

**DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY**



In the Matter of	:	
	:	
	:	
JAMES BAILEY, ESQUIRE	:	
	:	
Respondent	:	Disciplinary Docket No. 2020-D006
	:	
A Member of the Bar of the	:	
District of Columbia Court of Appeals	:	
Bar Number: 462391	:	
Date of Admission: March 8, 1999	:	

SPECIFICATION OF CHARGES

The disciplinary proceedings instituted by this petition are based upon conduct that violates the standards governing the practice of law in the District of Columbia as prescribed by D.C. Bar Rule X and D.C. Bar Rule XI, § 2(b).

1. Respondent is a member of the District of Columbia Bar, having been admitted on March 8, 1999, and subsequently assigned Bar number 462391.
2. At all relevant times herein, Respondent was a partner of the law firm Bailey & Ehrenberg, PLLC, along with Jason Ehrenberg and Kermit Rosenberg. Respondent was the partner responsible for handling funds entrusted to the firm.

3. At all relevant times herein, Respondent was a signatory on the firm's Eagle Bank IOLTA account ending in 1398. Mr. Ehrenberg and Mr. Rosenberg were also signatories

4. At all relevant times herein, Respondent was a signatory on the firm's Eagle Bank business checking account ending in 1620. Mr. Ehrenberg was also a signatory.

The conduct and standards that Respondent has violated are as follows:

5. In May 2017, the Federal National Mortgage Association ("Fannie Mae") filed six lawsuits in the Superior Court Civil Division against six corporate entities that owned apartment buildings in the District. Each of the corporate entities was controlled by the same individual, Carter Nowell, or his corporation Sanford Capital, LLC. Mr. Nowell was the borrower on Fannie Mae loans secured by the properties and was also named as a defendant in some of the lawsuits. The lawsuits alleged that Mr. Nowell and/or his entities had failed to satisfy his obligations under the loan agreements to maintain the collateral properties in satisfactory condition.

6. On May 22, 2017, Mr. Rosenberg entered an appearance on behalf of the corporate defendant in each case. Mr. Rosenberg did not represent Mr. Nowell in his individual capacity.

7. On June 17, 2017, the six cases were consolidated.

8. One of the apartment buildings, Tivoli Gardens, was under contract for sale for approximately \$5 million with a closing scheduled for July 27, 2017. On July 20, 2017, Fannie Mae filed an emergency motion for a prejudgment writ of attachment for \$867,000 from the sale, representing Mr. Nowell's share of the proceeds.

9. On July 26, 2017, the court granted Fannie Mae's motion, allowing Fannie Mae to issue a prejudgment writ of attachment on any proceeds distributed from the sale of Tivoli to Mr. Nowell.

10. The next day, the sale of Tivoli settled. Mr. Rosenberg informed Fannie Mae that no funds would be distributed to Mr. Nowell and therefore the prejudgment writ of attachment was not applicable.

11. On August 31, 2017, Fannie Mae moved for discovery with respect to the sale of Tivoli to determine whether Mr. Nowell had complied with the court's order authorizing the prejudgment writ of attachment.

12. On September 1, 2017, the defendants filed a motion to quash the writ of attachment.

13. On October 19, 2017, the court granted the motion for discovery.

14. Fannie Mae offered to discontinue its discovery if the defendants kept \$867,000 in an account not controlled by Mr. Nowell until resolution of the cases.

Mr. Rosenberg agreed and suggested using Bailey & Ehrenberg's IOLTA account to hold the funds. In doing so, he incorrectly told Fannie Mae that he was not a signatory on the account. On November 3, 2017, the parties filed a consent motion seeking an order enforcing their agreement.

15. On November 6, 2017, the court ordered the defendants to deposit \$867,000 into Bailey & Ehrenberg's IOLTA. The court also ordered that no disbursements, payments, or other transfers be made from the funds except through further order of the court. The order also gave Fannie Mae the right to request a confirmation of the balance of the IOLTA account.

16. Shortly after, Mr. Rosenberg provided a copy of the November 6, 2017, order to Respondent and told him to expect the funds to be wired into the IOLTA account.

17. On November 7, 2017, the defendants wired \$867,000 into the IOLTA account. The deposit brought the balance of the IOLTA account to \$867,277.85. Respondent received an email from Eagle Bank notifying him of the incoming wire.

18. On January 3, 2018, Respondent signed an operating account check for \$5,000 to pay his firm's rent. The check cleared on January 9, 2018. The debit resulted in an overdraft of the firm's operating account.

19. On January 11, 2018, Respondent transferred \$10,000 from the IOLTA account to the operating account. The transfer caused the balance of the IOLTA account to fall to \$857,277.89, below the amount required to be held in trust.

20. In early January 2018, Fannie Mae requested from Mr. Rosenberg confirmation of the IOLTA balance. Mr. Rosenberg asked Respondent to provide him with proof that the balance was over \$867,000.

21. On January 16, 2018, after depositing other funds into the operating account, Respondent transferred \$2,600 from the operating account into the IOLTA and deposited \$3,500 in funds from another client into the IOLTA, to bring the account balance to \$863,377.89.

22. On January 17, 2018, Respondent transferred an additional \$10,000 from the operating account to the IOLTA account to bring the account balance to \$873,377.89.

23. The same day, Respondent sent Mr. Rosenberg a photo of the IOLTA account balance. Mr. Rosenberg then sent the photo to Fannie Mae as confirmation that the balance was over \$867,000.

24. On January 22, 2018, the operating account again went into overdraft status.

25. On January 23, 2018, Respondent transferred \$1,962.55 from the IOLTA account to the operating account and withdrew \$767.50 from the IOLTA account by check. These transactions caused the balance of the IOLTA account to fall to \$866,837.84, below the amount required to be held in trust.

26. On January 25, 2018, a client wired \$10,000 in earned fees into the IOLTA account, bringing the balance above the amount required to be held in trust.

27. On February 15, 2018, Respondent transferred \$2,375 from the IOLTA account to the operating account. The transfer caused the balance of the IOLTA account to fall to \$866,000.84, below the amount required to be held in trust.

28. On February 20, 2018, Respondent transferred \$4,750 from the IOLTA account to the operating account. The transfer caused the balance of the IOLTA account to fall to \$861,250.84.

29. Were it not for the funds transferred from the IOLTA account to the operating account, the operating account would have gone into overdraft status on February 15, 2018 and February 20, 2018.

30. On February 23, 2018, a client wired \$15,000 in earned fees into the IOLTA account, bringing the balance above the amount required to be held in trust.

31. On February 27, 2018, the operating account again went into overdraft status.

32. On February 28, 2018, Respondent transferred \$2,250 from the IOLTA account to the operating account. The transfer caused the balance of the IOLTA account to fall to \$865,800.84, below the amount required to be held in trust.

33. On March 6, 2018, Respondent transferred \$11,275.00 from the IOLTA account to the operating account. The ending balance for the IOLTA that day was \$854,525.84.

34. On March 7, 2018, Respondent transferred \$8,250 from the IOLTA account to the operating account. The ending balance for the IOLTA that day was \$849,275.84.

35. Between March 2018 and September 2018, the operating account frequently went into overdraft status. In the same time period, Respondent made frequent transfers from the IOLTA account to the operating account and the balance of the IOLTA account frequently fell below \$867,000.

36. In September 2018, Fannie Mae and the defendants agreed to a settlement. On September 12, 2018, the parties filed a consent motion for an order authorizing the release of the \$867,000 held in the IOLTA account to Fannie Mae.

37. The same day, Mr. Rosenberg sent Respondent instructions for wiring the funds to Fannie Mae.

38. On September 17, 2018, the court granted the motion and ordered the funds released to Fannie Mae within 30 days.

39. On September 19, 2018, Respondent wired the funds Fannie Mae.

40. On October 9, 2018, the Office of Disciplinary Counsel received a notice from Eagle Bank that Respondent's IOLTA account had been overdrawn. The overdraft was unrelated to the Fannie Mae funds and did not involve any entrusted funds.

41. On October 30, 2018, the Office of Disciplinary Counsel informed Respondent that it was conducting an informal inquiry into the overdraft.

42. On January 23, 2019, the Office of Disciplinary Counsel informed Respondent and his partners that it was opening an investigation into the overdraft. On February 6, 2019, the Office of Disciplinary Counsel issued a subpoena to Mr. Ehrenberg for financial records for the IOLTA account for the period of January 1, 2018, through December 31, 2018, including a check register or journal for the account, subsidiary client ledgers for each client, and records showing the reconciliation of the account with Respondent's records.

43. On March 11, 2019, Mr. Ehrenberg provided a response to the subpoena, but failed to provide all of the financial records called for in the subpoena.

44. On May 23, 2019, the Office of Disciplinary Counsel sent a letter to Mr. Ehrenberg informing him that he had not provided all of the financial records called for in the subpoena.

45. On June 17, 2019, Mr. Ehrenberg provided an additional response to the subpoena, but failed to provide all of the financial records called for in the subpoena.

46. On March 6, 2020, the Office of Disciplinary Counsel sent a letter to Mr. Ehrenberg informing him that he had not provided all of the financial records called for in the subpoena and asking questions about specific transactions in the IOLTA.

47. On March 27, 2020, Respondent provided a response to the March 6, 2020 letter to Mr. Ehrenberg. Respondent informed the Office of Disciplinary Counsel that Mr. Ehrenberg was out of the office with health problems for the relevant time period and was not involved in the firm's administrative matters. Respondent provided responses to some, but not all, of the Office of Disciplinary Counsel's inquiries and failed to provide all of the financial records called for in the subpoena.

Respondent's conduct violated the following Rules of Professional Conduct:

- a. Rule 1.15(a) in that Respondent engaged in intentional or reckless misappropriation;
- b. Rule 1.15(a) in that Respondent engaged in commingling;

- c. Rule 1.15(a) in that Respondent failed to keep complete records of IOLTA account funds for a period of five years after termination of the firm's representation of Sanford Capital.

Respectfully submitted,

/s/ Hamilton P. Fox, III

Hamilton P. Fox, III
Disciplinary Counsel

/s/ Jelani C. Lowery

Jelani C. Lowery
Assistant Disciplinary Counsel

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VERIFICATION

I declare under penalty of perjury under the laws of the United States of America that I verily believe the facts stated in the Specification of Charges to be true and correct.

Executed on this 11th day of July 2022.

/s/ Jelani C. Lowery _____
Jelani C. Lowery
Assistant Disciplinary Counsel

D. Procedures

(1) **Referral to Hearing Committee** - When the Board receives the Petition Instituting Formal Disciplinary Proceedings, the Board shall refer it to a Hearing Committee.

(2) **Filing Answer** - Respondent must respond to the Specification of Charges by filing an answer with the Board and by serving a copy on the Office of Disciplinary Counsel within 20 days of the date of service of this Petition, unless the time is extended by the Chair of the Hearing Committee. Permission to file an answer after the 20-day period may be granted by the Chair of the Hearing Committee if the failure to file an answer was attributable to mistake, inadvertence, surprise, or excusable neglect. If a limiting date occurs on a Saturday, Sunday, or official holiday in the District of Columbia, the time for submission will be extended to the next business day. Any motion to extend the time to file an answer, and/or any other motion filed with the Board or Hearing Committee Chair, must be served on the Office of Disciplinary Counsel at the address shown on the last page of this petition.

(3) **Content of Answer** - The answer may be a denial, a statement in exculpation, or a statement in mitigation of the alleged misconduct. Any charges not answered by Respondent may be deemed established as provided in Board Rule 7.7.

(4) **Mitigation** - Respondent has the right to present evidence in mitigation to the Hearing Committee regardless of whether the substantive allegations of the Specification of Charges are admitted or denied.

(5) **Process** - Respondent is entitled to fifteen days' notice of the time and place of hearing, to be represented by counsel, to cross-examine witnesses, and to present evidence.

E. In addition to the procedures contained in D.C. Bar R. XI, the Board has promulgated Board Rules relating to procedures and the admission of evidence which are applicable to these procedures. A copy of these rules is being provided to Respondent with a copy of this Petition.

WHEREFORE, the Office of Disciplinary Counsel requests that the Board consider whether the conduct of Respondent violated the District of Columbia Rules of Professional Conduct, and, if so, that it impose/recommend appropriate discipline.

Office of Disciplinary Counsel

/s/ Hamilton P. Fox, III

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