**In re James Douglas Cottrell**
Attorney-Respondent

Commission No. 2022PR00069

**Synopsis of Hearing Board Report and Recommendation**
(July 2023)

The Administrator charged Respondent in a one-count Complaint with failing to safeguard funds belonging to third persons in his client trust account and engaging in dishonest conduct by knowingly withdrawing $2,902.34 from his client trust account and using those funds for his own purposes, without authorization.

The Hearing Panel found that the charges of misconduct were proved by clear and convincing evidence. Based on the significant mitigating circumstances, a majority of the Hearing Panel recommended that Respondent be reprimanded. The dissenting panel member would have recommended a censure.

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

| | |
|---|---|
| In the Matter of:<br><br>**JAMES DOUGLAS COTTRELL,**<br><br>Attorney-Respondent,<br><br>No. 6184207. | Commission No. 2022PR00069 |

**REPORT AND RECOMMENDATION OF THE HEARING BOARD**

SUMMARY OF THE REPORT

The Administrator charged Respondent with failing to safeguard funds belonging to third persons and dishonestly using $2,902.34 of those funds without authorization. The Hearing Panel finds that Respondent committed the charged misconduct, and a majority of the Hearing Panel recommends that Respondent receive a reprimand.

INTRODUCTION

The hearing in this matter was held remotely by video conference on January 27, 2023, before a Panel of the Hearing Board consisting of Janaki H. Nair, Chair, Martha M. Ferdinand, and Justine A. Witkowski. Rachel C. Miller represented the Administrator. Respondent was present and was represented by Michael J. Costello.

PLEADINGS AND ALLEGED MISCONDUCT

The Administrator charged Respondent in a one-count Complaint with failing to hold funds belonging to third persons in his client trust account and engaging in conduct involving dishonesty, fraud, deceit or misrepresentation by knowingly using those funds for his own purposes without

authorization, in violation of Rules 1.15(a) and 8.4(c) of the Illinois Rules of Professional Conduct (2010).

In his Amended Answer, Respondent admitted many of the factual allegations and admitted he used the funds at issue for his own business or personal purposes.*

EVIDENCE

The Administrator presented testimony from Respondent as an adverse witness, and Administrator's Exhibit 1 was admitted. (Tr. 61). Respondent testified on his own behalf. Respondent's Exhibits 1, 2, and 4-8 were admitted. (Tr. 62).

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, 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).

**I. In Count I, Respondent is charged with failing to safeguard funds that he should have held in his client trust account and dishonestly using those funds for his own purposes without authorization, in violation of Rules 1.15(a) and 8.4(c).**

A. Summary

It is undisputed that Respondent violated Rule 1.15(a) by failing to hold funds belonging to third persons in his client trust account. Based on Respondent's admissions that he knew he was not authorized to use the funds for his own purposes but did so anyway, the Administrator established that Respondent engaged in dishonest conduct, in violation of Rule 8.4(c).

B. Evidence Considered

Respondent has been licensed in Illinois since 1983 and has been a sole practitioner since 2014. Most of his work involves representing approximately 40 municipal drainage districts. He is responsible for making required filings, notices, and reports for those entities throughout the year. (Tr. 13-15).

In 2011, Respondent purchased the practice of attorney Carl Sinder, who was retiring. Pursuant to that purchase, a check dated August 22, 2011, for $2,977.23 was written to the James D. Cottrell Trust Account from an Engert and Sinder Law Offices account, with the notation "Transfer of Engert & Sinder IOLTA trust account." (Resp. Ex. 5). Respondent opened his client trust account on April 8, 2014, and on that date deposited a check for $2,977.23, written to James Cottrell from the trust account of attorney Arthur L. Mann and bearing the notation "replacement of Busey check." There is no explanation in the record as to the circumstances involving the replacement check, but that information is not necessary for our resolution of the issues before us.

The funds from Sinder's trust account primarily represented amounts owed to vendors or entities associated with real estate transactions, some of which dated back to 1972. (Tr. 36). Sinder gave Respondent a hand-written list of the entities to whom the funds belonged, and the amounts owed. (Tr. 15). The list did not include telephone numbers or addresses. (Tr. 37). Respondent made payments to a drainage district on the list and to a person who was owed $67.90 from an estate. Respondent made the latter payment from his personal account. (Tr. 38, 49). Respondent testified that he expended several weeks investigating contact information for the other entities but was not successful. Respondent's investigation determined that at least five of the entities had gone out of business in the 1970s and 1980s. (Tr. 38-39, 42). He testified that he would have paid the amounts owed if any of the vendors had contacted him. (Tr. 41).

The Sinder funds were the only funds in Respondent's client trust account. Respondent was the only signatory on the client trust account. (Tr. 19-20). Respondent's law practice does not typically require the use of an IOLTA account, as he does not request deposits or retainers. He handles all matters on a monthly billing basis with no advance payments. If a client does not pay, he withdraws from the representation and writes off his fees. He does not advance any costs. (Tr. 15; Resp. Ex. 7).

On May 3, 2016, Respondent wrote a check from his client trust account to James D. Cottrell Law Office in the amount of $2,544.29 and deposited it into his operating account. Respondent admits he used these funds for his own business or personal purposes. He further testified that he knew he did not have authority to do so. (Tr. 22-23).

On March 6, 2022, Respondent wrote a check from his client trust account to James D. Cottrell Law Office in the amount of $300 and deposited it into his operating account. Respondent admits he used funds totaling $2,902.34 from his trust account for his own personal or business purposes, without authorization. (Amended Ans. at par. 9; Tr. 26). He used the funds because he was frustrated that taking over Sinder's practice turned out to be "a big, huge expensive mess to clean up, costing me staggering amounts of hours." (Tr. 29). Respondent further described Sinder's practice as "a complete mess, comprised of one retired attorney's practice stacked on another, with no indications of any effort made by any of them to clean matters up." (Resp. Ex. 7).

In April 2022, Respondent deposited $3,100 into his client trust account to replace the funds he used. (Tr. 47). Shortly thereafter, he reported his withdrawals to the Administrator and asked for guidance on what he should do with the funds in his client trust account. (Resp. Ex. 7).

Respondent reported himself because "taking out the money was wrong," and his understanding was that he was obligated to report his own misconduct. (Tr. 27).

Respondent has not transferred any of the unclaimed funds to the Treasurer of the State of Illinois. When asked whether he took the money with the understanding that it was owed to anyone, Respondent answered, "Just the state, but no – no particular person." (Tr. 43). In his self-report letter, Respondent requested that the ARDC advise him as to how best to proceed with the final distribution of the funds. (Resp. Ex. 7). He has completed CLE courses on trust accounts and further testified that he is still trying to figure out what to do with the funds and if he should "make any further efforts to try to reach these people or somebody who might be connected to the business." (Tr. 56).

C. Analysis and Conclusions

Motion for Directed Finding

Respondent asserted that the Administrator charged him with civil conversion and moved for a directed finding as to that charge. The Hearing Panel took the motion under advisement.

Respondent's motion is based on an incorrect premise. The Complaint charges Respondent with specific rule violations, not civil conversion. While the words "conversion" and "converted" appear in the Complaint, it is clear that the Administrator used those words as synonyms for the improper use of others' funds without authorization. The allegations of the Complaint cannot be reasonably construed as charging civil conversion, nor would such a charge be permissible under In re Karavidas, 2013 IL 115767. Accordingly, Respondent's motion for directed finding is denied.

Rule 1.15(a)

A lawyer is required to hold property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property, in a client

trust account. Ill. R. Prof'l Conduct 1.15(a). The funds Respondent received in connection with his purchase of the Sinder law practice belonged to third persons. Respondent did not have permission to use them even though they had been unclaimed for decades. If a client or third person cannot be located and their funds have remained unclaimed for three years, those funds are to be remitted to the Illinois State Treasurer. See Comment [8] to Rule 1.15 ("Unclaimed funds in client trust accounts—funds whose owner is known but have not been claimed—should be handled according to applicable statutes including the Uniform Disposition of Unclaimed Property Act (765 ILCS 1025 et seq.); see also ARDC Client Trust Account Handbook (April 2018) at 22.

Respondent admits he withdrew from his client trust account $2,902.34 that belonged to third persons and caused the balance of the account to fall below the amount he should have been holding. This conduct establishes a violation of Rule 1.15(a) by clear and convincing evidence.

Rule 8.4(c)

Rule 8.4(c) provides that it is professional misconduct for an attorney to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. It is well-established that the knowing and purposeful use of funds belonging to others constitutes dishonest conduct. In re Adesina, 2017PR00097, M.R. 029549 (Nov. 15, 2018) (Hearing Bd. at 11). Respondent's unauthorized use of funds was not due to a mistake, confusion about his ethical obligations or sloppy bookkeeping. He admits he knew when he withdrew and used the funds that he was not permitted to do so. Based on this admission, the Administrator proved a violation of Rule 8.4(c) by clear and convincing evidence.

## EVIDENCE IN MITIGATION

Respondent testified that he spent "staggering amounts of hours" cleaning up Sinder's files. He estimated that he spent several weeks trying to track down the vendors on the list Sinder provided. (Tr. 29, 41-42). In addition, he reviewed "hundreds if not thousands" of old files,

disposed of those files at his expense, and spent $800 to file original wills of the previous attorneys' clients who could not be located with the Illinois Secretary of State Deposit of Wills. (Resp. Ex. 7).

Respondent submitted certificates of completion for three legal education courses pertaining to client trust accounts. (Resp. Ex. 1). He took the courses to gain a better understanding of how to manage his client trust account and "to show that [he] was making some effort." (Tr. 44).

Respondent does not have an associate or partner who could handle his client matters if he were suspended. He testified that a suspension would destroy his practice because the drainage districts he represents would have to find other counsel to ensure their compliance obligations are met. (Tr. 48).

Prior Discipline

Respondent has no prior discipline since being admitted in 1983.

## RECOMMENDATION

A. Summary

Having considered the nature of the misconduct, the absence of harm to any client or third person, and the unique circumstances of this matter, a majority of the Hearing Panel recommends that Respondent be reprimanded.

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, 2014IL117696, ¶ 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 consistency in recommending similar sanctions for similar types of misconduct, but must decide each case on its own unique facts. Edmonds, 2014IL117696, ¶ 90.

Respondent's knowing misappropriation of funds for his own use is misconduct. This misconduct is aggravated by the fact that it was not an isolated lapse in judgment. Respondent improperly withdrew funds from his trust account in 2016 and again in 2022 despite knowing it was wrong to do so.

That said, Respondent's misconduct falls on the less egregious end of the spectrum of conversion matters due to the relatively small amount of funds involved and absence of harm to any client or third party. Also, the circumstances that led to Respondent's ethical violations were unusual. He came into possession of the funds at issue because of his purchase of another attorney's practice and took on the unexpected and unenviable task of locating vendors or entities from transactions that occurred decades ago. This does not excuse Respondent's wrongful use of funds, but leads us to conclude that his misconduct is unlikely to recur and he does not pose a threat to the public or the profession.

In further mitigation, Respondent fully cooperated in this proceeding, was candid in his testimony, and has no other discipline in forty years of practice. Based on our observations of Respondent, we find that he is genuinely remorseful. We also believe that his efforts to locate the owners of the funds at issue and the time and money he spent cleaning up the files he received from attorney Sinder provided a valuable service to the public and the profession. In addition, we consider in Respondent's favor that he reported himself to the Administrator and replaced the funds he misused. We recognize that there was a lengthy delay between Respondent's initial withdrawal of funds and his self-report and replacement of those funds. Nonetheless, the

Administrator likely would not have learned of Respondent's misconduct but for his self-report. In the interest of encouraging attorneys to take responsibility for their ethical lapses, we give significant weight in mitigation to Respondent's efforts in this regard.

We also consider as mitigation Respondent's completion of CLE courses related to maintaining client trust accounts. Even though his misconduct did not result from a lack of understanding or diligence with respect to his obligations under Rule 1.15, we nonetheless find that his completion of these courses shows that he values his law license and is sincere in taking responsibility for misusing funds.

The Administrator asks us to recommend that Respondent be suspended for 90 days, relying on In re Kelly, 2020PR00029, M.R. 030908 (Sept. 23, 2021) (three-month suspension for making six transfers totaling $2,230 from escrow funds and causing escrow account to be overdrawn); In re Blanchard, 2015PR00025, M.R. 27795 (Jan. 21, 2016) (ninety-day suspension for misappropriating $3,500 in earnest money when attorney was experiencing financial difficulties; and In re Wolpoff, 2013PR00010, M.R. 26215 (Sept. 25, 2013) (ninety-day suspension for misappropriating $1,376 in escrow funds). Respondent requests a reprimand or censure and cites in support In re Vrdolyak, 137 Ill. 2d 407, 560 N.E.2d 840 (1990) (censure for representing City of Chicago employees while attorney had a conflict of interest due to his concurrent position as a Chicago alderman).

We acknowledge that the Administrator's cited cases could support a recommendation of a short suspension. The Administrator points to the Hearing Panel's statement in Kelly that "attorneys who knowingly misappropriate funds, particularly to their own use, usually are suspended." Kelly, 2020PR00029, Hearing Bd. at 9. That said, a suspension is not mandatory, and we must make our recommendation based on the particular circumstances of this case. What

distinguishes the instant case from the Administrator's cited cases is that, here, Respondent is not the attorney who initially collected or received the funds and held them for decades, Respondent did not have contact information for the third parties and spent an inordinate amount of time trying to find that information in an effort to distribute the funds, and Respondent reported himself to the Administrator. We determine that a suspension recommendation under these circumstances would be punitive and would not serve the purposes of the disciplinary process.

In making our recommendation, we emphasize our finding that Respondent poses no threat to the public or the profession. He recognizes and takes responsibility for his mistakes, which arose from an unusual set of circumstances that are unlikely to recur. We further find that he provides valuable representation to his municipal drainage district clients. It would be a disservice to those clients to suspend Respondent from the practice of law, as he does not have an associate who could take over those time-sensitive representations. For these reasons, we conclude that a suspension would serve no purpose other than to punish Respondent. We are confident that the effect of this proceeding and a reprimand will impress upon him the importance of abiding by the Rules of Professional Conduct at all times and will adequately protect the public and the profession.

Other attorneys who failed to safeguard funds in their client trust account have received reprimands. The attorney in In re Pappas, 2014PR00088 (Jan. 15, 2016) had shortfalls in his client trust account of $10,000 in one client matter and $5,000 in a second client matter due to a bank error and unintentional bookkeeping errors. Pappas had no prior discipline, presented favorable character evidence, and none of his clients were harmed. The Hearing Panel determined that a reprimand was appropriate under the circumstances of that case. In In re Tsamis, 2013PR00095 (Jan. 15. 2014), the attorney received a reprimand after her client trust account became overdrawn due to sloppy bookkeeping and a $3,027.81 settlement check to her client was returned due to

insufficient funds. Similar to Respondent, Tsamis had no prior discipline and expressed remorse for her conduct.

We recognize that the foregoing cases did not include findings that the attorneys violated Rule 8.4(c), and we further recognize that reprimands typically are not given when an attorney has been found to have dishonestly converted funds. That said, we determine that the unique circumstances of this case, including the absence of harm, Respondent's efforts to clean up the files of a retired attorney, and his efforts to rectify his mistakes and report his misconduct, justify a reprimand recommendation.

Accordingly, we recommend that the Respondent, James Douglas Cottrell, be reprimanded. A proposed reprimand accompanies this Report.

Respectfully submitted,

Martha M. Ferdinand
Justine A. Witkowski

[*] Respondent was granted leave at hearing to amend by interlineation paragraph 11 of his Amended Answer to state, "That Respondent denies that he used said funds without authority and dishonestly, and denies the remainder of the allegations of Paragraph 11."

Janaki H. Nair, concurring in part and dissenting in part:

I concur with the majority's findings of misconduct but dissent with respect to the recommended sanction. It is significant, in my view, that Respondent took the funds at issue knowingly and out of anger and frustration, not because of sloppy bookkeeping or confusion about his ethical obligations. The intentional nature of his misconduct warrants more than the lowest possible sanction. A reprimand is appropriate where there is evidence in mitigation, no dishonest motive, and no harm to the client. See In re Rawson, 96 CH 264 (Jan. 22, 1997). Based on our finding here that Respondent acted dishonestly, precedent does not support a reprimand. Further, while I agree with the majority that a suspension is not necessary in light of the mitigation presented, I do not agree that Respondent's self-report and replacement of the funds is entitled to significant weight. Respondent chose to wait six years from the time he made the initial withdrawal of $2,544.29 to report himself and replace the funds. I find that the lengthy delay substantially lessens the mitigating effect of those actions.

I recommend that Respondent be censured. In In re Homyk, 2014PR00154, M.R. 27728 (Jan. 21, 2016), the attorney received a flat fee of $3,500 and advanced costs of $337 to file a lawsuit against his client's condominium association. He was required to hold the cost advance in a client trust account but instead deposited it in his personal checking account and used it for his own purposes. Based on this conduct, Homyk was charged with violating Rules 1.15(a) and 8.4(c). He was charged with additional misconduct for failing to file a lawsuit on the client's behalf, failing to cooperate with the ARDC's investigation and failing to return the client's unearned fees in a timely manner. For all of this misconduct, which is more extensive than the misconduct before us, the Administrator and Homyk agreed to a censure and the Court approved that sanction. In my view, Homyk provides support for a censure recommendation when an attorney has dishonestly

converted a small amount of funds. Even though Respondent converted more funds than Homyk did, Homyk engaged in additional misconduct not present here. Therefore, on balance, I view Homyk as comparable to this matter and would recommend that Respondent be censured based on this precedent, the nature of the misconduct, and the relevant circumstances.

## 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 July 6, 2023.

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

MAINLIB_#1640948_v1

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

In the Matter of:

**JAMES DOUGLAS COTTRELL,**

Attorney-Respondent,

No. 6184207.

Commission No. 2022PR00069

**PROPOSED REPRIMAND**

To: James Douglas Cottrell

You are being reprimanded by the Hearing Board of the Illinois Attorney Registration and Disciplinary Commission as follows:

1. As detailed in the Hearing Board Report and Recommendation, you withdrew $2,902.34 belonging to third persons from your client trust account and used those funds for your own purposes, knowing you were not authorized to do so.

2. Your conduct violated Rules 1.15(a) and 8.4(c) of the Illinois Rules of Professional Conduct (2010).

3. You have not been previously disciplined. Based on all the circumstances, particularly the unique circumstances related to your purchase of a retired attorney's practice, we believe this is an isolated matter and that you will not repeat your mistakes.

4. Your conduct, however, was improper and cannot be condoned. The Hearing Board has authority pursuant to Supreme Court Rule 753(c) and Commission Rule 282 to administer a reprimand to an attorney in lieu of recommending disciplinary action by the Court, and a majority of the Board has determined such action is appropriate in this case.

5. Therefore, you are hereby reprimanded and admonished not to repeat or engage in conduct similar to the misconduct outlined in the Report and Recommendation.

6. You are further advised that, while this reprimand is not formally presented to the Supreme Court, it is not to be taken lightly. This reprimand is a matter of public record and is on file with the Attorney Registration and Disciplinary Commission. It may be admitted into evidence in any future disciplinary proceedings against you.

Respectfully submitted,

Martha M. Ferdinand
Justine A. Witkowski

MAINLIB_#1640948_v1