

IN THE SUPREME COURT OF OHIO

CLEVELAND METROPOLITAN BAR)	CASE NO.
ASSOCIATION CERTIFIED GRIEVANCE)	
COMMITTEE,)	
)	
<i>Relator,</i>)	
)	
v.)	
)	
TEDDY SLIWINSKI)	
Attorney Registration No. 0024901)	
)	
<i>Respondent.</i>)	

**RELATOR'S EMERGENCY MOTION FOR INTERIM REMEDIAL SUSPENSION
UNDER GOV. BAR R. V(19)**

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Respondent

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of authority over them. Moreover, there are several other unidentified victims over whom Respondent has exercised similar control to his personal financial benefit. Thus, more than one of Respondent's clients continue to be exposed and vulnerable to him.

In addition to the conduct addressed above, Respondent has also: shared legal fees with a non-attorney; neglected client matters for at least one elderly and incompetent client, jeopardizing the client's welfare; engaged in dishonesty both toward clients and Relator's investigator; engaged in self-dealing real estate transactions with vulnerable clients; commingled client and personal funds; failed to maintain required records regarding his IOLTA; and, used his position of control over an elderly and mentally ill client to coerce a \$26,000 loan in order to fund his dishonest dealings. Respondent admits some of this conduct, and cannot credibly dispute the rest, as it is reflected in both bank records and publicly available documents.

Respondent was previously disciplined by this Court for violations of IOLTA management rules, including failing to set forth a contingent-fee agreement in writing, failing to promptly refund an unearned fee, and failing to keep complete records of a trust account. Respondent has not cooperated with Relator during the investigation of this grievance, choosing instead to lie to and attempt to mislead the investigator.

As a result, and as detailed more fully below, Respondent's continued practice of law "poses a substantial threat of serious harm to the public." This Court should therefore impose an interim remedial suspension on Respondent under Gov. Bar R. V(19). Pursuant to S.Ct. Prac. R. 4.01(C) and Gov. Bar R. V(19)(B), this Court should do so immediately and before the filing of any memorandum in opposition as the "interests of justice warrant immediate consideration."

II. NOTICE TO RESPONDENT

As mentioned previously, Respondent has received notice of the grievance investigation against him, has submitted a response thereto, and generally has admitted to some of his wrongful conduct.

Pursuant to the notice provisions of Gov.Bar R. V(19)(A)(1)(a), Relator called Respondent on March 16, 2015, and indicated its intention to seek an interim remedial suspension with this Honorable Court. During that discussion, Respondent did not agree to voluntarily relinquish his license to practice law or consent to an interim suspension.

III. MEMORANDUM IN SUPPORT OF INTERIM REMEDIAL SUSPENSION

As set forth in more detail below, Respondent has repeatedly violated the following Rules of Professional Conduct and Ohio statute:

Rule 1.3 Diligence

A lawyer shall act with *reasonable* diligence and promptness in representing a client.

Rule 1.7 Conflict of Interest: Current Clients

(a) A lawyer's acceptance or continuation of representation of a client creates a conflict of interest if either of the following applies:

* * *

(2) 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 responsibilities to another client, a former client, or a third person or by the lawyer's own personal interests.

(b) A lawyer shall not accept or continue the representation of a client if a conflict of interest would be created pursuant to division (a) of this rule unless all of the following apply:

(1) the lawyer will be able to provide competent and diligent representation to each affected client;

(2) each affected client gives *informed consent, confirmed in writing*;

(3) the representation is not precluded by division (c) of this rule.

Rule 1.8 Conflict of Interest: Current Clients: Specific Rules

(a) A lawyer shall not enter into a business transaction with a client or *knowingly* acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless all of the following apply:

(1) the transaction and terms on which the lawyer acquires the interest are fair and *reasonable* to the client and are fully disclosed to the client in *writing* in a manner that can be *reasonably* understood by the client;

(2) the client is advised in *writing* of the desirability of seeking and is given a *reasonable* opportunity to seek the advice of independent legal counsel on the transaction;

(3) the client gives *informed consent*, in a *writing* signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

* * *

(c) A lawyer shall not solicit any *substantial* gift from a client. A lawyer shall not prepare on behalf of a client an instrument giving the lawyer, the lawyer's *partner*, associate, paralegal, law clerk, or other employee of the lawyer's *firm*, a lawyer acting "of counsel" in the lawyer's *firm*, or a person related to the lawyer any gift unless the lawyer or other recipient of the gift is related to the client. For purposes of division (c) of this rule:

(1) "person related to the lawyer" includes a spouse, child, grandchild, parent, grandparent, sibling, or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

(2) "gift" includes a testamentary gift.

Rule 1.15 Safekeeping Funds

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate interest-bearing account in a financial institution authorized to do business in Ohio and maintained in the state where the lawyer's office is situated. The account shall be designated as a "client trust account," "IOLTA account," or with a clearly identifiable fiduciary title. Other property shall be identified as such and appropriately safeguarded. Records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation or the appropriate disbursement of such funds or property, whichever comes first. For other property, the lawyer shall maintain a record that identifies the property, the date received, the person on whose behalf the property was held, and the date of distribution. For funds, the lawyer shall do all of the following:

* * *

(2) maintain a record for each client on whose behalf funds are held that sets forth all of the following:

(i) the name of the client;

(ii) the date, amount, and source of all funds received on behalf of such client;

(iii) the date, amount, payee, and purpose of each disbursement made on behalf of such client;

(iv) the current balance for such client.

(3) maintain a record for each bank account that sets forth all of the following:

(i) the name of such account;

(ii) the date, amount, and client affected by each credit and debit;

(iii) the balance in the account.

(4) maintain all bank statements, deposit slips, and cancelled checks, if provided by the bank, for each bank account;

(5) perform and retain a monthly reconciliation of the items contained in divisions (a)(2), (3) and (4) of this rule.

Rule 5.4 Professional Independence of a Lawyer

(a) A lawyer or *law firm* shall not share legal fees with a nonlawyer, except in any of the following circumstances . . .

Rule 8.1 Bar Admission and Disciplinary Matters

In connection with a bar admission application or in connection with a disciplinary matter, a lawyer shall not do any of the following:

(a) *knowingly* make a false statement of material fact;

(b) in response to a demand for information from an admissions or disciplinary authority, fail to disclose a material fact or *knowingly* fail to respond . . .

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to do any of the following:

* * *

(b) commit an *illegal act* that reflects adversely on the lawyer's honesty or trustworthiness;

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

* * *

(h) engage in any other conduct that adversely reflects of the lawyer's fitness to practice law.

The details of Respondent's violations of the Rules of Professional Conduct are set forth below.

O.R.C. 2913.02 Theft

Respondent has also committed theft under Ohio Revised Code section 2913.02, which states:

(A) No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services in any of the following ways:

- (1) Without the consent of the owner or person authorized to give consent;
- (2) Beyond the scope of the express or implied consent of the owner or person authorized to give consent;
- (3) By deception;
- (4) By threat;
- (5) By intimidation.

A. INITIAL INVESTIGATION

On April 8, 2011, Relator filed a formal Complaint against Respondent with the Board of Commissioners on Grievances and Discipline, alleging that he failed to put contingent-fee agreements in writing, mishandled client funds, and failed to properly maintain his IOLTA account. After a hearing, the Board recommended a six-month suspension, stayed on conditions. On December 5, 2012, the Supreme Court adopted the recommendation and suspended Respondent for six months, stayed on various conditions, including that he commit no further misconduct.

In addition to the stayed suspension, the Supreme Court ordered that a monitoring attorney provide Respondent IOLTA-management training. Attorney Richard Koblenz ultimately served in that capacity. In addition to these conditions, this Court placed Respondent on probation, requiring him to file an application for termination of probation before probation would end. *Cleveland Metro. Bar Assn. v. Sliwinski*, 134 Ohio St.3d 368, 2012-Ohio-5640. He has not done so, and thus remains on probation.

On March 28, 2014, Respondent bounced a \$190 check from his IOLTA account written on behalf of “Atwood Conservation Trust” the previous day. KeyBank notified Disciplinary Counsel of the overdraft, who in turn notified Relator. On May 2, 2014, Relator sent Respondent an inquiry letter. He responded by letter on May 22, 2014. He explained that the overdraft occurred because a March 24, 2014 check for \$7,651.50 from Alphonso & Sons was stopped. He claims that when he received notice of the overdraft on April 1, 2014, he “deposited personal funds of \$800.00 to clear the \$195.00 shortage due to the ‘stop pay.’” Relator has discovered that his claim was not true.

B. ATWOOD CONSERVATION TRUST MATTER¹

Atwood Conservation Trust (“ACT”) is located at 524 Avalon Road in Dellroy, Ohio. In his May 22, 2014 letter to Relator, Respondent described ACT rather vaguely, calling it “a managed account” with “a good balance.” During a February 19, 2015 interview with Relator’s investigator, Respondent described ACT as twenty acres of land serving as some sort of nature preserve in Carroll County, South of Canton near Atwood Lake.

Respondent indicated on February 19, 2015 that ACT is open to the public for thirty days a year, but is otherwise open only to those “associated” with the ACT, for example, donors. He said that he writes checks for ACT’s expenses out of his IOLTA account. Respondent indicated to the investigator that he created the Trust on behalf of a client four or five years ago, and that his main contact is the Trustee, Lori Mayer.

In truth, ACT is a trust created by Respondent of which he is the beneficiary. Respondent has owned the land since 1991 and granted it to the trust in 2010. **Respondent did**

¹ Facts concerning the Atwood Conservation Trust matter are supported by the Affidavit of Matthew D. Besser (“Besser Affidavit”), which is attached hereto as Exhibit A and incorporated herein by reference.

not indicate to Relator's investigator that he had any interest or ownership in the trust. Lori Mayer is Respondent's daughter, a fact both she and Respondent initially attempted to hide from Relator's investigator. Respondent has still not admitted the relationship, though Ms. Mayer did admit it upon questioning by Relator's investigator.

By the above actions, Respondent violated Rules 8.1(b) and 8.4(c) and (h) of the Ohio Rules of Professional Conduct.

C. KAREN STYLER MATTER²

On March 18, 2014, Alphonso & Sons wrote a settlement check to Respondent and client Karen Styler in a case involving a waterproofing construction defect. Respondent deposited the check into his IOLTA account on March 27, 2014. The same day, he wrote a check to someone named Jim Romig for \$195. Respondent says this check was for either lumber or firewood for ACT. Unbeknownst to Respondent, Alphonso & Sons put a stop payment on the check. As a result, there was only approximately \$122 in funds available in Respondent's IOLTA account. When Romig attempted to deposit his check on March 28, 2014, it was returned for insufficient funds.

Styler's settlement check was reissued on March 28, 2014 and deposited on April 16, 2014. **While her portion of the settlement was \$6,000, bank records show it was not distributed to her until July 16, 2014. In the interim, Respondent's IOLTA balance almost immediately dipped well below \$6,000.** Because none of those expenditures were for Styler, for a period of three months, Respondent was misappropriating her money to pay for ACT and possibly other clients.

² Facts concerning the Karen Styler matter are supported by the Besser Affidavit, Exhibit A hereto.

By the above actions, Respondent violated Rule 1.15(a) and 8.4(c) and (h) of the Ohio Rules of Professional Conduct.

D. EDWARD A. COOK MATTER³

Edward A. Cook, a client of Respondent, is an 84-year-old man in a Sandusky veterans home run by the State of Ohio. Respondent has had sole power of attorney over Cook, who appears to have no next-of-kin, since March 2010. Respondent is also Cook's guarantor for the veterans home. Cook is not deaf, but cannot comprehend or answer questions.

On August 1, 2010, Respondent prepared a mortgage deed granting Cook's home at 4050 East 44th Street in Newburgh Heights to "IPS Healthcare Inc." "IPS" stands for Irene Piatkowski Sliwinski—it is a corporation owned by Respondent's wife. Respondent filed the paperwork incorporating IPS and Respondent's wife signed the Articles of Incorporation. **The mortgage deed indicates Cook was paid \$35,000 for the deed, but there is no evidence demonstrating money was actually paid, that it represented fair value, or that Cook was appropriately advised about this business transaction with his own attorney.** Respondent stated to Relator's investigator that it was Respondent's idea to "donate" Cook's house to ACT. Upon information and belief, Respondent still controls the property.

Respondent is Cook's guarantor with the veterans home, and had been paying Cook's assessments owed to the home. These payments were apparently to be made from Cook's \$1,081.37 monthly OPERS retirement check and his monthly \$1,096.60 Social Security check, both of which were sent directly to Respondent. **In June 2014, Respondent stopped paying Cook's monthly assessment, and failed to respond to the veterans home's repeated**

³ Facts concerning the Edward A. Cook matter are supported by the Besser Affidavit, Exhibit A hereto.

attempts to contact him about the payments. In December 2014, a representative from the veterans home reached Respondent, who explained the failure to pay by claiming that Cook's money was being used to pay either liens or garnishments on Cook's house—a reference to payments on the above-mentioned mortgage deed to Sliwinski's wife.

On April 1, 2014, after Respondent's check to Romig for work done for ACT was returned for insufficient funds, Respondent deposited \$800 into his IOLTA account. The deposit came in the form of a check from Cook, signed by Respondent.

Respondent initially told Relator's investigator that he had deposited \$800 cash from his office safe into his IOLTA account on April 1, 2014. He later stated that he "could" have written a check from Cook's account because he needed the money right away and did not have the combination to his office safe. **Records of Respondent's banking and IOLTA account indicate Respondent never repaid the \$800 to Cook. Respondent took money from Cook, a vulnerable client, to pay for an expense of another "client," which is actually a Trust that benefits himself.**

In December 2014, the veterans home filed an application to take over as Cook's fiduciary payee for his Social Security benefits. That application was granted. **Respondent continues to have check-writing authority for Cook and to receive Cook's OPERS retirement checks.**

By the above actions, Respondent violated Rules 1.3, 1.7(a), 1.8(a) 1.15(a), 8.1(a), and 8.4(b), (c) and (h) of the Ohio Rules of Professional Conduct, and O.R.C. 2913.02.

E. JANINA AWIN MATTER⁴

Janina (“Jane”) Awin passed away in February 2008. Respondent serves as attorney and fiduciary for her estate.

On June 4, 2014, Sliwinski wrote a check from his IOLTA for \$25,945.28 to Awin’s estate. Five days later, on June 9, 2014, he filed a partial accounting of the Estate with the Probate Court. Respondent indicated to Relator’s investigator that the check was a refund of a “donation” made by Awin’s estate to ACT. He stated that one of her heirs changed his or her mind and asked for the money to be refunded. **The bank records available do not reveal the money going from Awin’s estate to ACT or Respondent’s IOLTA.**

By the above actions, Respondent violated Rules 1.7, 1.8(a), 1.8(c), 1.15(a), 8.1(a) and 8.4(b), (c) and (h) of the Ohio Rules of Professional Conduct, and O.R.C. 2913.02.

F. WALTER BEDNARZ MATTER⁵

Walter Bednarz is 87 years old, and is a client of Respondent’s. Bednarz has a mental health condition and Respondent knew about the condition.

On or about June 4, 2014, Respondent approached Bednarz for a loan, indicating that he needed money quickly. **Bednarz believed Respondent would not continue to represent him unless he provided the loan. Respondent drove Bednarz to the bank and waited in the car while Bednarz went inside to withdraw \$26,000.** Respondent promised Bednarz he would repay the loan the same day but did not repay him until about a month later.

⁴ Facts concerning the Janina Awin matter are supported by the Besser Affidavit, Exhibit A hereto.

⁵ Facts concerning the Walter Bednarz matter are supported by the Besser Affidavit, Exhibit A hereto.

Respondent made the \$25,945.28 payment to Awin's estate the same day he borrowed the \$26,000 from Bednarz.

By the above actions, Respondent violated Rules 1.8(c) and 8.4(b), (c) and (h) of the Ohio Rules of Professional Conduct, and O.R.C. 2913.02.

G. MARCELLA KASPER MATTER⁶

Respondent represented Marcella Kasper in a probate matter in 1999. Upon information and belief, his representation of Kasper continued in 2005 and 2006.

On November 16, 2005, Kasper granted a mortgage to Irene Sliwinski for the purported sum of \$120,000 via a deed prepared and witnessed by Respondent. **As with the Cook house, whether fair value was actually paid is unknown.** In 2006, Respondent aided in a sale of the former Kasper property from Irene Sliwinski to the "Jane Awin Irrevocable Living Trust."

By the above actions, Respondent violated Rules 1.7, 1.8(a) and (c), and 8.4(b), (c) and (h) of the Ohio Rules of Professional Conduct, and O.R.C. 2913.02.

H. IOLTA IRREGULARITIES⁷

Respondent had no documentation to explain the nature of cash withdrawals from his IOLTA, and the purported payees are at best sporadically listed. Respondent claims that ACT leaves him envelopes of cash to deposit into IOLTA, but he does not record when those payments are received, or what they are for.

Respondent's IOLTA accounts reveal at least seven checks written to Irene Sliwinski, totaling \$4,750. Ms. Sliwinski is not an attorney, nor does she work for

⁶ Facts concerning the Marcella Kasper matter are supported by the Besser Affidavit, Exhibit A hereto.

⁷ Facts concerning the IOLTA irregularities are supported by the Besser Affidavit, Exhibit A hereto.

Respondent's law firm. On or around February 18, 2014, Respondent received a \$6,138.23 fee for work on the estate of Ralph Sonny Klinger. Within a few days of the deposit, Respondent wrote his wife two checks totaling \$1,000. On them he wrote "Klinger" in the memo line.

On February 21 and July 26, 2014, Respondent wrote two checks to his wife out of his IOLTA account in the amounts of \$500 and \$2,500, respectively. The memo line for both checks is "Tyl." Respondent represented a Tadeusz and Sophie Tyl, residing very near his office, twice in 2014.

On July 20, 2014, Respondent wrote a check out of his IOLTA for \$100. The check was made out to Respondent's wife and the memo line stated the payment was for a locksmith at Respondent's office. A locksmith at an attorney's office is a business expense.

It appears that for at least three months in 2014, Respondent did not maintain separate IOLTA ledgers for each client. In response to Relator's inquiry, he produced what purported to be his ledger for ACT for the months of February, March and April 2014. Listed on the ledgers are transactions for other clients, including: Karen Styler's settlement check; deposits from the Estate of Ralph Sonny Klinger; what purports to be several checks on behalf of Klinger's estate (but it is unclear if they are legitimately for his Estate or not); and, a deposit from client Linda Knight.

Respondent's IOLTA ledgers omit many of the payees, sources of funds, and purposes for the transactions listed. It appears that for at least three months in 2014, Respondent was not keeping contemporaneous IOLTA ledgers. The ledgers are handwritten, and the transactions are not in chronological order. Instead, the entries exactly track the order of transactions listed on the bank statement, which are not listed by date. Moreover, the only payee identified by name on the February bank statement is for a February 11th electronic check to

Home Depot. Not coincidentally, Home Depot is the only payee Respondent listed on the ledger.

Respondent has repeatedly paid for personal and business expenses out of his IOLTA account. On August 26, 2013, Respondent paid his Supreme Court registration with a check drawn on IOLTA funds. Respondent also appears to be paying his electricity bill out of IOLTA, as he wrote several checks to Cleveland Public Power. On one of them, he wrote “5800 Fleet Avenue”—his office address—in the memo line. Finally, there are two checks Respondent wrote for tickets to events for the Cleveland Society of Poles and the Hungarian Veteran’s Memorial Ball in October 2013 and January 2014, respectively. The checks total \$220.

By the above actions, Respondent violated Rules 1.7, 1.8(a), 1.15(a), 5.4(a), 8.1 and 8.4(b), (c) and (h) of the Ohio Rules of Professional Conduct, and O.R.C. 2913.02.

IV. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all times relevant to this matter Respondent, Teddy Sliwinski, was and is currently licensed to practice law in the State of Ohio, and he was and is subject to the Rules of Government of the Bar and the Ohio Rules of Professional Conduct.

2. Relator has provided substantial, credible evidence that Respondent has engaged in a pattern of ethical misconduct that violates Prof.Cond.R. 1.3 by failing to act with reasonable diligence and promptness in representing a client.

3. Relator has provided substantial, credible evidence that Respondent has engaged in a pattern of ethical misconduct that violates Prof.Cond.R. 1.7 by engaging in continued representation of clients despite his personal interests in the transactions and failure to obtain informed consent to the conflict of interest.

4. Relator has provided substantial, credible evidence that Respondent has engaged in a pattern of ethical misconduct that violates Prof.Cond.R. 1.8(a) and (c) by knowingly acquiring ownership interests adverse to clients without obtaining the clients' informed consent in writing, and by soliciting gifts from clients.

5. Relator has provided substantial, credible evidence that Respondent has engaged in a pattern of ethical misconduct that violates Prof.Cond.R. 1.15(a) by failing to maintain appropriate IOLTA records and by commingling personal and client funds in his IOLTA.

6. Relator has provided substantial, credible evidence that Respondent has engaged in a pattern of ethical misconduct that violates Prof.Cond.R. 5.4(a) by sharing fees with a non-lawyer, namely his wife.

7. Relator has provided substantial, credible evidence that Respondent has engaged in a pattern of ethical misconduct that violates Prof.Cond.R. 8.1(a) and (b) by knowingly making false statements and failing to disclose material facts in the course of a disciplinary investigation.

8. Relator has provided substantial, credible evidence that Respondent has engaged in a pattern of ethical misconduct that violates Prof.Cond.R. 8.4(b), (c) and (h) by committing illegal acts that reflect adversely on his trustworthiness, namely theft under O.R.C. 2913.02; engaging in conduct involving dishonesty, fraud or misrepresentations; and engaging in conduct that adversely reflects on his fitness to practice law. Respondent's conduct – his repeated theft from and coercion of clients, his misrepresentations and self-interested dealings, and his clear attempts to impede Relator's investigation – is so egregious that it amounts to a violation of Prof.Cond.R. 8.4(h). Such behavior must cast serious doubt on Respondent's fitness to practice law.

9. Respondent has repeatedly engaged in ethical misconduct since at least 2005, is

currently on probation for previous ethical violations, and he continues to engage in ethical misconduct.

10. Respondent's continuing pattern of ethical misconduct poses a substantial threat of serious harm to the public.

11. Respondent should be immediately suspended from the practice of law pursuant to Gov.Bar R. V(19) and S.Ct. Prac. R. 4.01(C), until further order of this Court.

V. CONCLUSION

In light of the foregoing, the continued practice of law by Respondent Teddy Sliwinski "poses a substantial threat of serious harm to the public." Accordingly, and because Relator has satisfied all prerequisites in seeking relief, this Court should impose an interim remedial suspension on Respondent's license to practice law under Gov. Bar R. V(19). Pursuant to S.Ct. Prac. R. 4.01(C) and Gov. Bar R. V(19)(B), Relator requests that this Court do so immediately and before the filing of any memorandum in opposition as the "interests of justice warrant immediate consideration."

Respectfully submitted,

s/ Colin R. Jennings

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Attorneys for Relator

Cleveland Metropolitan Bar Association

Certified Grievance Committee

CERTIFICATE OF SERVICE

A copy of the foregoing *Relator's Emergency Motion for Interim Remedial Suspension Under Gov. Bar R. V(19)* has been served upon the following by regular U.S. Mail this 16th day of March, 2015:

Teddy Sliwinski
5800 Fleet Avenue
Cleveland, Ohio 44105

Respondent

s/ Colin R. Jennings
One of the Attorneys for Relator
Cleveland Metropolitan Bar Association
Certified Grievance Committee

IN THE SUPREME COURT OF OHIO

CLEVELAND METROPOLITAN BAR
ASSOCIATION CERTIFIED GRIEVANCE
COMMITTEE,

Relator,

v.

TEDDY SLIWINSKI
Attorney Registration No. 0024901

Respondent.

) CASE NO.

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AFFIDAVIT OF MATTHEW D. BESSER

STATE OF OHIO)

) ss:

COUNTY OF CUYAHOGA)

Matthew D. Besser, being first duly sworn, deposes and states as follows:

1. I am over 18 years of age, and I have personal knowledge of and am competent to testify as to the facts sworn to herein.

2. I am a duly licensed attorney in the State of Ohio, Bar No. 0078071. I am a member of the Certified Grievance Committee of the Cleveland Metropolitan Bar Association.

3. In that capacity, I investigated a report of an IOLTA overdraw by Attorney Teddy Sliwinski ("Respondent"). The facts set forth below are those gained from my investigation, and are true and accurate to the best of my knowledge and belief.

4. Due to the complexity of the facts, I created a graphic reflecting some of the transactions undertaken by Sliwinski. A true and accurate copy of the graphic I created is attached to this Affidavit as Exhibit A.

5. On March 28, 2014, Sliwinski bounced a \$190 check from his IOLTA account written on behalf of "Atwood Conservation Trust" the previous day. KeyBank notified Disciplinary Counsel of the overdraft, who in turn notified the CMBA Grievance Committee ("CMBA" or "the Committee"). On May 2, 2014, the Committee sent Sliwinski an inquiry

letter. He responded by letter on May 22, 2014. He explained that the overdraft occurred because a March 24, 2014 check for \$7,651.50 from Alphonso & Sons was stopped. He claims that when he received notice of the overdraft on April 1, 2014, he “deposited personal funds of \$800.00 to clear the \$195.00 shortage due to the ‘stop pay.’”

6. As part of the investigation into the overdraft, I reviewed what Sliwinski claims to be his IOLTA ledger for February, March, and April 2014, as well as what he claims is his monthly reconciliation for those months, appearing in the form of handwriting on the respective bank statements. Through Bar Counsel, the Committee subpoenaed Sliwinski’s bank statements, cancelled checks, and deposit slips for January 2013 through January 2015. After reviewing these various documents I then interviewed Sliwinski at his office on February 19, 2015. When review of the documents revealed reason to doubt the veracity of Sliwinski’s story and the appropriateness with which he was using IOLTA, I did further research for publicly available documents.

7. At the center of this investigation is Atwood Conservation Trust (“ACT”). In his May 22, 2014 letter to the Committee, he described ACT as “a managed account” with a “good balance.” At the interview, I asked Sliwinski to provide more details about it. He described ACT as twenty acres of land serving as some sort of nature preserve in Carroll County, South of Canton near Atwood Lake. A records search shows it located at 524 Avalon Road in Dellroy, Ohio. Sliwinski said ACT is open to the public for thirty days a year, but is otherwise open only to those “associated” with the ACT, for example, donors. He said that he serves as some sort of disburser for ACT, writing the checks for its expenses out of his IOLTA account. Among those expenses were what he described as a “4,000 square foot clubhouse” being built on the land. Sliwinski told me that he created the Trust on behalf of a client four or five years ago, and that

his main contact is the Trustee, Lori Mayer. According to Sliwinski, Mayer tells him when to pay an expense informally, either leaving him a “sticky note” with instructions along with an envelope of cash, or telling him verbally.

8. In truth, ACT is a Trust created by Sliwinski of which he is the beneficiary. According to Carroll County Recorder records, Sliwinski has owned the land on which the Trust is situated since 1991. In 2010, he granted the land to ACT. It appears that the Trustee at the start was a man named Thomas W. Sable. On June 14, 2012, Sable seems to have made Sliwinski the beneficiary of the Trust with a Transfer on Death Deed. In 2013, Sable disclaimed any interest in the Trust.

9. Sliwinski said nothing to me about having an interest or ownership in the Trust, or that it was his land at the outset. To the contrary, he very much led me to believe he created it for a “client,” and otherwise referred to the Trust as “they.” And while he told me the current Trustee is his contact, he neglected to mention her maiden name: “Sliwinski.”

10. I spoke to Lori Sliwinski Mayer on February 27, 2015. Before I brought up Sliwinski’s name, she volunteered, “He’s no longer my attorney.” She initially claimed he stopped as the Trust’s attorney once she learned the account had been overdrawn. She also suggested that she met Sliwinski through the prior Trustee, Tom Sable. At that point I asked her whether Sliwinski was her father. She admitted that he is.

11. Mayer was dubious about the money coming into the Trust: “As far the money going into the trust and what the trust money was used for, I’m not sure if that was 100 percent legit.” She explained that she believes Sliwinski is putting money into the Trust to keep it away from his wife Irene, whom she claims is stealing Sliwinski’s money. As she put it, “I think my Dad was putting money into the Trust, so that he could then take his own money out of the

Trust.” She even used the word “hide” at one point, before catching herself and trailing off. Mayer confirmed that a lodge is being built on the land. She said the lodge has multiple living areas, some of which are for the family and some of which are for the public.

12. On March 18, 2014, Alphonso & Sons wrote a settlement check to Sliwinski and client Karen Styler in a case involving a waterproofing construction defect. Sliwinski deposited the check into his IOLTA account on March 27, 2014. The same day, he wrote a check to someone named Jim Romig for \$195. Sliwinski says this check was for either lumber or firewood for ACT. Unbeknownst to Sliwinski, Alphonso & Sons put a stop payment on the check for reasons that are still not entirely clear. As a result, there was only approximately \$122 in funds available in Sliwinski’s IOLTA account. When Romig attempted to deposit his check on March 28, 2014, it was returned for insufficient funds.

13. Sliwinski did not explain why ACT did not have enough of its own money in IOLTA to cover the check for its expenses. He indicated he was unsure when he wrote the check if ACT had enough money in its account, but figured he could cover it because his own earned fee was part of the Alphonso & Sons check he had just deposited.

14. Styler’s settlement check was reissued on March 28, 2014 and deposited on April 16, 2014. While her portion of the settlement was \$6,000, bank records show it was not distributed to her until July 16, 2014. In the interim, Sliwinski’s IOLTA balance almost immediately dipped well below \$6,000. None of those expenditures were for Styler. When I showed Sliwinski the math on his bank statement proving that fact, he offered only a simple “well that’s bad.”

15. Sliwinski told the CMBA by letter that when he learned of the bounced check on April 1, 2014, he immediately went to the bank and deposited \$800 in “personal funds” to cover

the check. He repeated the same thing to me several times during the initial stages of our interview, insisting that the deposit was his own money, in “cash” and taken “from the safe” in his office. While Sliwinski’s bank statements do in fact reflect a deposit of \$800 into his IOLTA account on April 1, 2014, the cancelled checks received pursuant to the subpoena show that it was neither in cash, nor from his own funds.

16. The \$800 deposit came in the form of a check from Edward A. Cook, an eighty-four year old man in a Sandusky Veteran’s home run by the State of Ohio. The check is signed with Sliwinski’s signature, next to which it says “for Edward Cook.” Sliwinski has had sole power of attorney over Cook since March 2010, who appears to have no next-of-kin. There does not appear to be anyone supervising Sliwinski’s exercise of authority over Cook’s finances. I “spoke” to Cook on March 2, 2015 in the presence of his social worker and the VA home’s attorney. He was unresponsive. The social worker and attorney told me that Cook is not deaf, but cannot comprehend or answer questions.

17. During the initial stages of the interview, Sliwinski insisted the \$800 had come from his own funds, not those of a client. It was only at the very end of the interview, when I showed him the check and the April bank records—which show only one \$800 deposit—that he admitted he “could” have written a check from Cook’s account because he needed the money right away and did not have the combination to his office safe. I took him to be admitting theft of Cook’s money.

18. After I asked Sliwinski to provide proof of repayment and access to Cook’s records, Sliwinski gave a partial response on February 26, 2015. He claimed that he repaid Cook \$300 on April 28, 2014, and the remaining \$500 was for fees earned. However, there is no corresponding \$300 withdrawal or check from Sliwinski’s IOLTA account. The only cash

withdrawal from his IOLTA account in April was for \$200 on April 22nd. In addition, the bank records show no evidence that Sliwinski withdrew a \$500 earned fee in either March or April, from Cook or anyone else. Even then, Sliwinski still did not deny stealing from Cook.

19. Sliwinski has been unable to provide any credible proof that Cook was actually repaid, and the bank records reflect no such repayment. According to Sliwinski, he continues to have check-writing authority for Cook, although he says Cook recently asked him to transfer that authority to the treasurer at the VA nursing home. Given Cook's inability to communicate, I cannot see how Sliwinski's statement could be true. The Treasurer's Office at the VA home says no such conversation took place between their office and Sliwinski.

20. Per County Auditor records, Sliwinski initially became a joint power of attorney for Cook with Cook's sister, Dolores Kuchnicki, on July 23, 2008. According to the County Probate docket, on March 6, 2010, Kuchnicki passed away, leaving Sliwinski as Cook's sole power of attorney. Sliwinski was also the attorney for Kuchnicki's estate, and on May 12, 2010, he applied for relief from administration for her will, signing off on the application on Cook's behalf as her next-of-kin. A few months later, on August 1, 2010, Sliwinski prepared a mortgage deed granting Cook's home at 4050 East 44th Street in Newburgh Heights to "IPS Healthcare Inc." "IPS" stands for Irene Piatkowski Sliwinski—it is a corporation owned by Sliwinski's wife. The mortgage deed says Cook was paid \$35,000 for the deed, but I do not have enough information to demonstrate that money was actually paid, that it represented fair value, or that Cook was appropriately advised about this business transaction with his own attorney.

21. According to Sliwinski, Cook "donated" his house to Atwood Conservation Trust. He admitted that it was his idea to donate the house to the Trust. He says the house was first conveyed to an entity called "The Regina Foundation," which in turn conveyed the house to

ACT. While I have not found a document showing those transfers, Sliwinski neglected to tell me that “The Regina Foundation Incorporated” is also owned by his wife. Sliwinski created it on November 12, 2010 with documents he prepared and filed. There is no indication that the house has been transferred out of Sliwinski’s control.

22. According to the VA home Treasurer’s Office, Sliwinski is Cook’s guarantor with the home, and had been paying Cook’s assessments owed to the home. These payments were apparently to be made from Cook’s \$1,081.37 monthly OPERS retirement check and his monthly \$1,096.60 Social Security check, both of which were sent directly to Sliwinski. In June 2014, Sliwinski stopped paying Cook’s monthly assessment, and failed to respond to the Treasurer’s repeated attempts to contact him about the payments. In December 2014, a representative from the Treasurer’s office finally reached Sliwinski, who explained the failure to pay by claiming that Cook’s money was being used to pay either liens or garnishments on Cook’s house—which in truth seem to refer to payments on the above-mentioned mortgage deed to Sliwinski’s wife.

23. In December, the VA home filed an application to take over for Sliwinski as Cook’s fiduciary payee for his Social Security benefits. That application was apparently granted. However, the OPERS retirement check is still sent to Sliwinski, as the VA home apparently lacks authority to become fiduciary over it.

24. Cook appears not to be the only client Sliwinski has brought to ACT to make “donations.” Sliwinski admitted having had more than two or three, but less than ten, clients make these so-called donations. He explained that they occur when a client wants to do estate planning, but does not know what charities should receive their property. Sliwinski indicated he brings ACT to their attention. Whether he discloses his actual interest, let alone obtains a written

informed conflict waiver, is very much in doubt. While the identity of those other clients is not currently known, the bank records do reveal some shadows of these transactions.

25. According to Probate Court records, Janina (“Jane”) Awin passed away in February 2008 and Sliwinski served as attorney and fiduciary for her estate. He continues to serve in that role. His bank records show that on June 4, 2014, Sliwinski wrote a check for \$25,945.28 to her estate. Five days later, on June 9, 2014, he filed a partial accounting of the Estate with the Probate Court. When I inquired why he issued the check, Sliwinski claimed it was a refund of a “donation” made by her Estate to ACT. He says that one of her heirs changed his or her mind and asked for the money to be refunded. He could not or would not provide more specifics. The bank records available do not reveal the money going from Awin’s Estate to ACT or Sliwinski’s IOLTA. I asked for evidence of that payment, but did not receive it. What the bank records do reveal, however, is that on June 4, 2014, the same day Sliwinski wrote the \$25,945.28 check to Awin’s Estate, he received a \$26,000 check from someone named Walter S. Bednarz.

26. Walter S. Bednarz is eighty-seven years old, and lives in the neighborhood near Sliwinski’s office. When I spoke to him, he told me that Sliwinski has been his attorney for a long time, but has not done any legal work for him in a while. Bednarz volunteered that he has “a mental problem.”¹ Bednarz described himself as “kind of a weak man,” and says Sliwinski knew about his mental health condition.

27. Bednarz told me that last year Sliwinski approached him out of the blue, needing money in a hurry but not saying why. He asked Bednarz for a loan, which Bednarz felt pressured to give. Not knowing where else to turn for legal help, he feared Sliwinski would not represent

¹ To protect Bednarz’s privacy in his health information, I am omitting the specific diagnosis he revealed to me.

him anymore if he refused. As a result, Bednarz agreed to loan Sliwinski money, although he repeatedly told me he felt dumb and like a “fool” for doing so. Bednarz says Sliwinski drove him to the bank and sat in the car while he went inside for the funds, which he described as his “life savings.” He says he was “scared stiff,” and even the bank teller hesitated before allowing him to withdraw the funds. Bednarz says Sliwinski promised to repay him the same day but did not. Instead, he says Sliwinski came to his house about a month later, repaying him with a combination of cash and check. According to Bednarz, Sliwinski still does his taxes.

28. During my investigation I also found concerning evidence of Sliwinski’s dealings with the Estate of Marcella Kasper. On November 16, 2005, Kasper granted a mortgage to Irene Sliwinski for the purported sum of \$120,000 via a deed prepared and witnessed by Teddy Sliwinski. Having represented her in a probate matter in 1999, I believe Sliwinski was representing Kasper at the time of the transfer. As with the Cook house, whether fair value was actually paid is unknown. Regardless, in the years following that transfer, Sliwinski aided in a confusing series of transfers of the former Kasper property, including a 2006 “sale” from Irene Sliwinski to the “Jane Awin Irrevocable Living Trust.” Ultimately, Kasper’s house seems to have ended up in the possession of E. 42nd Street Partnership. Other than the above, I found no evidence Sliwinski has an interest in that property. It is registered to two otherwise unknown individuals.

29. When I spoke to Lori Mayer, she knew that there were “donations” being made. However, she seemed unaware they were from Sliwinski’s clients. When I asked her whether clients were making donations, she said she “can’t imagine that his clients would give donations.”

30. Sliwinski's bank records show a large number of cash transactions. He had no documentation to explain the nature of the cash withdrawals from IOLTA, and the purported payees are at best sporadically listed. Sliwinski claims that he was paying the men working on construction of the clubhouse, per instructions of the Trustee, Lori (Sliwinski) Mayer. He says that he handed the men the cash himself for payment. When I asked, Sliwinski admitted he did not take any steps to ensure that ACT issues an IRS Form 1099 or that the payments are otherwise reported on ACT's tax filings. In fact, he denied involvement in the Trust's tax filings (even though he apparently does Walter Bednarz's taxes). However, Lori Mayer says that the Trust does file taxes, but she does not handle them. As for cash deposits, Sliwinski claims that the Trust leaves him envelopes of cash to deposit into IOLTA, but he does not record when those payments are received, or what they are for.

31. Review of Sliwinski's IOLTA records also reveals at least seven checks written to his wife, Irene, totaling \$4,750. For some of these checks, Sliwinski at first could not explain what they were for, but later claimed that his wife must have forwarded expenses for ACT catering and building materials in cash, which he then reimbursed. He could not produce any receipts to substantiate his claim. I found these checks suspicious in part because of Sliwinski's undisclosed relationship with ACT. In addition, before I raised the matter of the checks to his wife with him, Sliwinski told me that his wife does no work for his law firm, and has no involvement with ACT, except perhaps for rendering brief medical care one time to a worker at ACT. Several of these checks grabbed my attention in particular.

32. First are two checks written to Irene Sliwinski from the IOLTA account just days after Sliwinski received a \$6,138.23 fee for work on the Estate of Ralph Sonny Klinger. That figure is reflected not only in a check deposited into IOLTA and recorded on ACT's ledger, but

also on Probate Court documents. Within a few days of the deposit, Sliwinski wrote Irene two checks totaling \$1,000. On them he wrote “Klinger” in the memo line. Sliwinski issued himself a check for \$500 at the same time, with “Klinger” in the memo line. There appears to be no legitimate reason why Irene Sliwinski—a non-lawyer—would be receiving part of Sliwinski’s legal fees. It also appears that Sliwinski left a significant portion of his fee in IOLTA. He did admit to me that at times he leaves his fees in IOLTA for extended periods. In fact, he claims that sometimes he just pays for ACT’s expenses as a courtesy because they bring him so much business.

33. Two other noteworthy checks to Irene Sliwinski are dated February 21 and July 26, 2014, in the amounts of \$500 and \$2,500, respectively. The memo line for them seems to say “Tyl.” Sliwinski claimed during the interview that Tyl is ACT’s caterer for events the Trust sometimes throws, and Irene must have forwarded the expenses. In fact, “Tyl” appears to have been a client. According to Common Pleas and Probate records, Sliwinski represented a Tadeusz and Sophie Tyl, residing very near his office, twice in 2014. Thus, it appears Sliwinski was simply paying his wife legal fees, as with Klinger’s Estate.

34. Finally, written out of IOLTA is a \$100 check to Irene dated July 20, 2014, which the memo states is for a locksmith at Sliwinski’s office. Sliwinski did not deny that check was written out of IOLTA for a business expense.

35. I found other evidence of Sliwinski using IOLTA to pay for business and personal expenses, as he did before his stayed suspension. At the outset, each of the checks written out of IOLTA for ACT appears to be personal expenses. Setting them aside, on August 26, 2013, Sliwinski paid his Supreme Court registration with a check drawn on IOLTA funds. The Supreme Court would not have noticed this however, as Sliwinski had a bank check issued,

which did not reflect that the funds came out of his IOLTA account. Sliwinski admits the conduct. He claims the money he used was from fees already earned but not withdrawn. It also seems Sliwinski is paying his electricity bill out of IOLTA, as he wrote several checks to Cleveland Public Power. On one of them, he wrote “5800 Fleet Avenue”—his office address—in the memo line. Sliwinski denied these checks were for business expenses. Finally, there are two checks Sliwinski wrote for tickets to events for the Cleveland Society of Poles and the Hungarian Veteran’s Memorial Ball in October 2013 and January 2014, respectively. The checks total \$220, and Sliwinski explained them as “perks” from ACT. He claims ACT authorized him to go because there were potential donors there. They instead appear to be personal expenses.

36. Additionally, as a general matter, Sliwinski does not appear to be keeping individual IOLTA ledgers for clients. In response to the CMBA inquiry, he produced what purported to be his ledger for ACT for the months of February, March, and April 2014. He confirmed to me during the interview that the ledgers he produced were only for ACT transactions. That was not true. Listed on the ledgers are transactions for other clients, including: Karen Styler’s settlement check; deposits from the Estate of Ralph Sonny Klinger; what purports to be several checks on behalf of Klinger’s estate (but it is unclear if they are legitimately for his Estate or not); and, a deposit from client Linda Knight. Although Sliwinski hand wrote on the bank statements he produced that these deposits were for ACT costs, the corresponding cancelled checks show that is untrue. Thus, he appears not to be keeping an individual ledger for each client, conduct that formed the basis of his stayed suspension in 2012.

37. Further, the ledger he does purport to keep omits many of the payees, sources of funds, and purposes for the transactions listed. This too is conduct that formed the basis of his prior discipline.

38. In addition, the February, March, and April 2014 ledgers he produced were not created contemporaneously, contrary to his claims. The ledgers are handwritten, and the transactions are not in chronological order. Instead, the entries exactly track the order of transactions listed on the bank statement, which are not listed by date. Moreover, the only payee identified by name on the February bank statement is for a February 11th electronic check to Home Depot. Not coincidentally, Home Depot is the only payee Sliwinski listed on the ledger. When I presented him with these facts, he admitted that he created the ledger from the bank statements. He admitted the same thing for March.

39. I believe that Sliwinski was not keeping a ledger at all, creating one after the fact once he received the Committee's inquiry letter in early May 2014. During my interview, I did see that Sliwinski appears to have kept a ledger from at least January 2013 through June 2013, the first six months of his probation. I have asked for copies of all ledgers since January 2013, but Sliwinski has not provided them.

40. By the above actions, Respondent violated Rules 1.3, 1.7, 1.8(a) and (c), 1.15(a), 5.4, 8.1, and 8.4(b), (c) and (h) of the Ohio Rules of Professional Conduct.

FURTHER AFFIANT SAYETH NAUGHT.



Matthew D. Besser

SWORN TO BEFORE ME and subscribed in my presence this 13 day of March, 2015.


Notary Public

JENNIFER L. NALLY, Notary Public
State of Ohio, Cuyahoga Cty.
My Commission Expires May 14, 2016

