

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

In re:

SCO Case No. 2014-1896

Complaint against

BPC Case No. 2014-062

**Lumumba Toure' McCord
Attorney Reg. No. 0066968**

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

Respondent

Columbus Bar Association

Relator

OVERVIEW

{¶1} This matter was heard on October 16, 2015 in Columbus before a panel consisting of Judge C. Ashley Pike, Lisa Eliason, and Sanford E. Watson, 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 former Gov. Bar R. V, Section 6.¹

{¶2} Respondent was present at the hearing, represented by Eric W. Brehm. David S. Bloomfield and Barry W. Epstein appeared on behalf of Relator.

{¶3} This case involved (1) Respondent's misdemeanor conviction for failure to file federal income tax returns and pay taxes owed, (2) the failure to maintain client funds in an IOLTA account, and (3) the failure to notify clients of his lack of professional liability insurance.

{¶4} Based upon the parties' stipulations and evidence presented at the hearing, the panel finds, by clear and convincing evidence, that Respondent engaged in professional misconduct, as

¹ This matter initially was filed with the Supreme Court on November 3, 2014 upon certification of default pursuant to former Gov. Bar R. V, Section 6a [now, Gov. Bar R. V, Section 14]. The Supreme Court imposed an interim default suspension on December 10, 2014. *Columbus Bar Assn. v. McCord*, 2014-Ohio-5416. On January 29, 2015, Respondent filed a motion for leave to answer the complaint and to terminate the interim default suspension. On March 6, 2015, the Court granted the motion, terminated the interim suspension upon Respondent's filing of an answer with the Board, and remanded the case to the Board for further proceedings. *Columbus Bar Assn. v. McCord*, 2015-Ohio-783. A hearing panel was appointed on March 13, 2015.

outlined below. Upon consideration of the applicable aggravating and mitigating factors and case precedents, the panel recommends that Respondent be suspended for a period of one year, with the suspension stayed upon conditions.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶5} Respondent was admitted to the practice of law in the state of Ohio on November 12, 1996 and is subject to the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

{¶6} On December 2, 2005, Respondent was previously suspended from the practice of law for failing to timely register with the Office of Attorney Services. *In re McCord*, 2005-Ohio-6408. Respondent registered and was reinstated to the practice of law on December 5, 2005. *In re McCord*, 2006-Ohio-13.

{¶7} Respondent fully stipulated to all of the conduct and the alleged violations as set forth below.

Count I—IOLTA Matters

{¶8} Respondent closed his IOLTA in 2010.

{¶9} From 2010 until on or about May 9, 2013, Respondent deposited unearned client funds into his business account. Respondent testified that, in his criminal practice, he treated his fee as “earned upon receipt” in that he immediately started working on the case. It should be noted that this practice was considered appropriate under Advisory Opinion 96-4 (which was superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007). The advisory opinion provides that “[i]t is proper for a lawyer to enter a flat fee agreement requiring a criminal defendant to pay a fixed amount in advance of representation in a criminal matter” *Id.* at syllabus. The flat fee may be deposited in a lawyer’s business account upon receipt, but should not be deemed nonrefundable.

Id.

{¶10} If a client was dissatisfied with a fee, Respondent's work, or a task was not completed, Respondent would refund the unearned moneys to the client using funds in his business account.

{¶11} At the hearing, Respondent acknowledged that he now understands that the practice of depositing a flat fee in his business account is no longer acceptable under rules. He reopened his IOLTA and understands this practice is no longer permitted under the rules.

{¶12} The parties stipulated and the panel finds that Respondent's failure to deposit client funds in an IOLTA violates Prof. Cond. R. 1.15(a) [requiring a lawyer to keep client funds in an interest bearing trust account separate from the lawyer's own property], as charged.

{¶13} No client actually complained, nor were any harmed by Respondent's failure to use an IOLTA. The violation was discovered during Relator's investigation, and Respondent readily admitted to it.

{¶14} The panel finds by clear and convincing evidence to support a violation of Prof. Cond. R. 1.15(a).

Count II—Professional Liability Insurance Notice

{¶15} Respondent did not maintain professional liability insurance prior to May 2, 2013.

{¶16} From 2011 to May 2, 2013, Respondent failed to inform any client of his lack of professional liability insurance.

{¶17} The parties stipulated and the panel finds that Respondent's failure to provide written notice of his lack of professional liability and obtain acknowledgement of the same from clients was violation of Prof. Cond. R. 1.4(c), as charged.

{¶18} No client actually complained, nor were any harmed by Respondent's failure to inform them of his lack of professional liability insurance. The violation was discovered during Relator's investigation, and Respondent readily admitted to it.

{¶19} The panel finds by clear and convincing evidence to support a violation of Prof. Cond. R. 1.4(c).

Count III—Income Tax Matters

{¶20} On March 19, 2013, Respondent was indicted for willfully failing to file income tax returns and pay federal income taxes for the calendar years 2006 through 2010. On August 29, 2013, Respondent entered into a plea agreement in which he pled guilty to one misdemeanor count of willful failure to file a return, supply information, or pay income taxes. The plea agreement was accepted by the court and Respondent was sentenced to 60 days in jail, one year of supervised release, and ordered to pay restitution in the amount of \$98,908.25.

{¶21} Relator argues and the panel agrees that Respondent's misdemeanor conviction for failure to file income taxes constitutes a violation of Prof. Cond. R. 8.4(b) [engaging in an illegal act adversely reflecting on a lawyer's honesty or trustworthiness].

{¶22} The parties recommended the dismissal of the remaining violations of Prof. Cond. R. 8.1(b) [knowingly failing to respond to a demand for information from a disciplinary authority], Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation], and Prof. Cond. R. 8.4(h) [conduct adversely reflecting on a lawyer's fitness to practice law].

{¶23} The panel finds by clear and convincing evidence to support a violation of Prof. Cond. R. 8.4(b). The panel accepts the recommendation of the parties and dismisses the alleged violations of Prof. Cond. R. 8.1(b), Prof. Cond. R. 8.4(c), and Prof. Cond. R. 8.4(h).

MITIGATION, AGGRAVATION, AND SANCTION

Aggravating Factors

{¶24} The parties stipulated to, and the panel finds, that Respondent was previously suspended from the practice of law on one prior occasion for failing to timely register with the Office of Attorney Services. The panel notes that although this is an aggravating factor, the

suspension was only three days in duration. See ¶6, *supra*.

{¶25} The parties stipulated to, and the panel finds that Respondent has multiple violations in view of Respondent's violations related to his lack of an IOLTA and his failure to notify clients of his lack of professional liability insurance.

Mitigating Factors

{¶26} The parties stipulated to, and the panel finds that Respondent had a full and free disclosure to the Board and a cooperative attitude toward the proceedings.

{¶27} The parties stipulated to, and the panel finds that Respondent was subject to the imposition of other penalties or sanctions. Here, Respondent served a criminal sentence of 60 days of actual jail time followed by one year of supervised release.

{¶28} Respondent has also begun making payments toward the restitution ordered by the court in the amount of \$300 per month.

{¶29} Respondent established an IOLTA as soon as he understood he was required to have one.

{¶30} Respondent hired an accounting firm to review his tax liability, assist him with managing his books, and managing his tax payments going forward.

{¶31} Respondent admitted responsibility for all his misconduct and he is also agreeable to taking classes in law office management.

{¶32} No clients were harmed by Respondent's misconduct.

{¶33} Respondent offered the testimony of Judge Michael Holbrook, a judge of the Franklin County Court of Common Pleas. Judge Holbrook has known Respondent for twenty years. He described Respondent as "professionally prepared" and as someone who does "stellar work when representing clients." He was disappointed when he learned of the federal tax issue and was not happy with Respondent's conduct. Ultimately, he believes that Respondent is honest,

and he is confident in Respondent's ability to perform his duties and handle cases correctly.

Recommended Sanction

{¶34} When recommending sanctions for attorney misconduct, the panel must consider relevant factors, including the ethical duties violated by Respondent and the sanctions imposed in similar cases.

{¶35} As a part of this analysis the panel considers the recommendations of the parties. Relator recommends a sanction of a one-year suspension with six months stayed, and an additional year of probation. Respondent recommends a sanction of six months, all stayed, with two years of probation. Both parties agree that some law office management classes or training is warranted.

{¶36} The panel considered similar cases involving the failure to file tax returns and pay taxes. In *Cuyahoga Cty. Bar Assn. v. Veneziano*, 120 Ohio St.3d 451, 2008-Ohio-6789 (one-year stayed suspension with conditions for failing to timely file tax returns and pay her own taxes for seven years, and for failing to pay for employees withholding taxes for seven years); and *Lake Cty. Bar Assn. v. Ezzone*, 102 Ohio St.3d 79, 2004-Ohio-1774 (one-year stayed suspension with conditions for failing to file a federal income tax return).

{¶37} The panel also found persuasive this Board's recent report and recommendation on remand from the Supreme Court of Ohio in *Disciplinary Counsel v. Hillman*, Supreme Court Case No. 2015-0594 (filed on October 5, 2015), where the respondent failed to file personal income tax returns for three years. In *Hillman*, the Board recommended a one-year suspension, with the suspension stayed in its entirety on the following conditions: (1) that Respondent make all payments on his back taxes as is required by the Internal Revenue Service until no further payments are required; (2) that Respondent timely pay his current taxes; (3) that Respondent complete a class in law office management within a reasonable time period, not to exceed one year, after the Court's issuance of a disciplinary order; and (4) that Respondent does not commit further misconduct.

{¶38} Based upon the foregoing, the panel recommends that Respondent receive a sanction of a one-year suspension, fully stayed on the following conditions: (1) that Respondent make all payments on his back taxes as is required by the Internal Revenue Service until no further payments are required; (2) that Respondent timely pay current taxes; (3) that Respondent successfully complete a two-year term of probation, during which he must complete at least six hours of additional CLE courses in law office management, over and above other CLE requirements; and (4) that Respondent does not commit further misconduct.

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 December 11, 2015. The Board adopted the findings of fact, conclusions of law, and recommendation of the panel and recommends that Respondent, Lumumba Toure' McCord, be suspended from the practice of law in Ohio for one year, with the suspension stayed in its entirety on conditions contained in ¶38 of this report, and ordered to pay the costs of these proceedings.

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.



RICHARD A. DOVE, Director