

BEFORE THE BOARD OF PROFESSIONAL CONDUCT

OF

THE SUPREME COURT OF OHIO

RECEIVED

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BOARD OF PROFESSIONAL CONDUCT

In re: Complaint Against
NEAL HALL MAGEE II
(Attorney Registration No. 0001214)
3163 Melbury Drive
Columbus, Ohio 43221

RESPONDENT,

by

COLUMBUS BAR ASSOCIATION
175 South Third Street, Suite 1100
Columbus, Ohio 43215

RELATOR

Case No. 16-050 **B**

FILED

NOV 03 2016

**COMPLAINT AND
CERTIFICATE**

BOARD OF PROFESSIONAL CONDUCT

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

Now comes Relator, Columbus Bar Association, and alleges that Neal Hall Magee II (Reg. #0001214), an Attorney at Law duly admitted to practice law in this state of Ohio, is guilty of the following misconduct:

INTRODUCTION

1. Respondent, Neal Hall "Bud" Magee II, was admitted to the practice of law in Ohio in 1966.
2. Respondent has not been previously disciplined by the Supreme Court of Ohio.
3. Upon information and belief, respondent is a sole practitioner.

COMPLAINT
COUNT ONE
(THE BRUCE FAMILY REVOCABLE TRUST)

4. William A. Bruce (“Dr. Bruce”), as Grantor, created the Bruce Family Revocable Living Trust (“the Trust”) on March 19, 2008 naming himself and respondent as Co-Trustees.
5. As Dr. Bruce’s attorney, respondent drafted the Trust.
6. Dr. Bruce was a Professor of Dentistry at The Ohio State University and was a Franklin County resident for more than 45 years.
7. Dr. Bruce’s wife, Nancy Macnab Bruce, predeceased him.
8. Dr. Bruce and his wife had no children.
9. Pursuant to the terms of the Trust, upon Dr. Bruce’s death, the Trust property was to be distributed to two beneficiaries in separate shares as follows: 75% to Columbus Nationwide Children’s Hospital Foundation (“the Foundation”) and 25% to Goucher College (“Goucher”) in Maryland.
10. Upon Dr. Bruce’s death, the Trust property was to be distributed to the Foundation and Goucher outright, free of trust.
11. The Trust was amended twice by Dr. Bruce prior to 2010, and neither of those amendments are relevant to the allegations in this formal complaint.
12. Sometime prior to February 2010, Dr. Bruce became a resident of a senior living facility in or near Lewes, Delaware.
13. On February 3, 2010, the Delaware Chancery Court adjudicated Dr. Bruce incompetent and appointed Dr. Bruce’s brother, Robert Bruce, as the guardian of Dr. Bruce’s person.

14. Because Dr. Bruce's disability had rendered him incapable of managing his financial affairs, the Chancery Court's February 3, 2010 order appointed respondent as guardian of the property of Dr. Bruce.
15. As a result of Dr. Bruce's incapacity, respondent became the sole Trustee of the Trust.
16. In its February 2010 order, the Chancery Court directed respondent to file an audited Trust accounting on or before August 30, 2010, and annually thereafter with copies forwarded to the Foundation and Goucher.
17. The Chancery Court further ordered respondent to file an inventory of Dr. Bruce's personal assets and the Trust assets on or before March 4, 2010.
18. On March 18, 2010, respondent provided the Chancery Court with a document titled "Inventory of William A. Bruce" accompanied by a partial January 31, 2010 Huntington National Bank (HNB) statement for Trust checking account ending in 7200; a January 31, 2010 partial Chase Investment Services Corp. statement for a Trust account ending in 245267; and, a January 29, 2010 partial Merrill Lynch Report for Dr. Bruce's account ending in 15763.
19. Following a review of respondent's March 4, 2010 submission, the Chancery Court appointed Arena, Harrison and Ring, Certified Public Accountants, to prepare an "Independent Accountants' Report" for Dr. Bruce and the Trust for the period February 1, 2010 through June 30, 2010.

20. In a report filed August 3, 2010, Arena, Harrison and Ring notified the Chancery Court of discrepancies in respondent's submission. In part, discrepancies were noted as follows: a \$200,000 loan from the trust to Suzanne Macnab; unspecified value of the contents of a safe deposit box; and, a real estate tax bill for property located in Wetzel County, West Virginia that respondent did not list as an asset on his March 4, 2010 submission.
21. The summary schedule of investment transactions created by Arena, Harrison and Ring for the period of February 1, 2010 through June 30, 2010 showed a combined (Dr. Bruce and the Trust) value of \$2,230,643.33.
22. On October 1, 2010, and, well after Dr. Bruce had been declared incompetent, respondent executed the self-serving "Amendment #1 to The Bruce Family Revocable Trust Agreement" (the "Guardian's Amendment").
23. Pursuant to the Guardian's Amendment, the Trust was amended to provide that in the event that respondent was unable to serve as Trustee, the successor Trustees would be respondent's own children, Michael D. Magee and Erin E. Magee, in that order.
24. The Guardian's Amendment further provided that Art. V, Section 2 of the Trust was deleted in its entirety so that the Trust shares created for the Foundation and Goucher would be held in the Trust indefinitely rather than distributed to the beneficiaries upon Dr. Bruce's death, and, instead, giving the Trustee discretion to pay the beneficiaries "an amount not less than five (5%) percent of the balance of the Trust Estate" annually.
25. Respondent did not request nor obtain the Chancery Court's permission to amend the Trust.

26. After respondent executed the Guardian's Amendment, he did not notify the beneficiaries of the amendments to the Trust.
27. Dr. Bruce was relocated to Florida sometime in 2011 to live closer to his brother.
28. On June 6, 2011, respondent sent a copy of a Trust accounting to the Foundation.
29. Respondent's June 6, 2011 letter to the Foundation was false and misleading. In part, the letter falsely states, "Distribution [to the Trust beneficiaries] will be made after [Dr. Bruce's] death."
30. Dr. Bruce died on October 31, 2012.
31. As guardian of Dr. Bruce's property, respondent filed a final account with the Chancery Court on December 14, 2012 for the time period March 1, 2012 through October 31, 2012.
32. The guardianship of Dr. Bruce was terminated by the Chancery Court on February 1, 2013.
33. Beginning in 2009 and continuing through May 2013 (excluding payments for trustee fees and attorney fees), respondent made the following transfers of Trust funds from Trust accounts at HNB into accounts at HNB in respondent's name or under his control:

DATE	TRUST ACCOUNT NUMBER	RESPONDENT ACCT NUMBER	AMOUNT OF TRANSFER
01/14/2009	7200	9500	\$5,745.00
01/14/2009	7200	9500	2,348.96
10/13/2011	7200	9500	5,000.00
04/04/2012	7200	9500	7,500.00
11/01/2012	7200	9677	90,000.00
02/14/2013	7200	9500	5,000.00
03/05/2013	7200	9677	25,000.00
03/07/2013	7200	9500	5,000.00
03/07/2013	7200	9677	45,000.00
03/25/2013	7445	9500	50,000.00
05/14/2013	7445	9500	99,000.00
05/14/2013	7445	9500	99,000.00
05/14/2013	7445	9500	99,000.00
05/14/2013	7445	9500	3,000.00
05/16/2013	7445	9500	27,216.28
05/17/2013	7445	9500	16,010.81
05/17/2013	7445	9500	99,000.00
TOTAL			\$682,821.05

34. On occasion between January 2013 and November 2013, respondent transferred money from accounts held in his name or under his control into Trust accounts:

DATE	RESPONDENT ACCT NUMBER	TRUST ACCOUNT NUMBER	AMOUNT OF TRANSFER
01/22/2013	9677	7200	\$ 85,000.00
01/22/2013	9500	7200	5,000.00
11/14/2013	9500	Pd. to successor Trustee	424,500.00
TOTAL			\$514,500.00

35. After crediting respondent for funds that were transferred to the trust from his own accounts, the total amount of unaccounted-for Trust funds is \$168,321.05 (\$682,821.05 less \$514,500).

36. In response to the Foundation's request for a list of Trust assets, respondent sent a letter dated May 22, 2013 to the Foundation.

37. Respondent's May 22, 2013 communication to the Foundation included a list of the Trust's "security holdings" in Charles Schwab investment account ending in 1882 (2,132,439.02) and stated that "the balance" (\$40,095.55) was in a "checking account."
38. Respondent's May 22, 2013 communication to the Foundation was false and misleading in that respondent did not disclose all of the Trust's assets nor did respondent disclose that shortly before the May 2013 letter was written, at least \$442,000 of Trust assets had been transferred into his personal account at HNB.
39. On June 14, 2013, counsel for the Foundation requested that respondent provide him with a trustee's report pursuant to R.C. 5808.13.
40. Respondent failed to respond to counsel's June 14, 2013 request for information.
41. On August 19 and August 22, 2013, respectively, Goucher and the Foundation signed a notice removing respondent as Trustee of the Trust.
42. Michael D. Magee and Erin E. Magee were also removed as successor Trustees.
43. On August 23, 2013, respondent appeared in Wetzel County, West Virginia and executed a Fiduciary Deed that he prepared, identifying himself as "Neal H. Magee II, Executor, of the Estate of William A. Bruce" and transferring Dr. Bruce's interest in certain Wetzel County property ("the Wetzel County property") into the Trust.
44. Fifth Third Bank was named successor Trustee of the Trust on August 27, 2013.
45. At the time of respondent's removal as Trustee, the Trust had assets with an approximate value of \$2,597,294.
46. On or about September 6, 2013 and after respondent's removal as Trustee, respondent executed another Fiduciary Deed for the Wetzel County property.

47. In the September 6, 2013 Fiduciary Deed, respondent falsely identified himself as “Neal H. Magee II, Trustee of the Bruce Family Irrevocable Trust dated march (sic) 19, 2008[.]”
48. The September 6, 2013 Fiduciary Deed prepared and executed by respondent, operated to transfer the Wetzel County property from the Trust to “NEAL H. MAGEE II, Executor of the Estate of William A. Bruce.”
49. The September 6, 2013 Fiduciary Deed was recorded in Wetzel County, West Virginia on or about September 27, 2013.
50. The Wetzel County property remains titled in respondent’s name as “Executor of the Estate of William A. Bruce.”
51. On October 31, 2013, respondent remitted a check in the amount of \$424,595.11 from his HNB account ending in 9500 to the Fifth Third Bank Trustee.
52. Respondent’s personal check in the amount of \$424,595.11 was returned by the bank due to insufficient funds.
53. In November 2013, respondent attempted to conceal his theft of trust assets by sending a “statement” to the Foundation and Goucher which showed an “Account Balance” of \$424,595.11.
54. On or about November 14, 2013, respondent remitted \$424,500 to the Trust in the form of a cashier’s check drawn from funds in respondent’s personal checking account ending in 9500.

55. On November 25, 2013, counsel for the Foundation again wrote to respondent. This time, counsel requested additional documentation regarding the Trust, the assets held by the Trust, and respondent's guardianship accountings.
56. On January 24, 2014, and because they continued to be unable to obtain the trustee reports from respondent that were due to them under R.C. 5808.13(C), the Foundation and Goucher filed a complaint against respondent in the Franklin County Probate Court seeking to compel respondent to prepare a trust report and accounting.
57. Respondent did not respond to the complaint and a motion for default judgment was filed on March 4, 2014.
58. Respondent did not respond to the motion for default judgment.
59. The motion for default judgment was granted on March 28, 2014 and respondent was ordered to provide the trust reports within 30 days of the date of the decision.
60. Respondent did not provide the trust reports within 30 days, and, on May 20, 2014, the court issued a citation and an order to appear on June 26, 2014.
61. Respondent appeared before a Magistrate at the Franklin County Probate Court hearing on June 26, 2014.
62. On June 26, 2014, respondent produced only partial records for the Trust and admitted that he did not have bank statements for at least one of the Trust's accounts.
63. On July 18, 2014, the Magistrate issued an entry recommending that respondent be held in contempt for failing to produce a Trust account report and that the forensic accounting firm of Groner Boyle Quillin, LLP ("GBQ") be appointed to prepare a Trust accounting for March 3, 2008 to March 28, 2014, at respondent's expense.

64. The Magistrate's entry was adopted by the Franklin County Probate Court on August 20, 2014 and the GBQ-authored report was due 30 days thereafter.
65. In its efforts to conduct the accounting, GBQ sent respondent an engagement letter on July 16, 2014 requesting a retainer of \$7,500.
66. Even though he received them, respondent did not respond to the July 16, 2014 communication nor to follow-up emails from GBQ dated July 28, 2014 and August 6, 2014.
67. Shortly after August 6, 2014, respondent sent a brief response and some documents to GBQ.
68. On August 18, 2014, respondent sent GBQ the executed engagement letter and a check for only \$5,000. According to respondent's communication to GBQ, the check was for less than the requested amount because he believed that the Trust should pay for the entire audit as it was "mostly a review of prior audits furnished the Court in the State of Delaware. I do realize that my delays have caused this all to happen."
69. On September 12, 2014, GBQ requested that respondent pay the additional retainer amount.
70. Respondent did not respond to GBQ's September 12, 2014 request.
71. Despite GBQ's repeated requests to respondent for Trust accounting documents, respondent failed to produce all of the documentation.
72. GBQ issued a preliminary report in the form of a letter on November 24, 2014.
73. According to the GBQ report, respondent committed "several irregular transactions" while serving as Trustee of the Trust.

74. The GBQ report confirmed that although respondent claimed that in May 2013, Trust assets in the amount of \$442,227 were transferred into a "Scott Trade" account, the assets were actually transferred into respondent's personal account at HNB ending in 9500.
75. GBQ also found that respondent committed other questionable transactions with Trust funds.
76. The GBQ report indicated that GBQ was unable to properly evaluate 116 material Trust transactions because respondent did not provide supporting documentation, despite specific requests.
77. GBQ concluded that from 2009 until his removal in 2013, respondent paid himself trustee fees from the Trust in the amount of \$148,829.13.
78. GBQ concluded that from 2009 until his removal in 2013, respondent paid himself attorney fees from the Trust in the amount of \$34,310.21.
79. GBQ concluded that respondent's conduct resulted in a total of \$89,000 in trust funds remaining unaccounted for from those 116 material transactions.
80. The Foundation and Goucher filed a motion to show cause on January 8, 2015, asking that respondent be held in civil contempt for his violation of the May 28, 2014 order. The matter was set for hearing on April 21, 2015.
81. Respondent did not appear at the April 21, 2015 hearing.
82. By entry filed June 15, 2015, the Probate Court adopted the Magistrate's decision on the show cause motion. The court held respondent in contempt and found that he committed a breach of trust in violation of R.C. 5810.01(A) in that he neglected to keep properly

detailed records of the Trust's accounts and that he was either unable or unwilling to provide records to GBQ.

83. The court further held that respondent's breach of trust prevented GBQ from determining the whereabouts of approximately \$89,000 of Trust assets associated with 116 missing transactions.

84. The court held that within 45 days from the date of the entry, respondent was required to pay the Trust \$89,000 for his breach of trust; to pay attorney fees expended by the beneficiaries in the total amount of \$61,490.58; and, to pay GBQ \$20,765 for its accounting services.

85. Respondent has not paid any of the court-ordered fees or penalties.

86. As set forth in Count One herein, respondent's conduct in acting as Guardian of Dr. Bruce and Attorney and Trustee of Dr. Bruce's Trust violates the Ohio Rules of Professional Conduct:

- a. Prof.Cond. R.1.3 (a lawyer shall act with reasonable diligence and promptness in representing a client);
- b. Prof.Cond. R. 1.5(a) (a lawyer shall not charge or collect a clearly excessive fee);
- c. Prof.Cond.R. 1.7(a)(2) (a lawyer's continuation of representation of a client creates a conflict of interest if there is a substantial risk that the lawyer's ability to consider, recommend, or carry out an appropriate course of action for that client will be materially limited by the lawyer's own personal interests);
- d. Prof.Cond.R. 3.4(a) (a lawyer shall not unlawfully alter, destroy, or conceal a document or other material having potential evidentiary value);

- e. Prof.Cond.R. 3.4(b) (a lawyer shall not falsify evidence);
- f. Prof.Cond.R. 3.4(c) (a lawyer shall not knowingly disobey an obligation under the rules of a tribunal);
- g. Prof.Cond.R. 8.4(c) (it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation); and,
- h. Prof.Cond.R. 8.4(d) (it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice).

COUNT TWO

FAILURE TO COOPERATE

87. Relator hereby incorporates all of the allegations of misconduct set forth in Count One herein.
88. On August 19, 2015, relator received a grievance against respondent that was based upon the misconduct alleged in Count One herein.
89. On August 20, 2015, relator sent, via U.S. Mail, a letter to respondent asking for a response to the allegations in the grievance.
90. Respondent did not respond to relator's August 20, 2015 letter.
91. On September 8, 2015, via Certified Mail, Return Receipt Requested, relator sent respondent a second letter inquiring about the allegations in the grievance.
92. Respondent received relator's September 8, 2015 letter on September 11, 2015 but did not respond.

93. On December 4, 2015, relator mailed via Certified Mail, Return Receipt Requested and U.S. Mail, a subpoena *duces tecum* that had been issued by the Board of Professional Conduct to respondent via Certified Mail, Return Receipt Requested.
94. The subpoena *duces tecum* required respondent to produce certain documents at relator's office on or before December 29, 2015.
95. Respondent was served with the subpoena *duces tecum* on December 7, 2015; however, respondent did not produce the required documents.
96. As set forth in Count Two herein, respondent's conduct in failing to cooperate with relator's investigation of his conduct violates the Ohio Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio: Prof.Cond.R. 8.1(b) (in connection with a disciplinary matter, a lawyer shall not knowingly fail to respond); and, Gov.Bar R.V(9)(G) (no attorney shall neglect or refuse to assist or testify in an investigation).

RESTITUTION

97. Relator hereby incorporates by reference all of the allegations of misconduct set forth in Counts One and Two herein.
98. Pursuant to Gov.Bar R.V(10)(E)(1)(b), respondent should be ordered to make restitution as follows:
- a. \$89,000 to the Bruce Family Revocable Living Trust (or to the Estate of William A. Bruce);
 - b. An additional amount estimated to be \$79,321.05 (\$168,321.05 of misappropriated Trust funds less the \$89,000 repayment ordered by the probate

court and set forth in “a” above) to the Bruce Family Revocable Living Trust (or to the Estate of William A. Bruce);

- c. \$61,490.58 to the law firm of Vorys, Sater, Seymour & Pease; and,
- d. \$20,765 to GBQ.

CONCLUSION

WHEREFORE, relator submits that respondent, Neal Hall Magee II, should be found in violation of these Ohio Rules of Professional Conduct and Rules for the Government of the Bar of Ohio and be sanctioned appropriately.

Respectfully submitted,

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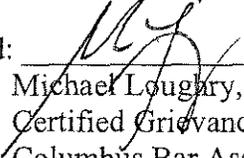
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CO-COUNSEL FOR RELATOR

CERTIFICATE

The undersigned Vice-Chairperson of the Certified Grievance Committee of the Columbus Bar Association hereby certifies that Kelly C. Patton, Esq., Linda Fiely, Esq., Yale Levy, Esq., Lori J. Brown, Esq., and A. Alysha Clous, Esq., are duly authorized to represent Relator in the premises and have accepted the responsibility of prosecuting this complaint to its conclusion. After investigation, Relator believes reasonable cause exists to warrant a hearing on such complaint.

Dated: 10/25/17

Signed: 
Michael Loughry, Esq., Vice-Chairperson,
Certified Grievance Committee,
Columbus Bar Association