

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

07 - 1111

In Re:	:	
Complaint against	:	Case No. 06-049
Eric Kyle Heiland	:	Findings of Fact,
Attorney Reg. No. 0056083	:	Conclusions of Law and
	:	Recommendation of the
Respondent	:	Board of Commissioners on
	:	Grievances and Discipline of
Disciplinary Counsel	:	the Supreme Court of Ohio
	:	
Relator	:	
	:	

INTRODUCTION

1. This matter was heard on March 29 and 30, 2007, in Cleveland, Ohio before a panel composed of Cynthia A. Fazio, Thomas F. Bryant, and John B. Street, Chair. None of the panel members was from the district in which the complaint arose, and none was a member of the probable cause panel that certified the matter to the board. Joseph M. Caligiuri appeared as counsel for Relator, Disciplinary Counsel. Respondent Eric Kyle Heiland was present for the hearing. He was not represented by counsel.

PROCEDURAL BACKGROUND

2. Disciplinary Counsel filed a complaint against Respondent on May 30, 2006. Respondent filed an answer on August 25, 2006. A hearing panel was appointed, and after pre-hearing discussions, the case was set for final hearing on January 29 and 30, 2007. Before the hearing,

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SUPREME COURT OF OHIO

however, the parties reported that they would not be ready for the hearing and requested a continuance.

3. At least part of the reason for the continuance was to permit the completion of Respondent's deposition. The deposition had begun on December 15, 2006, but could not be completed on that date. The deposition was then scheduled for completion on January 26, 2007. Respondent agreed, and was ordered, to review material and to provide documents to Relator no later than Friday, January 19, 2007. Respondent did not provide the documents, so the deposition did not occur on January 26, 2007. It was rescheduled for February 28, 2007.

4. During a pre-hearing telephone conference on February 7, 2007, Respondent again agreed, and was ordered, "to make his federal tax returns for the years 1998, 1999, 2000, and 2001 available to Relator no later than February 22, 2007." Also, during the telephone conference, the case was set for final hearing on March 29 and 30, 2007, in Cleveland.

5. Respondent still did not provide his tax returns, and Relator was granted leave to file an amended complaint. The amended complaint was filed March 9, 2007. It contained the same allegations as the original complaint but added a count for failing to cooperate during the disciplinary process.

6. On March 28, 2007, the panel chairman was contacted by attorney Michael Barkus. He said that he might be willing to represent Respondent if a continuance would be granted. A continuance was denied. At the beginning of the hearing Mr. Heiland also requested a continuance to obtain counsel, and that continuance was denied.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Count One - Scheme to Defraud Creditors

7. On June 5, 2002, the Lorain County Grand Jury indicted Respondent on three counts of theft in violation of Sections 2913.02(A)(2) and 2913.02(A)(3) of the Ohio Revised Code. Two of the counts were second degree felonies and one of the counts was a fourth degree felony. On February 14, 2005, Respondent entered an *Alford* plea to three misdemeanor counts of defrauding creditors in violation of Section 2913.45 of the Ohio Revised Code, as lesser included offenses of the charges in the indictment. On April 4, 2006, Respondent was sentenced to three years probation, a one thousand dollar fine, and a ninety day suspended jail sentence. The felony indictment and subsequent misdemeanor conviction involved Respondent's participation in a scheme to defraud his in-laws, Emmitt and Catherine Holbrook, and various nursing homes that had provided care for the Holbrooks between January 31, 1998, and April 30, 2001.

8. On January 31, 1998, Catherine Holbrook *purportedly* granted power of attorney to her daughter and Respondent's wife, Patricia Heiland. Respondent had not prepared the power of attorney, but he did serve as a witness to Holbrook's signature despite having filed court documents describing her as "incompetent" and having "the diagnosed medical condition of suspected Alzheimer's disease which is so advanced that she does not understand who or where she is." (See Count Two.)

9. Catherine Holbrook's income consisted of a pension from the State Teachers' Retirement System (STRS). Between 1998 and 2001, Patricia Heiland endorsed a number of Catherine Holbrook's STRS pension checks and, together with Respondent, deposited the checks into

Respondent's IOLTA account.

10. On February 4, 1998, Emmitt Holbrook granted power of attorney to his daughter, Patricia Heiland. During this time Emmitt Holbrook's entire income came from two sources: United States Social Security and a pension from Ford Motor Company. Between 1998 and 2001, Patricia Heiland endorsed Emmitt Holbrook's monthly Social Security and Ford pension checks and, together with Respondent, deposited the checks into Respondent's IOLTA account.

11. Patricia Heiland, together with Respondent, also deposited some of her earnings as a part-time organist into Respondent's IOLTA account.

12. Between 1998 and 2001, Respondent deposited a total \$68,917.79 into his IOLTA account - approximately \$40,000.00 of which came from the retirement funds of Respondent's in-laws and Patricia Heiland's employment checks. The remaining deposits were from other client funds.

13. In August 1998, the IOLTA account was overdrawn on four separate occasions.

14. Between 1998 and 2001, Respondent wrote 292 checks from his IOLTA account. Of the 292 checks, 262 of them were made payable to cash with no identifying notations on the face of the check. The checks payable to cash totaled \$60,195.00. Respondent has not accounted for this money other than he testified that he cashed the checks and gave the money to his wife as power of attorney for her parents.

15. Between February 28, 1995, and August 2, 2001, Emmitt Holbrook resided at the following locations:

Anchor Lodge	from 2-28-95 to 2-4-99
Parkvue Nursing home	from 2-5-99 to 1-6-00
The Home of Respondent	from 1-6-00 to 5-5-00
Avon Oaks Nursing Home	from 5-5-00 to 8-2-01

16. On February 4, 1998, Patricia Heiland began acting as Emmitt Holbrook's attorney in fact. Prior to that time, Mr. Holbrook personally paid Anchor Lodge for his care and his payments were always received timely. Initially, Patricia timely paid Emmitt Holbrook's bills for several months. Then between December 1998 and February 1999, she bounced four checks made payable to Anchor Lodge totaling \$9,162.00. After repeated attempts to collect the outstanding debt, Anchor Lodge caused criminal charges to be filed against Patricia Heiland in Lorain Municipal Court for passing bad checks. The criminal charges were dismissed after Respondent paid Anchor Lodge \$4,141.86 on a check drawn from his IOLTA account.

17. Respondent began depositing his wife's income from Grace United Methodist Church into the IOLTA in June 1999, and the Social Security checks of Mr. Holbrook, the Ford pension checks of Mr. Holbrook, and the STRS checks of Mrs. Holbrook began to be deposited in July of 1999.

18. From February 5, 1999, to January 6, 2000, Emmitt Holbrook resided at Parkvue Health Care Center. Patricia Heiland continued to act as his attorney in fact and assumed financial responsibility for his care. On January 6, 2000, Parkvue discharged Emmitt Holbrook for nonpayment. At that time he owed over \$53,000.

19. Between February 1999 and January 6, 2000, Respondent deposited \$13,674.70 of Emmitt Holbrook's Social Security and Ford pension checks into his IOLTA account. During this time, Respondent wrote 92 checks on his IOLTA account-87 of the checks were made payable to cash with no other notations. The 87 checks made payable to cash totaled \$28,530.86. The remaining checks that were not made payable to cash totaled \$282.97. Respondent could not account for any of the funds he received when he negotiated the 87 checks made payable to cash except to say that the cash from the checks was given to his wife as attorney in fact to be used for the Holbrooks. None of the

cash withdrawals made by Respondent had been used to pay Parkvue.

20. On May 5, 2000, Emmitt Holbrook was admitted to Avon Oaks nursing home. Patricia Heiland continued to act as his attorney in fact and assumed financial responsibility for his care. Patricia Heiland and Respondent deposited Emmitt Holbrook's social security and Ford pension checks into Respondent's IOLTA account while Emmitt Holbrook resided at Avon Oaks nursing home. Between May 2000 and November 2000, Respondent wrote 92 checks drawn on his IOLTA account-86 were made payable to cash with no other notations. The 86 checks made payable to cash, totaled \$20,306.62, yet none of the funds were used to pay Avon Oaks. Respondent cannot account for any of the funds he received when he negotiated the 86 checks made payable to cash except to say that the cash from the checks was given to his wife as attorney in fact to be used for the Holbrooks. By November 2000, Emmitt Holbrook owed over \$29,000 in fees to Avon Oaks.

21. Basically, Respondent used his IOLTA account to launder the money from Emmitt and Catherine Holbrook. Their retirement and pension checks came in almost every month, and then he doled them out in unmarked checks payable to cash almost on a daily basis. By following this procedure, he and his wife were able to keep the retirement and pension funds out of the hands of the nursing homes and medicaid.

22. Relator alleged in Count One that Respondent's conduct violated the following disciplinary rules:

- 1-102(A)(3) - a lawyer shall not engage in conduct involving moral turpitude;
- 1-102(A)(4) - a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;
- 1-102(A)(6) - a lawyer shall not engage in conduct that adversely reflects on his

fitness to practice law;

- 9-102(B)(2) - a lawyer shall maintain complete records of all funds, securities, and other properties of a client coming into possession of the lawyer and render appropriate accounts to his client regarding them; and
- 1-102(A)(5) - a lawyer shall not engage in conduct that is prejudicial to the administration of justice.

23. The Panel finds that all of the alleged violations have been proved by clear and convincing evidence.

Count Two

24. On January 2, 1998, Respondent filed a complaint in Lorain County Court of Common Pleas on behalf of his clients Faye Happel, Patricia Heiland, and Catherine and Emmitt Holbrook. Respondent sought to enjoin Royal Manor Health Care, Inc. from discharging his mother-in-law, Catherine Holbrook, from Royal Manor Nursing Home for nonpayment of fees. In the complaint, Respondent asserted that Catherine Holbrook was "incompetent." In support of the complaint he attached an affidavit signed by Patricia Heiland which stated, "My mother, Catherine Holbrook, has the diagnosed medical condition of suspected Alzheimer's disease which is so advanced that she does not understand who or where she is. However, she is physically active, sometimes even violent and always a danger to herself or others necessitating constant 24 hour care."

25. Despite describing Catherine Holbrook as incompetent and obtaining an affidavit stating that she did not know who or where she was, 29 days later, on January 31, 1998, Respondent signed as a witness on a document in which Catherine Holbrook purportedly granted a durable power of attorney to Respondent's wife, Patricia Heiland.

26. Relator alleged that Respondent's conduct had violated DR 1-102(A)(4) [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation] and DR 1-102(A)(6) [A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law].

27. The panel finds by clear and convincing evidence that there was a violation of DR 1-102(A)(6) but does not find a violation of DR 1-102(A)(4) as to Count Two.

Count Three

28. Relator charged respondent with violating DR 1-102(A)(4) [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation] based on the fact that his IOLTA account was entitled:

Legal Aid Trust Account

State of Ohio

Eric K. Heiland

29. Respondent had no affiliation with Legal Aid, assigned counsel, or any other government subsidized legal services organization.

30. The panel finds, by clear and convincing evidence, that respondent's conduct in Count Three violated DR 1-102(A)(4).

Count Four - Failure to Cooperate

31. On December 15, 2006, relator began respondent's deposition. During the deposition the relator requested that respondent provide relator with respondent's federal tax returns for the years 1999, 2000, and 2001. Respondent agreed to produce the returns, but failed to do so.

32. On January 5, 2007, the panel chair ordered respondent to produce the requested documents by January 19, 2007. On January 25, 2007 relator sent respondent a letter informing respondent of

his failure to comply and again requested the federal tax returns. Respondent contacted relator's assistant by electronic mail and informed her that respondent's mother had died.

33. On February 7, 2007, the panel chair again ordered respondent to produce the requested documents by February 22, 2007. Respondent contacted Relator on February 27, 2007, and informed relator that he would produce the returns.

34. Respondent has not produced his federal tax returns. At the hearing, respondent refused to answer questions regarding the production of his federal tax returns.

35. Respondent's conduct violated Gov. Bar Rule V. (4)(G).

Mitigation

36. The panel finds that the following mitigating factors have been shown:

A. Respondent graduated from Vermillion High School in 1975. He attended Bowling Green State University and graduated in 1978. He graduated from Cleveland State University Law School in 1991 and was admitted to practice that same year.

B. There is an absence of any prior disciplinary record.

C. The conduct of respondent involved family members and occurred in 1998, 1999, and 2000. None of the family members has complained about respondent's conduct.

D. Respondent was sentenced for the misdemeanor offense of defrauding creditors for the same conduct.

Aggravation

37. The panel finds that the following aggravating factors have been shown:

A. Respondent had a dishonest or selfish motive.

B. Relator established a pattern of misconduct.

C. Relator has proved multiple offenses.

D. There was a lack of cooperation in the disciplinary process.

E. Submission of false evidence, false statements, or other deceptive practices during the disciplinary process. Respondent promised to produce his tax returns, but never did. When asked about his tax returns at the hearing, he refused to answer any questions. His testimony was often guarded and misleading. He tried to avoid direct answers by obfuscation and misunderstanding.

F. Respondent has refused to acknowledge the wrongful nature of his conduct.

G. Respondent's conduct caused harm to the nursing homes who were entitled to be paid for their services.

Sanction

38. Relator recommended that respondent receive a two year suspension for his misconduct.

39. Respondent asked the panel to stay any suspension that might be imposed.

40. The Supreme Court of Ohio has stated: “[w]e hold it of the utmost importance that attorneys maintain their personal and office accounts separate from their clients’ accounts and that the violation of that rule warrants a substantial sanction whether or not the client has been harmed.” *Erie-Huron Counties Joint Certified Grievance Committee v. Miles* (1996), 76 Ohio St.3d 574, 576. Following that rationale in *Disciplinary Counsel v. Wise*, 108 Ohio St.3d 381, 2006-Ohio-1194, the Supreme Court indefinitely suspended attorney Wise. Wise had extensively misused his trust account between 2002 and 2004, he failed to maintain or produce adequate records to document account deposits and withdrawals, he had multiple overdrafts, he lacked cooperation and candor during the disciplinary investigation, and he had been previously suspended.

41. Here, Respondent extensively misused his trust account to launder money between 1998 and

2001, he failed to maintain or produce adequate records, he had multiple overdrafts, he failed to cooperate, and he had been convicted of defrauding creditors. The panel recommends that respondent be indefinitely suspended from the practice of law.

BOARD RECOMMENDATION

Pursuant to Gov. Bar Rule V(6)(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on June 7, 2007. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Panel and recommends that the Respondent, Eric Kyle Heiland, be indefinitely suspended in the State of Ohio. The Board further recommends that the cost of these proceedings be taxed to the Respondent in any disciplinary order entered, so that execution may issue.

Pursuant to the order of the Board of Commissioners on Grievances and Discipline of The Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendations as those of the Board.



**JONATHAN W. MARSHALL, Secretary
Board of Commissioners on
Grievances and Discipline of
The Supreme Court of Ohio**