

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

In Re: :
Complaint against : Case No. 11-006
Harvey C. Miller : Findings of Fact,
Attorney Reg. No. 0071490 : Conclusions of Law and
Respondent, : Recommendation of the
Toledo Bar Association : Board of Commissioners on
Relator. : Grievances and Discipline of
the Supreme Court of Ohio

11-1750

FILED
OCT 14 2011
CLERK OF COURT
SUPREME COURT OF OHIO

OVERVIEW

{¶1} The Toledo Bar Association has accused Respondent of three counts of misconduct: making false statements in a garnishment proceeding, making false statements in a bankruptcy proceeding, and misappropriating funds held in his law firm's IOLTA account. The panel finds that he did engage in this misconduct and recommends that he be suspended from the practice of law for twelve months with six months of the suspension stayed on condition.

INTRODUCTION

{¶2} The Toledo Bar Association filed a complaint against Respondent on February 14, 2011. The complaint alleged three counts of misconduct. The first and second counts charged violations of Prof. Cond. R. 3.3(a)(1) [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]. The third count charged violations of Prof. Cond. R. 1.15(a) [safekeeping funds and property], Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or

misrepresentation], and Prof. Cond. R. 8.4(h) [conduct that adversely reflects on the lawyer's fitness to practice law].

{¶3} Respondent filed an answer to the complaint on March 7, 2011, in which he admitted all of the allegations of the complaint except the alleged violation of Prof. Cond. R. 8.4(c).

{¶4} The matter was heard on September 8, 2011, in Columbus, Ohio before a panel composed of Martha Butler Clark, Walter Reynolds, and Judge John Street, chair. None of the panel members was from the appellate district in which the complaint arose, and none was a member of the probable cause panel that certified the matter to the Board. Amy E. Stoner, Yolanda D. Gwinn, and Michael A. Bonfiglio appeared as counsel for Relator. Respondent was present at the hearing and represented by Charles M. Boss.

{¶5} At the start of the hearing, the Toledo Bar Association moved to dismiss the violation of Prof. Cond. R. 8.4(c), and the panel accepted the dismissal. The parties presented the attached written stipulations as to the remaining charges. The stipulations pertained to the facts, the alleged violations, and the recommended sanction. After the stipulations were accepted, Relator rested. Respondent testified on his own behalf, and the matter was then submitted to the panel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Count I

{¶6} Respondent worked for the Toledo law firm of Bugbee & Conkle, LLP (hereafter Bugbee firm). From November 1, 2000 through December 31, 2006, he was employed as a salaried attorney. Effective January 1, 2007, Respondent became a nonequity partner and continued in that capacity until his relationship with the Bugbee firm was terminated on December

21, 2009.

{¶7} In 2001, Respondent purchased a house in the Toledo area for \$127,500. The house was purchased with a down payment of \$75,000 that Respondent had received from his father and a traditional loan and mortgage for the balance of the purchase price. Respondent believed the money from his father was a gift, and it was described as such at the closing on the house. Sometime after the closing, Respondent's father, a resident of the State of Wisconsin, indicated that the money was not a gift and he wanted to be paid back. Although Respondent did not agree that he owed the money, he began making monthly payments to his father to try to resolve the dispute. After about six months, he could not afford to continue the payments. The father then sued Respondent in Wisconsin and recovered a judgment against him. The father had the Wisconsin judgment certified in Ohio and then brought an action to enforce the judgment. The first effort at collection was to try to garnish Respondent's wages at the Bugbee firm.

{¶8} Respondent received notice that the wage garnishment was being filed, and although he attempted to resolve the matter with his father's Ohio counsel, he was unable to do so. As a result, the garnishment paperwork was sent to the Bugbee firm where it arrived on June 4, 2007. For reasons that have not been revealed, the garnishment forms were given to Respondent instead of the partner who normally would have been in charge of dealing with such matters. Respondent did not give the garnishment papers to the appropriate partner nor did he make anyone else at the firm aware of the garnishment. He knew the partners would take a dim view of him because of it. Instead, he responded directly to the garnishment by falsely stating that the Bugbee firm did not possess, hold, or otherwise own any property that might be subject to the garnishment. In addition, Respondent indicated that he was not employed at the firm. He rationalized that as a nonequity partner, he was not an employee.

{¶9} The next collection effort by his father was another garnishment - this time for property other than wages. It was filed on August 14, 2007, and sent to the Bugbee firm. Again, the garnishment form was given to Respondent, and again he answered it without notifying any other member of the Bugbee firm. In the answer, he denied that the Bugbee firm had any money, property, or credit other than personal earnings of his under the firm's control or possession.

{¶10} Respondent's answers were misleading and false. Therefore, the panel finds, by clear and convincing evidence, that Respondent violated Prof. Cond. R. 3.3(a)(1).

Count II

~~{¶11} Respondent continued to have financial difficulties, largely because of the~~
judgment his father obtained against him. On July 17, 2009, he and his wife filed a Chapter 13 bankruptcy, whereby they agreed to pay ten percent of their unsecured debts through a monthly payment plan. Respondent made his payments through December 2009.

{¶12} Respondent was terminated from the Bugbee firm on December 21, 2009. Soon thereafter, he moved the bankruptcy court to suspend his obligations under the Chapter 13 wage earner plan because he had been laid off from the firm and had no outside income to continue the payments. When Respondent was terminated by the Bugbee firm, however, he entered into a separation agreement that required the Bugbee firm to make three monthly payments to him totalling \$25,000 beginning January, 2010. Respondent received the first monthly payment of \$8,333 on February 10, 2010. He did not receive the second or third monthly payments due to his failure to meet certain conditions of the separation agreement. Respondent also received a \$6,000 payment in December after he was terminated and after he moved to have the bankruptcy payments suspended. In addition, Respondent cashed out his retirement plan from the Bugbee firm and received approximately \$22,392 on January 10, 2010.

{¶13} Respondent did not notify the trustee or the bankruptcy court about these payments, and following a hearing on January 19, 2010, the court granted his motion to suspend payments. Ultimately, the bankruptcy trustee learned of the payments and terminated the Chapter 13 proceeding. Subsequently, when he was eligible, Respondent filed a Chapter 7 bankruptcy and has discharged all of his dischargeable debts.

{¶14} The panel finds, by clear and convincing evidence, that Respondent violated Prof. Cond. R. 3.3(a)(1).

Count III

{¶15} In 2008, Respondent represented a *pro bono* client whom he knew through his church in a divorce case. When it came time to pay the court filing fees for his *pro bono* client, Respondent acted dishonestly. He did not ask the client for the money. He did not file an indigency request with the court. He did not advance the filing fee from Respondent's own funds. Instead, he had the bookkeeper at the Bugbee firm draft a check from a different client's escrow account in the amount of \$300, and he used the other client's funds to pay the filing fee for his *pro bono* client.

{¶16} This thievery went undetected until sometime after Respondent was terminated from the Bugbee firm. The Bugbee firm received notice that some of the \$300 was still on deposit with the court. The Bugbee firm, however, had no record of the *pro bono* client and could not determine to whom the deposit belonged. When the Bugbee firm checked into the discrepancy, it discovered that Respondent had used funds from a different client. By that time, Respondent had already been terminated from the Bugbee firm. The Bugbee firm has since refused to pay to Respondent the remaining two payments under the separation agreement. After this disciplinary case was instituted, Respondent repaid the \$300 to the Bugbee firm.

{¶17} The panel finds, by clear and convincing evidence, that Respondent violated Prof. Cond. R. 1.15(a) and Prof. Cond. R. 8.4(h)

MATTERS IN MITIGATION AND AGGRAVATION

{¶18} Weighing in favor of mitigation, there is an absence of a disciplinary record. In addition, Respondent has acknowledged his wrongful conduct and is remorseful about it, he has demonstrated a cooperative attitude toward the disciplinary proceedings, he has made restitution to the Bugbee firm, he has a good reputation, and he has had other penalties or sanctions imposed against him. BCGD Proc. Reg. 10(B)(2). Respondent is now employed for Jeep Country Credit Union as in-house counsel and as a collection attorney. In his answer to the complaint, in the stipulations, and in his testimony, Respondent has admitted his wrongful conduct. He is ashamed of what he did and for how it reflects on him, on the Bugbee firm, on his family, and on his profession. He admits he should not have been the one to answer the garnishments and that he should have given it to the managing partner. He is mortified that he used one client's funds to pay the costs of another client, and he promises that such a thing will never happen again. As a result of this misconduct, the Bugbee firm did not make the final two payments contemplated by the separation agreement, and he has lost \$17,000. Respondent has been actively involved in his church. He leads a daily Bible study at his home for high school students.

{¶19} With respect to matters in aggravation, the unauthorized use of client funds is very troubling and indicates a giant character flaw. The panel finds that Respondent acted with a dishonest motive in that he basically stole funds from one client and gave them to another client. His explanation that he reduced the first client's bill is no explanation. It just leads to the conclusion that he was trying to transfer the loss of the funds from the client to the Bugbee firm. He also demonstrated a dishonest and selfish motive by his misconduct in misleading the court on

the garnishment answers and in his failure to fully inform the bankruptcy court. In addition, the panel finds that there was a pattern of misconduct and multiple offenses. BCGD Proc. Reg. 10(B)(1).

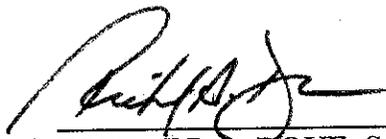
SANCTION

{¶20} The parties recommend that Respondent receive a one-year suspension with six months stayed upon the condition that Respondent work with a mentoring attorney for a period of one year, which would require meeting with a mentoring attorney monthly and the mentoring attorney submitting reports to Relator on a quarterly basis. The panel concurs in this recommendation.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 6(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on October 7, 2011. The Board adopted the Findings of Fact, Conclusions of Law, and Recommendation of the panel and recommends that Respondent, Harvey C. Miller, be suspended from the practice of law in Ohio for one year with six months of the suspension stayed upon the condition that Respondent work with a mentoring attorney for a period of one year, which would require meeting with a mentoring attorney monthly and the mentoring attorney submitting reports to Relator on a quarterly basis. 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.**



**RICHARD A. DOVE, Secretary
Board of Commissioners on
Grievances and Discipline of
the Supreme Court of Ohio**

FILED

AUG 22 2011

BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

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

IN RE:

Case No. 11-006

Complaint Against:

Harvey C. Miller (0071490)

STIPULATIONS

Respondent,

Toledo Bar Association

Relator.

Now come the Relator and Respondent and stipulate and agree that all of the following facts are true, and may be accepted as true by the Hearing Panel and Board of Commissioners for all purposes in this litigation, without further evidence.

1. The Toledo Bar Association, Relator, through its Certified Grievance Committee, is authorized to file this complaint pursuant to Rule V, Section 3 (c) and Rule V, Section 4 of the Supreme Court Rules for the Government of the Bar of Ohio.
2. Harvey C. Miller ("Respondent") was admitted to the practice of law in the State of Ohio on the 8th day of November, 1999 and is subject to the Supreme Court Rules for the Government of the Bar of Ohio and was registered with the Supreme Court under attorney registration number 0071490.

3. Respondent was employed at Bugbee & Conkle, LLP, (hereafter referenced as "Bugbee") beginning as an attorney on November 1, 2000, and was a fulltime employee of the firm through December 31, 2006.
4. Effective January 1, 2007, Respondent became a partner at Bugbee and continued in that capacity until the relationship was severed on December 21, 2009.
5. Respondent is a debtor subject to a foreign judgment obtained in the State of Wisconsin.
6. An action to enforce this judgment was commenced before Lucas County Court of Common Pleas Judge Stacy Cook, and was captioned Miller v. Miller, Case No. LN-2006-03795.
7. During the pendency of this case and with Bugbee listed as the garnishee, a wage garnishment notice was filed on May 29, 2007, and received at Bugbee on June 4, 2007.
8. Respondent, in his capacity as a partner at Bugbee, received this notice and responded to the court in the "Answer of Garnishee" that Bugbee did not possess, hold or otherwise own any property that might be subjected to garnishment.
9. Further, Respondent marked and signed "NO" on behalf of the firm in his capacity as partner when asked if the judgment debtor (Respondent himself) was employed at the firm.
10. A second notice of garnishment was filed on August 14, 2007, and again sent to Bugbee.

11. This notice of garnishment inquired as to whether "...the Garnishee had money, property, or credits other than personal earnings of the Judgment Debtor under the Garnishee's control and in the Garnishee's Possession."

12. In the Garnishee Answer filed in Court on September 6, 2007, Respondent marked the above question with a "No", signed his name to the document, and then also wrote the title "Partner" under his signature.

13. The answers to these questions given by Respondent on both Garnishee Answers filed with the Court were misleading and false.

14. By virtue of his answers written to the Court in the Garnishee Answered filed on at least two separate occasions, along with the facts set forth herein, Respondent committed the following act of misconduct: "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" in violation of Rule 3.3(a)(1).

15. On July 17, 2009, Mr. Miller and his wife filed a Chapter 13 bankruptcy in the United States Bankruptcy Court for the Northern District of Ohio, in Case No. 09-34073.

16. Following Respondent's termination from Bugbee on December 21, 2009, Respondent/Debtor moved the Bankruptcy court on December 23, 2009 to suspend his obligations under the wage earner plan as he had been "laid off" from the firm and had no outside income to continue the payments.

17. After Respondent was terminated from Bugbee, the firm and Respondent entered into a separation agreement on December 24, 2009, whereby Bugbee

would make three payments to Respondent totaling \$25,000, commencing January 2010.

17. Thus, Respondent was aware at the time of the filing of his motion to suspend obligations that as part of the termination agreement with Bugbee, he potentially could receive three payments from Bugbee through March 2010, assuming he also met his obligations under the Separation Agreement.

18. Respondent also subsequently cashed out his retirement plan from Bugbee and received approximately \$22,392.00 on or about January 10, 2010.

19. Further, Respondent received his regular monthly income draw from Bugbee on 12/31/2009 for \$6,000.

20. Respondent did not notify the trustee or the Bankruptcy Court either of his right to receive any of these payments or of the fact that he received one of the agreed upon three payments on February 1, 2010, in the amount of \$8,333.00.

21. On January 19, 2010 a hearing was held in the Bankruptcy Court where Respondent proceeded on his motion to suspend his Chapter 13 payments.

22. Subsequently, on January 20, 2010, without knowing about the payments Respondent received, the court granted Respondent's motion to suspend payments pursuant to the wage earner plan due to Respondent's being "laid off" at Bugbee.

23. By virtue of his motion filed with the Bankruptcy Court and subsequently not disclosing the payments received from Bugbee as a result of entering into the Separation Agreement, regular pay, and cashing out his pension plan, Respondent violated the following Professional Conduct Rule:

- a. Prof. Cond. R. 3.3(a)(1): 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.

24. In 2008, in addition to representing clients of the Bugbee firm, Respondent also represented at least one client who was not a client of the Bugbee firm, hereinafter referred to as Client B. Client B did not have any funds on deposit in Bugbee's escrow account from which to pay court filing fees.

25. In August 2008, Respondent directed Bugbee's Bookkeeper to access Client A's escrow account to pay the filing fee to the Bowling Green Municipal Court for a case filed by Client B. Client A was a firm client. Client B was not a firm client.

26. Upon discovery of the above written check, the firm advised Client A that his or her account had been erroneously accessed to pay a filing fee. The firm credited Client A's escrow account the sum of \$300.00.

27. Respondent has thereby violated the following Professional Conduct Rules:

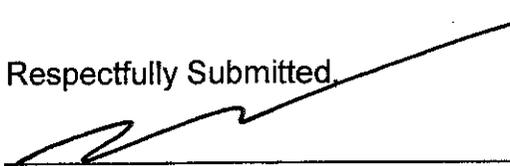
- a. Prof. Cond. R. 1.15(a) by wrongfully taking funds from one client's trust account to pay for fees for another, non-firm client.
- b. Prof. Cond. R. 8.4(h) by engaging in conduct that adversely reflects upon his fitness to practice law.

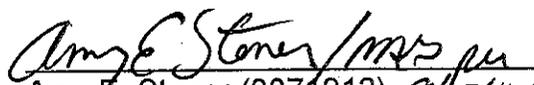
28. Respondent Harvey C. Miller has no prior disciplinary record (BCGD Proc. Reg. 10(B)(2)); and has acknowledged his wrongful conduct.

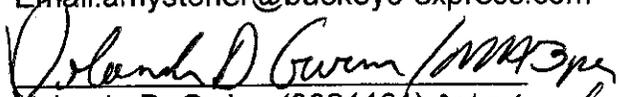
29. Relator and Respondent jointly recommend a sanction of a one year suspension with six months stayed upon the conditions set by the Board, including the condition that Respondent work with a mentoring attorney for a

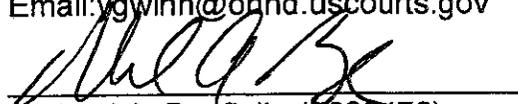
period of one year, which would require meeting with the mentoring attorney monthly and the mentoring attorney submitting reports to Relator on a quarterly basis.

Respectfully Submitted,


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