

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

FILED

OCT 06 2014

In re:

BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

Complaint against

David Franklin Robertson, Esq.
Attorney at Law - Partner
Robertson, Geiser & Longano, LLC
11137 Main Street
Cincinnati, OH 45241

No. 14 - 068

Attorney Registration No. (0074030)

COMPLAINT AND CERTIFICATE

Respondent,

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

CINCINNATI BAR ASSOCIATION
225 East Sixth St., 2nd Floor
Cincinnati, OH 45202

RECEIVED

SEP 18 2014

Relator.

BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

Now comes Relator and alleges that David Franklin Robertson Jr, an Attorney at Law, duly admitted to the practice of law in the state of Ohio on November 13, 2011, is guilty of the following misconduct:

1. On or about July 6, 2012, Respondent undertook representation of Debra Ann Lewallen in her capacity as the fiduciary for the estate of Frank G. Mayborg. Mr. Mayborg, who passed away June 13, 2012, was Ms. Lewallen's father.
2. Respondent and Ms. Lewallen entered into a written fee agreement which provided that she would pay an attorney fee pursuant to the guidelines of the Hamilton County Probate Court.

3. The Hamilton County Probate Court requires court approval prior to the payment of any attorney fees. The local rules of that court provide, in relevant part:

Attorney fees for the administration of a decedent's probate estate ordinarily shall be paid at the time fiduciary's final account or certificate of termination is prepared for filing with Court, and such fees shall not be paid prior to two weeks before the filing of the fiduciary's final account or certificate of termination.

Loc. R. 71.1(C)

4. On August 10, 2012, one of Ms. Lewallen's sisters filed a motion to have her removed as the fiduciary. During the next month, her other sister and brother and seven grandchildren joined that effort to have her removed. This concerted effort, including the appearance of independent counsel on behalf of the beneficiaries, continued until February 5, 2013, when the Application for Removal was withdrawn. Nevertheless, Ms. Lewallen's battle with her siblings and the other beneficiaries continued.
5. On February 25, 2013, over Ms. Lewallen's signature as Executrix, an Application For Allowance Of Partial Payment Of Attorney Fees was filed. Additionally, on March 13, 2013, an Application For Extraordinary Attorney Fees was filed. Consideration of the two applications was combined with consideration of various objections filed in the case, and on March 21, 2013, the probate court ruled that the applications for payment of attorney fees would be held in abeyance until the estate was ready to be closed.
6. At or about that time, Respondent asked Ms. Lewallen to personally advance payments toward his outstanding legal fees owed by the Estate.
 - On March 23, 2013, Ms. Lewallen paid Respondent \$5,000.00 on her personal credit card.
 - On April 1, 2013, Ms. Lewallen paid Respondent \$5,000.00 on her personal credit card.

- On May 31, 2013, Ms. Lewallen paid Respondent \$7,820.00 on her personal credit card.
- On July 19, 2013, at Respondent's direction, Ms. Lewallen paid \$5,500.00 to attorney Jeremy J. Evans (attorney number 0077363) of Hamilton, Ohio, whom Respondent had brought in to assist him with litigation.

None of these payments of attorney fees, totaling \$23,320.00, had been authorized by the Hamilton County Probate Court.

7. In a judgment entry entered September 16, 2013, the Court awarded Respondent \$14,000.00 in attorney fees and costs and ordered that such fees should not be paid prior to two weeks before the filing of the fiduciary's final account, pursuant to local rule.
8. On September 30, 2013, Respondent filed a second fee application asking that the sum of \$29,480.00 be allowed from the estate for legal services from March 8, 2013 to September 17, 2013.
9. By judgment entry entered October 18, 2013, the court held that no additional attorney fees would be awarded for activities conducted on behalf of the estate, and that the award of fees of \$14,000.00 represents the full amount of attorney fees from all sources approved for all activities conducted on behalf of the estate. Respondent never informed the Court that attorney fees in the amount of \$23,320.00 had already been paid.
10. On November 12, 2013, Respondent filed a Fiduciary's Account for the period from March 9, 2013 to October 28, 2013. That document, which was signed by Respondent and Ms. Lewallen, reported that attorney's fee for this accounting period was "\$0.00" even though attorney fees of \$23,320.00 had been paid.

11. On May 16, 2014, Respondent filed a Final Fiduciary's account for the period from October 29, 2013 to May 16, 2014. That account also reiterated that, for the accounting period of July 9, 2012 to March 8, 2013, attorney fees paid were "0.00," and for the accounting period of March 9, 2013 to October 28, 2013, attorney fees paid were "0.00."
12. That Final Fiduciary account stated that attorney fees paid during that period were \$14,000.00 and nowhere accounted for the \$23,320.00 actually paid.
13. During the final accounting period, a check was drawn on the Estate, payable to Respondent in the amount of \$14,000.00. Respondent endorsed that check over to Ms. Lewallen and delivered it to her. However, Respondent failed to reimburse Ms. Lewallen the \$9,320.00 which was paid in excess of the award of fees by the Court
14. By reason of the forgoing, Respondent has violated his Oath of Office and the Ohio Rules of Professional Conduct, specifically:
 - Rule 1.5(a) by charging and collecting a clearly excessive fee;
 - Rule 3.3(a)(1) by making a false statement of fact or law to a tribunal;
 - Rule 3.4(c) by taking fees which had not been authorized by the Probate Court, in violation of Loc. R. 71.1. See *Disciplinary Counsel v. Shaw*, 138 Ohio St.3d 522, 2014-Ohio-1025, ¶s 8-10;
 - and Rule 8.4(c) by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation in that he filed false accountings with the Hamilton County Probate Court.

CONCLUSION

WHEREFORE, Relator alleges Respondent is chargeable with misconduct as an attorney at law, which misconduct has brought disrepute to the legal profession, and, by reason thereof, Relator requests that Respondent be disciplined pursuant to Rule V of the Rules for the Government of the Bar of Ohio.

Respectfully submitted,

Vincent A. Salinas, Sr.

Vincent A Salinas Sr. (0023895)
1 Sheakley Way, Suite 180
Cincinnati, OH 45246
513-552-1400
vince@vincentsalinas.com

*EWP
per authority*

Howard M. Schwartz

Howard M. Schwartz (0024571)
50 E Business Way, Suite 410
Cincinnati, OH 45241
513-587-3483
hschwartz@fp-legal.com

Edwin W. Patterson III

Edwin W. Patterson, III (0019701)
General Counsel
Cincinnati Bar Association
225 East Sixth St., 2nd Floor
Cincinnati, OH 45202
513-699-1403
ewpatterson@cincybar.org

CERTIFICATE

The undersigned, Chairman of the Grievance Committee of the Cincinnati Bar Association, hereby certifies that Vincent A. Salinas, Howard M. Schwartz and Edwin W. Patterson, III are duly authorized to represent relator in the premises and have 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: September 15, 2014



Grievance Committee Chair

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.