

**BEFORE THE BOARD OF PROFESSIONAL CONDUCT  
OF THE SUPREME COURT OF OHIO**

**In re:**

**Case No. 2014-045**

**Complaint against**

**Raymond Leland Eichenberger III  
Attorney Reg. No. 0022464**

**Respondent**

**Findings of Fact,  
Conclusions of Law, and  
Recommendation of the  
Board of Professional Conduct  
of the Supreme Court of Ohio**

**Disciplinary Counsel**

**Relator**

**OVERVIEW**

{¶1} This matter was heard on June 23, 2015 in Columbus before a panel consisting of David L. Dingwell, Sharon L. Harwood, and Lawrence A. Sutter, chair. None of the panel members resides in the district from which the complaint arose or served as a member of the probable cause panel that reviewed the complaint pursuant to Gov. Bar R. V, Section 11(A).

{¶2} Respondent appeared pro se. Michelle Bowman appeared on behalf of Relator.

{¶3} Respondent was charged in the complaint with the following violations: Prof. Cond. R. 1.15(a) [a lawyer shall hold property of clients separate from a lawyer's own property]; Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation]; Prof. Cond. R. 8.4(d) [conduct that is prejudicial to the administration of justice]; and Prof. Cond. R. 8.1(b) and Gov. Bar R. V, Section 4(G) [failure to cooperate].

{¶4} Based upon the parties' stipulations and other evidence at the hearing, the panel concludes that Relator has established multiple violations by clear and convincing evidence and recommends a sanction of a two-year suspension, with the final year stayed on conditions.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶5} Respondent was admitted to the practice of law in the state of Ohio on November 7, 1980 and is subject to the Code of Professional Responsibility, the Rules of Professional Conduct, and the Rules for the Government of the Bar of Ohio.

{¶6} On May 9, 2013, Relator received an overdraft notice from PNC Bank reporting that Respondent's IOLTA became overdrawn on May 2, 2013 (account number XX-XXXX-6377). Stipulated Ex. 2.

{¶7} On June 12, 2013, Relator sent a letter of inquiry to Respondent regarding the May 2, 2013 overdraft. Stipulated Ex. 3.

{¶8} On June 27, 2013, Relator received a written response from Respondent to the letter of inquiry. Respondent stated that the transaction that caused the overdraft was an unauthorized attempt to make a withdrawal from an account that was not currently being used and was in the process of being closed. Respondent provided no additional details about this transaction that caused the overdraft. Stipulated Ex. 4.

{¶9} Respondent also stated that his IOLTA account numbers XXXXX3339 and XXXXXX6377 are the same account but had two account numbers because of the bank's transition from National City Bank to PNC. *Id.*

{¶10} The overdraft notice from PNC Bank described the transaction causing the overdraft as PAYDAYADV CASHNETUSA in the amount of \$1,275.68, item returned, no charge. Stipulated Ex. 2.

{¶11} Respondent opened a new IOLTA account at PNC in March 2013 under account number XX-XXXX-1362. Respondent provided to Relator only page 1 of 3 of the March bank statement reflecting the new account number. Stipulated Ex. 4.

{¶12} On July 15, 2013, Relator sent a letter to Respondent requesting additional information. In its second letter, Relator again requested copies of Respondent's monthly bank statements on account number XX-XXXX-6377 for the month of the overdraft, the month before the overdraft, and the month after the overdraft, (*i.e.*, April, May, and June 2013). Stipulated Ex. 5.

{¶13} On July 23, 2013, Relator received a response from Respondent. Respondent stated, in part, "I would once again emphasize to you, and state that you are missing the point, because, 1) this was a fraudulent and unauthorized transaction on an old account that was not even being used at the time, and 2) virtually all of the funds in my trust account at any given time are retainers being earned by me and not client funds." Stipulated Ex. 6.

{¶14} Respondent provided a copy of a letter that he wrote to PNC Bank dated March 13, 2013 reporting a check in the amount of \$30 as being fraudulent and unauthorized activity on his IOLTA account. *Id.*

{¶15} On August 21, 2013, Relator sent a letter to Respondent requesting additional information. Relator specifically asked for a more detailed explanation of the transaction that caused the overdraft in May 2013. Stipulated Ex. 7.

{¶16} On September 5, 2013, Relator received a response from Respondent. Stipulated Ex. 8.

{¶17} Respondent said that, in response to Relator's further inquiry regarding the electronic transfer that caused the overdraft in May 2013, "as this transaction was not initiated by me, in the way of writing a check or personally initiating a withdrawal, it is very unfair to attempt to blame the situation on me, or to attempt to state that I caused a deficiency in the bank account balance." He further stated "the fact that the account was, for all practical purposes

closed and dormant at the time of this occurrence, also makes your inquiry more than a little silly.” *Id.*

{¶18} Respondent further stated “I will decline to send you the monthly statements from the new Trust Account, as there are no allegations pending of any problems with the Account.” He further stated “I find your threats to subpoena my bank records to be totally out of line and offensive. The authority of your office in this simple and easily explained matter surely cannot extend to such overly broad and invasive limits.” *Id.*

{¶19} Respondent had previously described the transaction that caused the overdraft as “fraudulent and unauthorized.”

{¶20} As reflected by Stipulated Exs. 9-25, Respondent used his PNC IOLTA accounts in the following manner from at least September 1, 2012 through October 8, 2013:

- On at least 25 occasions, Respondent wrote checks payable to Columbia Gas, WOW cable, and American Electric Power. These payments totaled approximately \$1,681.58.
- On at least 39 occasions, Respondent issued preauthorized electronic checks or wrote checks payable to Target. These payments totaled \$1,043.84.
- On 12 occasions, Respondent wrote checks payable to DEB group for monthly rent of Respondent’s law office. These payments totaled \$7,200.
- On 12 occasions, Respondent wrote checks payable to Spare Room Storage for storage units. These payments totaled \$1,057.68.
- On at least 87 occasions, Respondent wrote checks payable to himself. These payments totaled \$7,265.
- On August 22, 2012, Respondent wrote a check payable to Tobacco Road Golf and Travel in the amount of \$486.
- On April 19, 2013, Respondent wrote a check payable to Legacy Golf Packages in the amount of \$640.
- On May 8, 2013, Respondent wrote a check payable to the Memorial Tournament for two tournament badges in the amount of \$315.

- On April 15, 2013, Respondent wrote a check payable to the U.S. Treasury in the amount of \$66.67, noting Irvin/Eichenberger and 2012 Form 1040, in the check's memo line, and Respondent wrote a check payable to Ohio Treasurer of State in the amount of \$10, noting Irvin/Eichenberger and Form 1040, in the check's memo line.
- On November 21, 2012, Respondent wrote a check payable to the Columbus Symphony for two tickets in the amount of \$85.75.
- Monthly payments in the amount of \$56.72 were issued to Protective Life Insurance by way of ACH deductions and checks written by Respondent.
- On August 16, 2013, Respondent wrote a check in the amount of \$128.25 to Squared Insurance Agency for partial payment on malpractice insurance premium.
- On 10 occasions, from July 31, 2013 through October 8, 2013, Respondent wrote and personally endorsed checks to Red Foot Racing Stables, LLC in the amount of \$3,990.
- On numerous occasions, Respondent wrote checks to Kroger, Hallmark, Kohl's, Walgreens, Anthony Thomas, Strader's, Darby Creek Nursery, JC Penney, Bath & Body Works, and Toys R Us.

{¶21} On April 1, 2014, Relator sent a letter to Respondent requesting an explanation from Respondent regarding the use of his IOLTA for personal transactions. Stipulated Ex. 26.

{¶22} On April 16, 2014, Relator received a response from Respondent.

{¶23} In his response to Relator, Respondent identified Red Foot Racing Stables as an Ohio LLC which is personally owned by him as its sole member. He further stated that "transfers to Red Foot once again involve the shifting of my personal income by the way of earned fees." Stipulated Ex. 27.

{¶24} Respondent stated "I repeat that the funds in my trust account are uniformly almost always retainers that have been or will be earned quickly, and that the funds belong to me personally. The funds are never withdrawn from the account until they are due and payable to

me. Therefore, the transactions you mention in your letter are draws of my earned fees, and involve my personal income to use as I see fit.” *Id.*

{¶25} The panel finds, by clear and convincing evidence, that Respondent improperly used his IOLTA account for personal and nonclient related business.

{¶26} It is uncontroverted that Respondent failed to properly manage his IOLTA account for most of his 35 years in the practice of law.

{¶27} There are over 200 instances of improper transactions made through Respondent’s IOLTA account in the 24 months prior to the hearing.

{¶28} The panel finds, by clear and convincing evidence, that Respondent failed to cooperate with the investigation into his IOLTA account.

{¶29} Respondent repeatedly and consistently refused to provide copies of his IOLTA bank records during both the investigation and litigation phase of the proceedings.

{¶30} Even after having been ordered to produce information by the panel chair [January 9, 2015 Prehearing Order], Respondent refused to participate in the exchange of information.

{¶31} The panel was forced to issue an order recommending the Supreme Court of Ohio find Respondent in contempt due to the refusal to respond to produce financial information relevant to the allegations.

{¶32} The panel finds, by clear and convincing evidence, that Respondent intentionally and deceptively altered bank records before production in an effort to conceal transactions he knew were inappropriate. Said conduct was a willful act of deception, dishonesty, and fraud.

{¶33} Bank records were produced wherein incriminating information had been redacted from the pages. Stipulated Ex. 6, 9.

{¶34} Respondent claimed the missing data was “a copy error” despite the fact that the missing information was in the middle of the page and only included data that was damaging to Respondent’s claims. Hearing Tr. 72-77.

{¶35} No attempt was made to rectify the situation even after Respondent was confronted with the actual bank records. Hearing Tr. 104.

{¶36} At no time prior to, or during the hearing, did Respondent show any remorse for the intentional and willful alteration of records.

{¶37} Additionally the panel finds, by clear and convincing evidence, that Respondent repeatedly made material misrepresentations in correspondence with Relator in a deceptive and willful effort to conceal the irregularities in his IOLTA accounts.

{¶38} The panel finds, by clear and convincing evidence, that Respondent’s lack of cooperation was prejudicial to the administration of justice.

{¶39} The panel finds, by clear and convincing evidence, that the conduct of Respondent violated the following violations: Prof. Cond. R. 1.15(a), Prof. Cond. R. 8.1(b), Prof. Cond. R. 8.4(c), Prof. Cond. R. 8.4(d), and Gov. Bar R. V, Section 4(G).

#### **MITIGATION, AGGRAVATION, AND SANCTION**

{¶40} The panel finds, by clear and convincing evidence, that Respondent has no prior disciplinary record.

{¶41} The panel finds, by clear and convincing evidence, that Respondent acted with a dishonest or selfish motive; demonstrated a pattern of misconduct; committed multiple offenses; showed a lack of cooperation in the disciplinary process; and submitted false evidence, submitted false statements, and engaged in other deceptive practices during the disciplinary process.

{¶42} Respondent's conduct in the matter displayed a clear disregard for Prof. Cond. R. 1.15(a)(2), Prof. Cond. R. 1.15(a)(3), and Prof. Cond. R. 1.15(a)(4). No records were ever produced in this matter indicating even an attempt at compliance with the requirements set forth in the rule. Respondent's disdain for the investigatory process, fraudulent conduct, and lack of cooperation only exacerbated the problem.

{¶43} In cases in which lawyers misused client trust accounts, the dispositions range from a one-year suspension, all stayed on conditions, to a six-month conditionally stayed suspension, to a public reprimand. Ordinarily at least a conditionally stayed suspension of six months for this misconduct is imposed. Examples include: *Disciplinary Counsel v. Fletcher*, 122 Ohio St.3d 390, 2009-Ohio-3480, (the respondent did not have an operating account from 2002 to 2007, paid personal and business expenses from the IOLTA account, wrote at least 150 checks from 2005 to 2007, and received a six-month stayed suspension); *Disciplinary Counsel v. Johnston*, 121 Ohio St.3d 403, 2009-Ohio-1432, (the respondent received one-year suspension, all stayed for using his IOLTA account for operating and personal expenses for two years and commingling his own funds with his clients); *Cuyahoga Cty. Bar Assn. v. Nance*, 119 Ohio St.3d 55, 2008-Ohio-3333, (the respondent admitted he violated the rules by misusing his client trust account and received a six-month stayed suspension with conditions); *Columbus Bar Assn. v. Peden*, 118 Ohio St.3d 244, 2008-Ohio-2237, (the respondent received a six-month suspension, all stayed, where he had no IOLTA account and also violated Gov. Bar R. V, Section 4(G)); *Disciplinary Counsel v. Newcomer*, 119 Ohio St.3d 351, 2008-Ohio-4492, (the respondent received a six-month suspension, all stayed, where his personal account was closed by his bank and then he used the IOLTA account for personal expenses); and *Disciplinary Counsel v. Vivyan*, 125 Ohio St.3d 12, 13-14, 2010-Ohio-650, (the respondent withdrew unearned fees from his

IOLTA account and used them for personal expenses, and received a six-month suspension, stayed on condition of no further misconduct).

{¶44} Although some of the attorneys in the above cases were found to have engaged in conduct adversely reflecting on their fitness to practice law, see, e.g., *Johnston, Peden, Nance, Newcomer*, none of them was charged with dishonesty, fraud, deceit, or misrepresentation for their misconduct.

{¶45} There are two cases that appear to be on point in relation to this matter. In *Disciplinary Counsel v. Riek*, 125 Ohio St.3d 46, 2010-Ohio-1556, the Court held that an 18-month suspension, with 12 months conditionally stayed, was appropriate for attorney who used his trust account to pay personal expenses and subsequently provided a check to a client without sufficient funds to honor the check, and then was less than honest with his client as to the source of the problem. In *Disciplinary Counsel v. Dockry*, 133 Ohio St.3d 527, 532-33, 2012-Ohio-5014, the Court issued a one-year suspension, all stayed on conditions. Dockry deposited and maintained personal funds in his client trust account, used that account to pay personal and business expenses, borrowed client funds from the account for his personal use, failed to maintain ledgers of the client funds held in that account, and failed to reconcile the account. The Court did not impose an actual suspension because Dockry took corrective action and had significant mitigating factors. That is not the case in this matter.

{¶46} This matter does not involve just the inappropriate use of the IOLTA account; it also includes the deliberate and systematic attempts to deceive Relator through noncooperation, deception, and fraud. “Generally, misconduct involving dishonesty, fraud, deceit, or misrepresentation warrants an actual suspension from the practice of law.” *Disciplinary Counsel v. Karris*, 129 Ohio St.3d 499, 2011-Ohio-4243, ¶ 16, citing *Disciplinary Counsel v. Kraemer*,

126 Ohio St.3d 163, 2010-Ohio-3300, ¶ 13; and *Disciplinary Counsel v. Fowerbaugh*, 74 Ohio St.3d 187 (1995), syllabus. In this matter, Respondent's misconduct during the process places him on a level well above those involved in the *Riek* and *Dockry* matters.

{¶47} As a result, the panel recommends a two-year suspension, with one year stayed. In addition, Respondent shall be assigned a mentor to provide oversight as to his IOLTA account and attend a continuing legal education course on law firm financial management.

### **BOARD RECOMMENDATION**

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct of the Supreme Court of Ohio considered this matter on August 7, 2015. The Board adopted the findings of fact and conclusions of law of the panel. After discussion, the Board voted to amend the sanction proposed by the panel and recommends that Respondent, Raymond Leland Eichenberger III, be suspended from the practice of law in Ohio for two years, with reinstatement subject to the condition that Respondent complete a continuing legal education course on law firm financial management and pay the costs of these proceedings, as ordered by the Supreme Court. No restitution is recommended because there was no evidence presented that any client funds were lost as a result of Respondent's misconduct. The Board further recommends that upon reinstatement, Respondent be required to work with a mentoring attorney, assigned by Relator, to provide oversight of Respondent's compliance with IOLTA requirements.

The Board's recommendation regarding the amended sanction is based on the following:

- (1) Respondent's failure for nearly 35 years of practice to adhere to the requirements for maintaining separation between his personal funds and funds belonging to his clients;
- (2) the deceptive and deceitful action of altering bank records provided to Relator in an attempt to

conceal inappropriate transactions; (3) positions taken by him during the disciplinary proceedings that are clearly without merit and contrary to the requirements of the Rules of Professional Conduct; (4) his failure to appreciate or acknowledge the wrongfulness of his misconduct; and (5) his repeated and flagrant disregard for his duty to cooperate in the disciplinary proceedings. See *Cleveland Metro. Bar Assn. v. Gruttadaurio*, 136 Ohio St.3d 283, 2013-Ohio-3662, ¶¶47, 50 (indefinite suspension imposed against an attorney who engaged in conduct analogous to that of Respondent but who also neglected legal matters with resulting harm to clients).

**Pursuant to the order of the Board of Professional  
Conduct 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, Director**