and, although there was no attorney-client relationship between respondent and the beneficiary, respondent's violation of his fiduciary duties as trustee violates Prof. Cond. Rule 8.4(h) [A lawyer shall not engage in any conduct that adversely reflects on the lawyer's fitness to practice law].

CONCLUSION

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

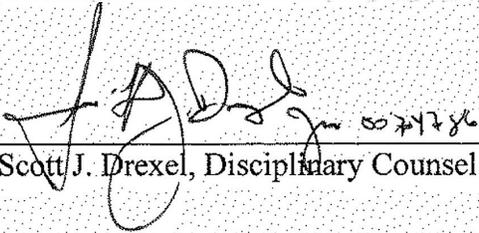


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CERTIFICATE

The undersigned, Scott J. Drexel, Disciplinary Counsel, of the Office of Disciplinary Counsel of the Supreme Court of Ohio hereby certifies that Donald M. Scheetz 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: November 30, 2015



Scott J. Drexel, Disciplinary Counsel