In re Terrence Richard Miles
Attorney-Respondent

Commission No. 2023PR00016

Synopsis of Hearing Board Report and Recommendation
(April 2024)

The Administrator charged Respondent with engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation by knowingly using for personal purposes over $11,000 of interest income from a trust account for which he was the trustee for over 17 years, in violation of Rule 8.4(c). After initially participating in the proceedings, including admitting all of the alleged facts, Respondent failed to appear at the hearing. Based on Respondent's admissions, the Hearing Board found that the Administrator proved by clear and convincing evidence that Respondent violated Rule 8.4(c). The Hearing Board recommended that Respondent be suspended for one year and until further order of the Court and until he makes restitution due to his violation of the Rule, several factors in aggravation, minimal mitigation, and relevant case law.

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

TERRENCE RICHARD MILES,

Attorney-Respondent,

No. 6197891.

Commission No. 2023PR00016

REPORT AND RECOMMENDATION OF THE HEARING BOARD

SUMMARY OF THE REPORT

The Administrator charged Respondent with engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation by knowingly using for personal purposes $11,323.10 of interest income from a trust account for which he was the trustee for over 17 years, in violation of Rule 8.4(c). Based on Respondent's admissions, the Hearing Board found that the Administrator proved by clear and convincing evidence that Respondent violated Rule 8.4(c). The Hearing Board considered mitigating and aggravating evidence, including Respondent's failure to appear at the hearing. The Hearing Board recommended that, for his misconduct, Respondent be suspended for one year and until further order of the Court and until he makes restitution.

INTRODUCTION

The hearing in this matter was held on November 17, 2023, at the Springfield offices of the Attorney Registration and Disciplinary Commission (ARDC) before a panel of the Hearing Board consisting of Sonni Choi Williams, Chair, Christopher A. Nichols, and Carol A. Kulek. Tammy L. Evans represented the Administrator. Respondent was not present and not represented by counsel.

FILED

April 25, 2024

ARDC CLERK

PLEADINGS AND MISCONDUCT ALLEGED

On April 12, 2023, the Administrator filed a one-count Complaint charging Respondent with violating Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010) by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, by conduct including knowingly using the income of the Kenneth Robert Marlo Trust for his personal purposes rather than distributing the income for the beneficiary's use and benefit as set forth in the trust. On June 16, 2023, Respondent filed an Answer in which he admitted all of the factual allegations and further stated that he is "ultimately responsible for everything" and "accept[s] whatever discipline is deemed appropriate." (Ans. at pars. 13-18).

EVIDENCE

The Administrator presented testimony from Kenneth Robert Marlo. Administrator's Exhibit 1 was admitted into evidence. (Tr. 25). Respondent was not present and offered no evidence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Administrator bears the burden of proving the charges of misconduct by clear and convincing evidence. In re Thomas, 2012 IL 113035, ¶ 56. Clear and convincing evidence constitutes a high level of certainty, which is greater than a preponderance of the evidence but less stringent than proof beyond a reasonable doubt. People v. Williams, 143 Ill. 2d 477, 484-85, 577 N.E.2d 762 (1991). The Hearing Board assesses witness credibility, resolves conflicting testimony, makes factual findings, and determines whether the Administrator met the burden of proof. In re Winthrop, 219 Ill. 2d 526, 542-43, 848 N.E.2d 961 (2006).

In this case, Respondent admitted all of the factual allegations of the Complaint. Therefore, we consider whether the admitted facts constitute the misconduct charged. In re Paganucci, 06 CH 48, M.R. 21727 (Sept. 18, 2007) (Hearing Bd. at 7-8).

Respondent is charged with conduct involving dishonesty, fraud, deceit, or misrepresentation due to knowing misuse of trust funds for which he was the trustee, in violation of Rule 8.4(c).

A. Summary

We find that the Administrator proved by clear and convincing evidence that Respondent, during his 17-year role as trustee, knowingly and dishonestly used for his own purposes $11,323.10 of trust funds belonging to the beneficiary. We find that Respondent's conduct violated Rule 8.4(c).

B. Admitted Facts and Evidence Considered

On August 31, 2004, the Circuit Court of Vermilion County appointed Respondent as the successor trustee ("trustee") of the Kenneth Robert Marlo Trust ("Trust") after the original trustee died and the nominated successor trustee declined to serve. (Ans. at pars. 1-6). In his will, Robert E. Marlo created the Trust through a bequest of $40,000 to his grandson, Kenneth Robert Marlo ("Kenneth"), who was 12 years old when Respondent became the trustee. (Ans. at pars. 1, 3). The Trust provided that the trustee shall pay from the annual income such amounts as the trustee deems necessary for Kenneth's care, maintenance, and education until he reaches the age of 30 and then the trustee shall transfer to Kenneth the principal and any undistributed income of the Trust. (Ans. at par. 3).

Between August 31, 2004, when Respondent became the trustee, and April 20, 2022, when Kenneth turned 30, the certificate of deposit holding the $40,000 Trust funds generated $11,323.10 of interest. (Ans. at par. 10). During that time, Respondent made no payments from the Trust income for Kenneth's care, maintenance, or education and provided no accounting of the Trust

assets to Kenneth or his legal guardian. (Ans. at pars. 7-9). Instead, shortly after he became the trustee, Respondent retitled the Trust to add his name ("Kenneth Robert Marlo Trust, Terrence R. Miles, trustee") and opened a checking account with the same title. (Ans. at 6). Sometime during the next 17 years, Respondent directed the bank to transfer $11,323.10 to the checking account, drew checks payable to himself totaling $11,323.10, and, without authorization from Kenneth or his legal guardian, used those funds for his own purposes. (Ans. at par. 11).

Prior to April 20, 2022, an attorney representing Kenneth contacted Respondent to inquire about the Trust. The attorney left several messages on Respondent's voicemail and with Respondent's secretary, but Respondent did not return his calls. (Ans. at 13). On April 21, 2022, one day after Kenneth turned 30, Kenneth's attorney sent Respondent a certified letter with instructions on where to send the Trust proceeds. (Ans. at par.15). Respondent did not distribute the Trust proceeds or follow up with the attorney, even though Respondent admitted that he should have distributed the funds. (Ans. at pars. 14, 16).

In 2022, the bank transferred the certificate of deposit holding the Trust funds to the Illinois State Treasurer as unclaimed property. (Adm. Ex. 1 at 4). Upon Kenneth's request, the Illinois State Treasurer paid Kenneth the anticipated $40,000 plus approximately $1,000 of interest shortly after his thirty-first birthday in 2023. (Tr. 21-22; Adm Ex.1 at 1).

C. Analysis and Conclusions

Rule 8.4(c) provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. Ill. R. Prof'l Cond. R. 8.4(c). The Administrator charged Respondent with violating this Rule by conduct including knowingly using the income of the Trust for his personal purposes rather than distributing the income for Kenneth's use and benefit. Respondent admitted all of the underlying facts in his Answer. He did not admit or deny the charge of misconduct, asserting instead, "I accept whatever discipline is deemed

appropriate and as stated previously offer Mr. Marlo $15,000 and will transfer the Certificate of Deposit." However, an allegation not specifically denied is deemed admitted unless the Answer states why Respondent is unable to make a specific denial, which it did not. Comm. R. 233.

Even if the charge were not admitted by Respondent's failure to specifically deny it, the factual admissions are sufficient to support our finding that Respondent violated Rule 8.4(c). An attorney engages in conduct involving dishonesty, fraud, deceit, or misrepresentation when he takes funds that he knows he is not entitled to, whether those funds belong to a client or a third party with whom the attorney has a fiduciary relationship. In re Doyle, 99 CH 100, M.R. 18071 (May 24, 2002) (Hearing Bd. at 10-12). A trustee has fiduciary duties of undivided fidelity, honesty, and good faith. In re Meersman, 09 SH 17, M.R. 23643 (Mar. 16, 2010) (Hearing Bd. at 11-12). Respondent admitted that, between 2004 and 2022, he made no payments from the Trust for Kenneth and instead wrote checks to himself totaling $11,323.10, thereby using all of the interest income for Respondent's own purposes. (Ans. at pars. 7-8, 10-12). Clearly Respondent engaged in misconduct when he took for himself the funds that he, as trustee, had a fiduciary duty to distribute for Kenneth's benefit. We find that the Administrator proved by clear and convincing evidence that Respondent violated Rule 8.4(c).

EVIDENCE OFFERED IN MITIGATION AND AGGRAVATION

Aggravation

Kenneth testified that he participated in sports and received medical treatments for diabetes and delayed growth as a child and that he obtained a student loan to pay for vocational school. (Tr. 17-18, 20-21). Kenneth's attorney requested that Respondent distribute the Trust funds upon Kenneth's thirtieth birthday, but Respondent ignored a certified letter and several phone messages from the attorney. (Ans. at pars. 13-16). Kenneth received his $40,000 Trust funds approximately

one year late because he had to request them from the Illinois State Treasurer rather than receive them directly from Respondent. (Tr. 21-22). This delay happened at a time of significant financial hardship for Kenneth, when he was "almost homeless" after being fired from his job, losing his truck, and getting evicted while supporting his infant child. (Tr. 23). When Kenneth received the money, he purchased a car and paid some debts. (Tr. 23-24).

Respondent initially participated in the discipline process. However, he did not attend the final pre-hearing conference or the hearing, despite receiving notice of these events. (Tr. 5).

Mitigation

In his Answer, Respondent acknowledged that he is "ultimately responsible for everything" and agreed to accept the discipline determined. (Ans. at pars.13-18). Respondent admitted that he did not reply to Kenneth's attorney's inquiries about the Trust in April 2022. He added, "[f]or whatever minimal mitigation value it might be," that the sudden departure of his assistant in February 2021 caused "considerable stress" to his office operations and that he hired five different assistants between then and November 2022. (Ans. at pars. 13-17). He also asserted that he had authority to take attorney fees as trustee, but he admitted that did not provide invoices or accountings. (Ans. at pars. 11-12).

Prior Discipline

Respondent has been licensed to practice law in Illinois since 1988 and has no prior discipline.

RECOMMENDATION

A. Summary

Based on the intentionally dishonest misconduct in violation of Rule 8.4(c), the factors in aggravation, and the minimal amount of mitigation, the Hearing Board recommends that

Respondent be suspended for one year and until further order of the Court and until he makes restitution of $11,323.10 to Kenneth Robert Marlo.

B. Analysis

The purpose of the disciplinary process is not to punish attorneys, but to protect the public, maintain the integrity of the legal profession, and safeguard the administration of justice from reproach. In re Edmonds, 2014 IL 117696, ¶ 90. When recommending discipline, we consider the nature of the misconduct and any factors in mitigation and aggravation. In re Gorecki, 208 Ill. 2d 350, 360-61, 802 N.E.2d 1194 (2003). We seek to recommend similar sanctions for similar types of misconduct, but we must decide each case on its own unique facts. Edmonds, 2014 IL 117696, ¶ 90.

Disciplinary sanctions range from censure to disbarment for misappropriating funds from a client or a third party with whom the attorney has a fiduciary relationship. In re Saindon, 2012PR00012, M.R. 26199 (Sept. 25, 2013) (Hearing Bd. at 17) (citing In re Rotman, 136 Ill. 2d 401, 556 N.E.2d 243 (1990)). Censure is generally reserved for first offenses with significant mitigating circumstances, whereas disbarment is appropriate for multiple violations and a lack of mitigating circumstances. Suspension is ordered in most cases. In re Merriwether, 138 Ill. 2d 191, 200, 561 N.E.2d 662 (1990). We consider "the amount of money converted, whether a continuing pattern of misconduct is involved, the presence or absence of a dishonest motive, and the extent of mitigating and aggravating factors." Saindon, 2012PR00012 (Hearing Bd. at 17). In the present matter, Respondent deprived the beneficiary of $11,323.10 over 17 years through admittedly dishonest conduct, there are several aggravating factors, and there is minimal mitigation.

We find aggravating that Respondent acted with a selfish motive and engaged in a pattern of misconduct. In re Ruggiero, 2021PR00078, M.R. 031850 (Nov. 21, 2023) (Hearing Bd. at 8).

He admitted to taking without authorization $11,323.10 of Trust interest income for his personal purposes. And he did so by drawing checks payable to himself on the Trust checking account, meaning that this intentional conduct occurred on multiple occasions.

We also find aggravating that Respondent has failed to make restitution of the $11,323.10 that he misappropriated. In re Fox, 122 Ill. 2d 402, 410, 522 N.E.2d 1229 (1988). Although Respondent offered in his Answer to pay Kenneth $15,000, there is no evidence that he ever did.

Another aggravating factor is that Respondent's actions and inactions caused actual harm to the beneficiary. In re Saladino, 71 Ill. 2d 263, 276, 375 N.E.2d 102, 107 (1978). Respondent admitted that he should have distributed the Trust funds, including the interest income, when Kenneth turned 30 in April 2022, but Respondent did not do so. Although Kenneth obtained the $40,000 Trust funds from the Illinois State Treasurer, he still has not received the $11,323.10 of interest income that Respondent misappropriated. Respondent's failure to provide the interest income to Kenneth for nearly two years since it was due constitutes actual harm, as does Respondent's failure to distribute the $40,000, which caused a yearlong delay in Kenneth's receipt of those funds.

The Administrator contends that Respondent's failure to make distributions from the Trust interest income to Kenneth between the ages of 12 and 30 is additional aggravation. We disagree. The Trust terms required the trustee to distribute interest income as he deemed necessary for Kenneth's care, maintenance, and education. Kenneth testified that he participated in sports and received medical treatments as a child and that he obtained a student loan to pay for vocational school, but there was no evidence of specific costs or financial impact on Kenneth and his family. Nor was there any evidence of whether Respondent even knew about these expenses. While Respondent was clearly not allowed to use the Trust interest income for himself, the Trust terms

allowed him to either spend those funds to meet Kenneth's needs or hold the funds on Kenneth's behalf until his thirtieth birthday. The evidence did not establish that Respondent had a duty to make distributions for the specific extracurricular, medical, and educational expenses that Kenneth testified about.

We further find Respondent's failure to attend the final pre-hearing conference and the hearing to be significantly aggravating. Attorneys have a duty to cooperate in disciplinary proceedings, including personally attending all pre-hearing conferences unless excused by the Chair and appearing at the hearing. In re Zisook, 88 Ill. 2d 321, 331, 430 N.E.2d 1037 (1982); Ill. S.Ct. R. 753(f); Ill. R. Prof'l Cond. R. 8.1; Comm. R. 260(a). By failing to appear at the hearing, Respondent missed the opportunity to provide mitigating evidence and prevented us from assessing his fitness to practice law.

Potential mitigating factors include "the length of time in practice, previous misconduct, whether and when restitution is made if it is owing, community service, pro bono legal work, and the testimony of character witnesses and professional colleagues." In re Lenz, 108 Ill. 2d 445, 453-54, 484 N.E.2d 1093 (1985). We find mitigating Respondent's 35 years of licensure as an attorney without prior discipline. We acknowledge Respondent's statements in the Answer expressing accountability for his conduct, but we could not assess his genuineness due to his failure to attend the hearing, nor did we hear from any character witnesses as to Respondent's reputation for truth and veracity. In re Meersman, 09 SH 17, M.R. 23643 (Mar. 16, 2010) (Hearing Bd. at 17-18) (citing Merriwether, 138 Ill. 2d at 203; Rotman, 136 Ill. 2d at 422). There is no evidence about Respondent's community service or *pro bono* work.

We do not find mitigating that Respondent's assistant quit in February 2021 or that he hired five different assistants between then and November 2022. The proven misconduct in this case is

Respondent's unauthorized taking of over $11,000 of Trust funds between 2004 and 2022, not his failure to respond to Kenneth's attorney's inquiries in 2022. Even if personnel issues contributed to Respondent's lack of communication in that instance, it does not explain why Respondent took for himself funds that he was obligated to hold for or distribute to the beneficiary during the rest of the 17 years at issue.

In determining the appropriate sanction for Respondent, we considered the cases cited by the Administrator as well as a case we found with factual similarities. The Meersman case, which resulted in disbarment, mirrors Respondent's situation in many ways, but some key differences support a lesser sanction for Respondent. Meersman, 09 SH 17. Both attorneys were court-appointed successor trustees of a testamentary trust in which a grandfather bequeathed funds to a minor grandson, to be used for the grandson's benefit until he reached a particular age. Meersman was a trustee for 9 years, whereas Respondent acted as trustee for 17 years. During their tenures as trustee, the attorneys used the beneficiary's funds for their own purposes and failed to make restitution. Both beneficiaries had to obtain counsel to track down their funds, which were provided through alternative means, and which resulted in incomplete restitution. In Meersman, a bond paid the full amount due, which was over $47,000, but the beneficiary gave up nearly $16,000 as a contingent attorney fee. In the present case, the state's unclaimed property fund paid the $40,000 Trust funds, but over $11,000 of interest remains unpaid.

Although Respondent's conduct took place over a longer period, other factors make Meersman's case more egregious. Meersman misappropriated over $47,000, which is significantly more than the approximately $11,000 taken by Respondent. Also, Meersman, who was the county's public administrator when he became the trustee, later made false statements about what happened to the funds. We have no evidence that Respondent held a public office or made false

statements related to the misconduct. Additionally, Meersman did not participate in the disciplinary process at all, whereas Respondent cooperated until the final pre-hearing conference and expressed accountability for his actions in his Answer. In the present case, the Administrator did not request that Respondent be disbarred.

Instead, the Administrator requested a suspension of two years and until further order of the Court and payment of restitution. We considered the Administrator's cited cases: In re Stoakley, 2013PR00044, M.R. 27229 (May 14, 2015) (suspension for nine months plus restitution of $13,694 and ARDC professionalism seminar when attorney dishonestly misappropriated funds from an elderly client and later claimed the funds constituted attorney fees, despite failure to account and bill for services); In re Doyle, 99 CH 100, M.R. 18071 (May 24, 2002) (suspension for one year plus restitution of $7,070.12 and interest when attorney dishonestly took funds belonging to an estate or its beneficiaries and later claimed the funds constituted attorney fees, despite lack of fee agreement and billing); and Saindon, 2012PR00012 (suspension for two years plus completion of repayment agreement of $7,560 and ARDC professionalism seminar when attorney acting as president and treasurer of her condominium association used the association's funds for personal purposes 66 times in two years).

Of these cases, Respondent's facts most align with Doyle. Doyle, who represented the executor of an estate, had a fiduciary duty to the estate's beneficiaries. He received money from the beneficiaries to pay the estate's expenses and debts, and he kept the unused amount of approximately $7,000 for himself rather than returning it to the beneficiaries. The Hearing Board rejected Doyle's explanation that the funds he took were unaccounted for and unbilled fees when his actions, including moving the funds into an account solely titled in his name and failing to provide a complete accounting, demonstrated intentional misuse of entrusted funds. Likewise,

Respondent admitted to dishonestly taking the beneficiary's funds for personal purposes, failing to distribute funds that the beneficiary was entitled to, and failing to issue invoices and accountings, despite the potential for attorney fees.

While both Stoakley and the present matter involved vulnerable victims (an elderly client in failing health and a minor, respectively), the misconduct in Stoakley took place over less than a year whereas Respondent's misconduct spanned 17 years, supporting a more aggravated sanction for Respondent than the nine-month suspension for Stoakley. The two-year suspension in Saindon is also distinguishable because that attorney had prior misconduct, unlike in the present matter, and she took entrusted funds 66 separate times, in a "systematic pattern of using funds whenever they were in the Association's account." Saindon, 2012PR00012 (Hearing Bd. at 10). Respondent admitted to drawing checks on the Trust checking account totaling $11,323.10, which indicates a pattern of misconduct, but we have no evidence of how often this occurred. On balance, we determine that the appropriate length of suspension for Respondent is one year, which is within the range of sanctions in the Administrator's cited cases.

Additionally, we recommend that Respondent be suspended until further order of the Court and until he makes restitution of $11,323.10 to Kenneth Robert Marlo. Unlike Stoakley, Doyle, and Saindon, who were not suspended until further order of the Court, Respondent did not fully participate in this proceeding. Respondent's failure to attend the hearing limited our understanding of why he engaged in the admittedly dishonest misconduct, the genuineness of his remorse, and his fitness to practice law. Should he seek to practice law again, he should be required to address these issues in the reinstatement process. In the meantime, the public will be protected from repeated misconduct, as Respondent's law license will remain suspended. In re Woods, 2014PR000181 (Hearing Bd. at 30) (citing S.Ct. R. 767).

Considering the proven misconduct, mitigating and aggravating factors, and relevant case law, we recommend that Respondent, Terrence Richard Miles, be suspended for one year and until further order of the Court and until he makes restitution of $11,323.10 to Kenneth Robert Marlo.

Respectfully submitted,

Sonni Choi Williams
Christopher A. Nichols
Carol A. Kulek

CERTIFICATION

I, Michelle M. Thome, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, hereby certifies that the foregoing is a true copy of the Report and Recommendation of the Hearing Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on April 25, 2024.

/s/ Michelle M. Thome
Michelle M. Thome, Clerk of the
Attorney Registration and Disciplinary
Commission of the Supreme Court of Illinois

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