

ORIGINAL

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

In Re: : 12-0287

Complaint against : Case No. 11-044

Michael Brian Dockry  
Attorney Reg. No. 0002845

Respondent

Disciplinary Counsel

Relator

FILED  
FEB 16 2012  
CLERK OF COURT  
SUPREME COURT OF OHIO

Findings of Fact,  
Conclusions of Law, and  
Recommendation of the  
Board of Commissioners on  
Grievances and Discipline of  
the Supreme Court of Ohio

OVERVIEW

{¶1} This matter was heard on December 8, 2011 in Columbus, Ohio before a panel consisting of members Judge Thomas F. Bryant, Paul M. DeMarco, and Bernard K. Bauer, chair. None of the panel members is from the district from which the complaint arose or was a member of the probable cause panel in this matter.

{¶2} Relator was represented by Philip A. King. Respondent was present at the hearing and was represented by John B. Juhasz.

{¶3} Relator proceeded upon its complaint which alleged that Respondent committed misconduct in his use of his IOLTA.

{¶4} For the reasons which follow, the panel recommends Respondent be found to have violated the Ohio Rules of Professional Conduct, specifically: Prof. Cond. R. 1.15(a) (a lawyer shall hold property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property); Prof. Cond. R.

1.15(a)(2) (a lawyer shall maintain a record for each client on whose behalf funds are held); Prof. Cond. R. 1.15(a)(5) (a lawyer shall perform and retain a monthly reconciliation of the funds in his or her trust account); Prof. Cond. R. 8.4(c) (dishonesty, fraud, deceit, or misrepresentation); and Prof. Cond. R. 8.4(h) (conduct that adversely reflects on the lawyer's fitness to practice law). Based upon such conclusions, the panel recommends that Respondent receive a one-year suspension from the practice of law, with six months stayed on the condition that Relator appoint a monitoring attorney for a period of twelve months and that Respondent satisfy the probationary period with no further misconduct.

### **FINDINGS OF FACT**

{¶5} Based upon the stipulations of the parties, the testimony, and the exhibits, the panel makes the following findings by clear and convincing evidence.

{¶6} Respondent was admitted to the practice of law in Ohio on November 5, 1982, and is subject to the Code of Professional Responsibility, the Ohio Rules of Professional Conduct, and the Rules for the Government of the Bar of Ohio.

{¶7} Respondent has been a sole practitioner since 1982.

{¶8} Since 1983, Respondent has maintained an IOLTA at PNC Bank and its predecessor, National City Bank.

{¶9} Respondent's IOLTA was the only bank account maintained for his law practice until November 9, 2010, when he opened a business account at First Place Bank.

{¶10} Respondent continuously maintained a personal checking account since 1982.

{¶11} Respondent practices in the areas of eviction law, probate law, estate planning, and property transfers.

{¶12} On and after February 1, 2007, Respondent handled cases on an hourly fee basis and received advances of attorney fees from his clients that he deposited into his IOLTA.

{¶13} In addition to client funds, Respondent deposited and maintained personal funds in his IOLTA beyond the amount permitted under Prof. Cond. R. 1.15(b):

- On April 2, 2009, Respondent deposited \$200 from his personal checking account.
- On April 23, 2009, Respondent deposited \$12 from Joseph and Barbara Vito for basketball tickets.
- On May 12, 2010, Respondent deposited \$3,035.24 in earned attorney fees from the Estate of Helen Witt.

{¶14} Respondent had always kept personal funds along with client funds in his IOLTA.

Though Respondent was unaware of the specific amount of client funds in his IOLTA, he admitted that typically 75 percent of the funds in his IOLTA belonged to his clients.

{¶15} Respondent also used his IOLTA to pay the following personal and business expenses:

- Between January 13, 2009 and October 27, 2009, Respondent wrote six IOLTA checks totaling \$1,200 to attorney Warren "Bo" Pritchard for monthly office rent payments.
- Between January 19, 2009 and March 24, 2010, Respondent wrote five IOLTA checks totaling \$423 to the Austintown Kiwanis Club for personal membership dues.
- Between February 11, 2009 and June 4, 2010, Respondent wrote eight IOLTA checks totaling \$620.59 to One Communications for telephone service for his law office.
- On March 6, 2009 and March 6, 2010, Respondent wrote two IOLTA checks totaling \$8,000 to Lincoln Financial Group for insurance premium payments for his brother. These payments were unrelated to respondent's law practice. Prior to those withdrawals, Respondent deposited sufficient personal funds into his IOLTA account to cover these withdraws.
- On April 1, 2009, Respondent wrote an IOLTA check for \$60 to Dr. Jenifer Lloyd to pay a medical bill for his daughter.
- On September 3, 2009, Respondent wrote an IOLTA check for \$100 to O'Donald's Irish Pub and Grill for a personal expense.

- On October 14, 2009, Respondent wrote an IOLTA check for \$408.37 to Advanced Marking Systems for a business expense.
- On October 14, 2009, Respondent wrote an IOLTA check for \$100 to the Committee to Elect Ditzler for a personal expense.
- On March 5, 2010, Respondent wrote an IOLTA check for \$50 to Dr. Traikoff for in payment of a personal medical bill.

{¶16} On two occasions, Respondent borrowed funds from his IOLTA account for

personal loans:

- On April 1, 2009, Respondent wrote IOLTA check #3335 for \$2,000 to himself to cover a deficiency in his personal checking account and re-deposited the \$2,000 into his IOLTA account on April 3, 2009.
- On April 12, 2010, Respondent wrote IOLTA check #3446 for \$300 to suspended attorney Warren Pritchard as a personal loan from personal funds he maintained in this account; however, in the week of November 14, 2011, the Respondent reimbursed his IOLTA account with \$300 of his personal funds to cover this loan.

{¶17} From February 1, 2007 to early 2010, Respondent did not maintain ledgers of the client funds contained in his IOLTA.

{¶18} From February 1, 2007 to March 2010, Respondent did not reconcile his IOLTA. Specifically, he did not maintain client ledgers with which to perform his reconciliations and when the IOLTA bank statements reflected different balances than Respondent's check register, he simply adjusted the check register balances on April 16, 2009 and February 23, 2010 without determining the causes of the discrepancies.

{¶19} Respondent's conduct described in the preceding paragraphs is consistent with the way he had used his IOLTA since February 2007 until the investigation of this matter.

## **CONCLUSIONS OF LAW**

{¶20} Relator alleges that Respondent violated the Ohio Rules of Professional Conduct, specifically: Prof. Cond. R. 1.15(a); Prof. Cond. R. 1.15(a)(2); Prof. Cond. R. 1.15(a)(5); Prof. Cond. R. 8.4(c); and Prof. Cond. R. 8.4(h) .

{¶21} Based upon clear and convincing evidence, the panel concludes that Respondent by his actions violated Prof. Cond. R. 1.15(a), Prof. Cond. R. 1.15(a)(2), Prof. Cond. R. 1.15(a)(5), Prof. Cond. R. 8.4(c), and Prof. Cond. R. 8.4(h).

## **AGGRAVATION AND MITIGATION**

{¶22} Based upon the stipulations of the parties and the evidence presented, Respondent's misconduct was motivated by a dishonest or selfish motive.

{¶23} Based upon the stipulations of the parties and the evidence presented, the panel determines that there is an absence of a prior disciplinary record, that Respondent has paid restitution, that Respondent has cooperated in the disciplinary proceedings and that Respondent has good character and reputation in the community.

## **RECOMMENDED SANCTION**

{¶24} Relator has recommended that Respondent receive a one-year suspension from the practice of law, with six months stayed on the condition that Relator appoint a monitoring attorney for a period of one year and that Respondent satisfy the probationary period with no further misconduct.

{¶25} Respondent has recommended that he receive a six-month suspension from the practice of law, with all six months stayed on the condition that Relator appoint a monitoring attorney for a period of twelve months and that Respondent satisfy the probationary period with no further misconduct.

{¶26} In *Disciplinary Counsel v. Wise*, 108 Ohio St.3d 381, 2006-Ohio-1194, the respondent had been previously suspended for one year, with the last six months stayed, in a separate matter, and was once again before the court for depositing fees from clients, personal funds and cash between 2002 and 2004, and maintaining no client ledgers, records or receipts showing the source of all funds deposited to his IOLTA. The panel and the Board recommended a one-year suspension, with the last six months stayed.

{¶27} Even though there was no evidence that any client lost any money as a result of the respondent's misconduct, the court adopted an indefinite suspension for the respondent, observing that:

Ten years ago, we stated that it is "of the utmost importance that attorneys maintain their personal and office accounts separate from their clients' accounts" and that any violation of that rule "warrants a substantial sanction whether or not the client has been harmed." And in an earlier case, we explained that the "mishandling of clients' funds either by way of conversion, commingling, or just poor management, encompasses an area of the gravest concern of this court in reviewing claimed attorney misconduct." [Citations omitted.] *Id.* at ¶15.

{¶28} In this case, there is no evidence that any clients lost any money as a result of Respondent's misconduct and, unlike *Wise*, there were not multiple overdrafts of the account. Respondent cooperated and was candid during the disciplinary investigation, and there were no prior disciplinary proceedings against Respondent.

{¶29} Based upon the foregoing, the panel recommends that Respondent receive a one-year suspension from the practice of law, with six months stayed on the condition that Relator appoint a monitoring attorney for a period of one year and that Respondent satisfy the probationary period with no further misconduct.

#### **BOARD RECOMMENDATION**

Pursuant to Gov. Bar R. V, Section (6)(K), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on February 10, 2012. The

Board adopted the Findings of Fact, Conclusions of Law, and Recommendation of the panel and recommends that Respondent, Michael Brian Dockry, be suspended from the practice of law for a period of one year with six months of the suspension stayed on the conditions set forth in ¶29 of this report. The Board further recommends that the cost of these proceedings be taxed to 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 Recommendation as those of the Board.**



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