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STATE OF WISCONSIN

IN SUPREME COURT

OCT 0 9 2014

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST RAYMOND M. CLARK, ATTORNEY AT LAW.

CASE CODE 30912

CLERK OF SUPREME COURT OF WISCONSIN OFFICE OF LAWYER REGULATION,

CASE NO. 2014AP 2366 -D

Complainant;

RAYMOND M. CLARK,

Respondent.

COMPLAINT

NOW COMES the Wisconsin Supreme Court - Office of Lawyer Regulation (OLR), by Retained Counsel Denis R. Vogel, and alleges as follows:

- 1. The OLR was established by the Wisconsin Supreme Court and operates pursuant to Supreme Court Rules. This complaint is filed pursuant to SCR 22.11.
- 2. Raymond M. Clark (Clark) is an attorney who was admitted to the practice of law in Wisconsin on June 8, 1959, State Bar No. 1008086. The most recent address furnished by Clark to the State Bar of Wisconsin is Raymond M. Clark Law Office, W129N6889 Northfield Drive (#203), Menomonee Falls, WI 53051-0521.

COUNTS 1 - 5

Regarding Campbell Divorce OLR Matter No. 2009MA1364

- 3. Clark represented Tina Campbell (Ms. Campbell) in divorce proceedings. Milwaukee County Case No. 2007FA002553.

 Mr. Campbell had separate counsel.
- 4. On March 14, 2008, Milwaukee County Circuit Judge Karen E. Christenson entered the Findings of Fact, Conclusions of Law, and a Final Judgment in the divorce, which incorporated by reference all of the terms of a Marital Settlement Agreement ("MSA") signed by Ms. Campbell and Jonathan J. Campbell ("Mr. Campbell").
- 5. The MSA listed the marital debts and stated that Ms. Campbell and Mr. Campbell were equally liable for the payment of those debts.
- 6. The MSA also provided that Ms. Campbell's share of an M&I retirement account would be forwarded to Clark, and that Clark "shall withhold said monies in order to satisfy petitioner's [Ms. Campbell's] financial responsibilities per the Marital Settlement Agreement. After petitioner's financial responsibilities have been satisfied in full, petitioner shall receive the remaining balance."

- 7. As of the entry of the Order incorporating the MSA, the total amount of marital debt shown in the MSA was \$16,997.04. According to the terms of the MSA, Ms. Campbell was obligated to pay at least \$8,498.52 of the marital debt.
- 8. By letter dated July 10, 2008, Mr. Campbell provided Clark with notice and documents showing that Mr. Campbell had paid marital debts totaling \$4,019.10, and that he was continuing to make payments on debt of \$5,399.69 involving a Great Lakes Higher Education loan. Mr. Campbell's letter also asserted he was responsible for \$9,418.39 of the marital debt which included the Great Lakes Higher Education loan; and that Ms. Campbell was responsible for \$9,356.22, plus a student loan in her name for which he did not have a correct balance.
- 9. Clark did not dispute Mr. Campbell's July 2008 calculations or otherwise communicate to Mr. Campbell or his attorney that he disagreed with any specific item in Mr. Campbell's letter.
- 10. While there may have been concerns regarding the accuracy of the calculation of debt shown on the MSA, Clark had sufficient information to understand that Ms. Campbell would be responsible to pay debts of at least \$9,356.22.

- 11. On or about August 12, 2008, Clark received Ms. Campbell's share of the M&I retirement account, totaling \$9,341.84, and deposited the same into his IOLTA trust account.
- 12. Between August 13, 2008 and September 26, 2008, Clark disbursed check numbers 1868, 1869, 1870, 1871, 1873, 1874, 1876, 1877, and 1878 from his trust account to himself, totaling \$1,710 of the funds on deposit for Ms. Campbell.
- 13. On September 26, 2008, Clark made a cash withdrawal in the amount of \$1,000 from the funds in his trust account attributable to his representation of Ms. Campbell.
- 14. During that same time period, Clark also disbursed \$250 to Delphi Consulting Group related to the costs of disbursing the M&I retirement funds to Ms. Campbell.
- 15. Meanwhile, between July and December 2008, Clark and Mr. Campbell exchanged numerous communications regarding the debts to be paid by Ms. Campbell, and on several occasions Mr. Campbell provided Clark with information and documents related to the marital debts.

- 16. On October 8, 2008, Clark communicated to Mr. Campbell that Clark had misplaced information that Mr. Campbell had previously provided to him; that he was working on negotiating several of the debts; and that upon his receipt from Mr. Campbell of a listing of debts outlined in the final hearing, Clark "will then pay all the bills that we are not challenging."
- 17. On October 13, 2008, Mr. Campbell forwarded the requested information to Clark.
- 18. During October 2008, Clark did not pay any of the debts owed by Ms. Campbell.
- 19. In October 2008, Clark made a settlement offer to Kwik Trip, a creditor who claimed an amount due larger than was recited in the MSA. Kwik Trip accepted the offer, but no payment was made to them at that time.
- 20. On November 18, 2008 Mr. Campbell notified Clark by email that there was a letter from Bruck Law Offices regarding a debt of \$2,380.92 from the Medical College of Wisconsin.
- 21. As of January 26, 2009, Clark had not paid any of the creditors Ms. Campbell was obligated to pay pursuant to the MSA, nor had he paid any of the undisputed debts.

- 22. Clark asserted that his efforts to pay the debts were frustrated by Mr. Campbell's failure to provide Clark with accurate and sufficient information regarding the debts; however Clark did not seek the Court's assistance in obtaining records and information from Mr. Campbell or file any motions with the court to amend the MSA to reflect the accurate amounts due.
- 23. On January 27, 2009, Clark paid \$2,780.47 to Bruck Law Offices, S.C., to satisfy a debt to the Medical College of Physicians.
- 24. The MSA showed a debt to Medical College of Physicians of \$501, and a separate debt to Med-Health Financial Services, Inc. of \$3,408.25. However, it appears that the \$3,408.25 debt to Med-Health Financial Services, Inc. included the \$501 debt to Medical College of Physicians, and that the January 29, 2009 \$2,780.47 payment satisfied a portion of the \$3,408.25 debt to Med-Health Financial Services, Inc. shown on the MSA, leaving some portion of the Med-Health Financial Services, Inc. debt outstanding and unpaid by Clark on behalf of Ms. Campbell.

- 25. Between January 30, 2009 and March 5, 2009, Clark disbursed another \$1,850 of the M&I retirement funds to himself via checks numbered 1919, 1921, 1923, 1926, and 1930, and he disbursed \$300 of the funds to his client via check 1920. He did not discuss the disbursements with opposing counsel, seek a modification of the MSA, or seek the court's authorization for those disbursements.
- 26. April 6, 2009 Kwik Trip records show that a settlement had been agreed upon and that Clark had been notified that payment pursuant to the settlement was due by April 24, 2009 or the settlement would be null and void. On April 6, 2009, Clark disbursed \$1,341.64 to the Kwik Trip Credit Department.
- 27. Prior to paying Kwik Trip, Clark did not obtain a modification of the MSA to account for the increased balance due or attempt to negotiate with Mr. Campbell or his counsel a revised division of the debts based on the higher balance due to Kwik Trip.
- 28. As of April 7, 2009 Clark had paid \$4,122.11 toward Ms. Clark's share of the debt on the MSA, had paid \$4,360 to himself, \$500 to his client, \$250 to a consultant, leaving no more than \$109.73 of Ms. Campbell's share of the M&I funds in his trust account.

- 29. On May 11, 2009, Mr. Campbell's counsel filed a motion for an Order to Show Cause due to Ms. Campbell's failure to timely pay her portion of the marital debts.
- 30. Clark filed a cross motion asserting Mr. Campbell failed to comply with the law concerning financial disclosures, disputing that Mr. Campbell had paid his share of the debts, and asserting that Mr. Campbell had interfered with IRS refunds.
- 31. As of June 1, 2009, at least five debts to be paid by Ms. Campbell, totaling \$833.15, remained unpaid. However, by this time Clark was holding insufficient funds in trust for Ms. Campbell to pay these debts.
- 32. On June 16, 2009, Clark disbursed \$50 of the M&I retirement funds to pay Ms. Campbell's costs of having a motion for an Order to Show Cause served in Milwaukee County Case No. 2007FA002553, leaving only \$59.73 of the M&I funds in Clark's IOLTA account.
- 33. At a June 19, 2009 hearing, Milwaukee County Court Commissioner, Ana Berrios, held that the Commissioner had no authority other than to enforce the MSA, ordered Ms. Campbell to pay her share of the marital debt, and ordered that "any monies in trust to be used for outstanding bills forthwith."

- 34. At this hearing, Clark failed to advise the court that he had already disbursed \$4,360 of the M&I retirement funds to himself, \$500 to his client, \$250 to Delphi and \$50 to the process server, or that only \$59.73 of the M&I funds remained in Clark's IOLTA account.
- 35. On July 14, 2009, Clark disbursed \$600 to himself, exhausting the remaining \$59.73 of the M&I retirement funds remaining in trust for the Campbell matter, and therefore disbursing \$540.27 of the funds that belonged to Clark or others.
- 36. On August 5, 2009, OLR received a grievance against Clark from Mr. Campbell.
- 37. On August 13, 2009, Clark disbursed \$50 from his trust account to Ms. Campbell. However, as of August 13, 2009, Clark was no longer holding any funds in his trust account attributable to Ms. Campbell.
- 38. On September 23, 2009, Clark sent letters to certain creditors attempting to determine the amounts due. Clark had not contacted these creditors before September 2009.
 - 39. In response to Clark's inquiry:
 - a) Advanced Pain Management notified Clark by invoices dated October 7 and 8, 2009, that it was owed \$347.88.

- b) On October 7 and 8, 2009, Wisconsin Health Center notified Clark that it was owed \$187.94.
- c) On October 19, 2009, Great Lakes Higher Education Guaranty Corporation notified Clark that it was owed \$160.13 from Tina Campbell.
- d) On October 22, 2009, J. C. Christensen & Associates, Inc. notified Clark that its client, Pro-Health Care Medical was owed \$117.20.
- e) On October 8, 2009, Wheaton Franciscan Healthcare notified Clark that it required additional information from him to respond to his inquiry. Clark did not confirm the amount due to Wheaton Franciscan Healthcare until a February 16, 2010 telephone call.
- 40. There is no evidence that any of the above amounts set forth in 39 (a)-(d) were in dispute.
- 41. In a December 8, 2009 letter to OLR, Clark asserted that five debts totaling \$833.15 remained outstanding.
- 42. In a March 17, 2010 letter to OLR, Clark stated that six debts remained outstanding as of December 8, 2009 due to the fact that there were insufficient funds in his trust account to pay the bills on behalf of Ms. Campbell.
- 43. On February 16, 2010, Clark deposited \$1,846.05 in his trust account, and identified the deposit as "Return of Fees" related to his representation of Ms. Campbell.

- 44. Between February 16, 2010 and February 26, 2010, Clark disbursed six checks totaling \$1,446.05 to pay the remaining creditors, leaving \$400 of the \$1,846.05 deposit remaining in Clark's trust account.
- 45. From the \$9,341.84 in M&I retirement funds, and after taking into consideration Clark's \$1,846.05 deposit to his trust account, Clark disbursed: \$5,568.16 to pay creditors of Ms. Campbell and Mr. Campbell; \$950 to Ms. Campbell; \$300 to pay costs associated with his representation of Ms. Campbell; and \$3,113.95 to himself.

COUNT ONE

46. By failing to take reasonable steps to advance Tina Campbell's interests in having her marital debts paid in a timely fashion, Clark failed to act with reasonable diligence and promptness in representing a client, in violation of SCR 20:1.3¹.

COUNT TWO

47. By making a cash withdrawal from the funds he held in trust relating to his representation of Tina Campbell, Clark made a prohibited transaction by making a disbursement of cash

¹ SCR 20:1.3 provides: "A lawyer shall act with reasonable diligence and promptness in representing a client..."

from his trust account from funds held in trust for a client, in violation of SCR 20:1.15(e) $(4)a^2$.

COUNT THREE

48. By failing to hold in trust the \$9,341.84 entrusted to him for the payment of Tina Campbell's share of the marital debts as required under the Marital Settlement Agreement and by disbursing funds related to his representation of Tina Campbell in excess of the funds he held in trust related to her case, Clark failed to hold in trust, separate from his own property, the property of his client and 3rd parties held in Clark's possession in connection with his representation of a client, in violation of SCR 20:1:15(b)(1)³.

COUNT FOUR

49. By failing to hold \$9,341.84 in trust for the payment of Tina Campbell's share of the marital debts as part of the Marital Settlement Agreement as ordered by the court on March 14, 2008; and by failing to hold the remaining \$59.73 in trust for the payment of Tina Campbell's share of the marital debts as ordered by the court on June 19, 2009, Clark knowingly disobeyed

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² SCR 20:1.15(e) (4) a provides: "No disbursement of cash shall be made from a trust account or from a deposit to a trust account, and no check shall be made payable to 'Cash'..."

³ SCR 20:1.15(b) (1) provides: "A lawyer shall hold in trust, separate from the lawyer's own property, that property of clients and 3rd parties that is in the lawyer's possession in connection with a representation..."

an obligation under the rules of a tribunal, in violation of SCR $20:3.4(c)^4$.

COUNT FIVE

50. By disbursing to himself \$4,960 of the \$9,341.84 entrusted to him for the payment of Tina Campbell's share of the marital debts, without obtaining the prior authorization of the court or opposing counsel to do so, Clark engaged in professional misconduct involving dishonesty, fraud, deceit or misrepresentation, in violation of SCR 20:8.4(c)⁵.

II. COUNTS 6-9

Trust Account Investigation OLR Matter No. 2011MA1558

- 51. On October 5, 2011, OLR asked Clark to identify all banks, credit unions or other financial institution accounts maintained by him related to his practice of law since January 1, 2008, and provide certain information related to each account.
- 52. By letter dated December 5, 2011, Clark asserted that the only account he maintained related to his practice of law

⁴ SCR 20:3.4(c) provides: "A lawyer shall not...knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists..."

⁵ SCR 20:8.4(c) provides: "It is professional misconduct for a lawyer to...engage in conduct involving dishonesty, fraud, deceit or misrepresentation..."

was his client trust account, number XXXXXXX66 at U.S. Bank, titled as Raymond M. Clark-IOLTA.6

- 53. Clark provided OLR with records he asserted were his transaction registers and his client ledgers, copies of monthly account statements, and copies of the front side of cancelled or imaged checks.
- 54. OLR obtained from U.S. Bank copies of deposit slips and the sources of deposits in Clark's trust account and copies of the front and back of checks drawn on Clark's trust account.
- 55. OLR audited the activity in Clark's trust account for the period January 31, 2008 through February 29, 2012, using the records provided by Clark and those obtained from U.S. Bank.
- 56. On October 9, 2013, OLR provided Clark with a copy of the records obtained from U.S. Bank and copies of the transaction register and client ledgers produced from OLR's audit.
- 57. During telephone interviews with Clark on November 5 and 21, 2013, Clark stated to an OLR investigator that he reviewed the records and reports provided to him by OLR. Clark stated that OLR's audit of the activity in his trust account and the resulting transaction register and client ledgers appeared

⁶ Full account number not cited for security reasons.

accurate, and that he could not identify any errors or omissions in the audit or reports.

Deposits to Trust Account Relating to Earned Fees

- 58. OLR's audit revealed that Clark regularly deposited checks from clients for earned fees in his client trust account, and then disbursed the earned fees to himself by writing checks to himself and cashing them at a U.S. Bank branch office, often involving a pattern requiring a series of checks to disburse the earned fees.
- 59. Clark allowed his earned fees to remain in his trust account for extended periods of time.
- 60. OLR inquired about activity in Clark's trust account and whether specified deposits were comprised of earned fees. On November 21, 2013, Clark told OLR that substantially all of the deposits noted in an October 9, 2013 OLR inquiry were earned fees he deposited in his trust account.

Re: Michael Baron

- 61. On February 18, 2009 Clark deposited a check for \$600 relating to Michael Baron into his trust account. The memo line stated "Legal Fees".
- 62. Between February 18, 2009 and March 11, 2009, Clark disbursed \$565 of the \$600 to himself by writing checks to

himself in amounts of \$50 to \$300 and cashing the checks at U.S. Bank on or about the date they were written.

- 63. On September 2, 2009, Clark deposited a check for \$500 which had a memo line stating "Retainer Fee." Of this \$500, \$315 reimbursed Clark's trust account for amounts Clark had already over-disbursed to himself from other funds held in the trust account.
- 64. Clark disbursed the remaining \$185 to himself by a \$200 check written to himself and cashed at U.S. Bank on September 8, 2009.

Re: Audrey Bauer

65. On October 14, 2009 Clark deposited a \$400 fee payment check from Audrey Bauer into his trust account. The same day, Clark disbursed a check for \$400 to himself and cashed it at U.S. Bank.

Re: Cobleigh

66. On August 26, 2008, Clark deposited a \$750 check from Robert and Bernadette Cobleigh into his trust account. The same day, Clark disbursed check 1872 for \$750 to himself and cashed it at U.S. Bank. In the trust account records Clark provided to OLR, Clark identified check 1872 as disbursing fees related to Cobleigh.

Re: Estate of Schulz

- 67. Clark represented the estate or personal representative in *In the Estate of Frieda Schulz*, Milwaukee County Case No. 2001PR002758 until the case was closed in March of 2005. The estate was re-opened for special administration in 2007, and closed again on or about October 25, 2007.
- 68. Clark also represented Frieda Schulz and the person named as special administrator in the re-opened Estate in a 2001 litigation matter, Frieda Schulz et al. v. Sharon Mineo, Milwaukee County Case No. 2001CV001397.
- 69. On January 3, 2008, Clark deposited into his trust account a \$10,200.37 check that had been issued by Mitchell Bank to close a Certificate of Deposit. The check was endorsed "Pay to the Order of Raymond M. Clark Trust Acct for Deposit Only" and was endorsed by "Patricia Crerar PR & Special Administrator of the Estate of Frieda Schulz".
- 70. On February 11, 2014, Clark told OLR in a telephone interview that the \$10,200.37 check represented earned fees for his past representation in Milwaukee County Case Nos. 2001PR002758 and 2001CVOOJ397.
- 71. Rather than deposit the earned fees in his personal bank account or disburse the entire amount to his personal account within a reasonable time after the check had been

deposited into his trust account, Clark paid himself from his trust account in small amounts over a 15 month period.

- 72. As of January 3, 2009, \$4,230.37 of the \$10,200.37 earned fees remained in Clark's trust account.
- 73. By June 23, 2009, Clark had disbursed all but \$380 of the \$10,200.37 to himself by one cash withdrawal and 32 checks written to himself and cashed at U.S. Bank, ranging in amounts from \$50 to \$700.
- 74. The remaining earned fee amount was disbursed to Clark on June 23, 2009.

Re: Estate of Young

- 75. On January 6, 2012, Clark deposited a \$1,000 check from Harlan Young and Robert Jacobs into his trust account. The memo line stated "retainer."
- 76. On January 6 and 7, 2012, Clark disbursed the entire \$1,000 to himself by disbursing to himself a \$700 check on January 6, 2012 and a \$300 trust account check on January 7, 2012 and cashing the checks at U.S. Bank.

Re: Jaco Leasing

77. On November 14, 2008 Clark deposited a \$630 check from Jaco Leasing Co. Inc. into his trust account. The memo line stated "statement No. 0."

- 78. Clark disbursed two checks to himself on November 14, 2008 and November 22, 2008, totaling \$450. Clark cashed each check at U.S. Bank.
- 79. The remaining \$180 continued to be held in Clark's trust account until April 2010, when Clark wrote three checks to himself, totaling \$180 on April 20, 22 and 24, 2010, and cashed each at U.S. Bank.

Re: Janet Janusz and Ortiz

- 80. On October 9, 2008, Clark deposited a \$1,666.67 check from the law firm of McGranahan & Stawski Ltd. Client Trust Account into his trust account. The memo line stated "Janet Janusz referral fee."
- 81. Clark paid \$1,600 of the \$1,666.67 to himself by writing checks numbered 1880 through 1884 from his trust account, and cashing the checks at U.S. Bank between October 9 and October 22, 2008.
- 82. On December 16, 2009, Clark paid himself another \$50 by writing a check to himself from his trust account and cashing it at U.S. Bank.
- 83. As of February 29, 2012, the remaining \$16.67 remained in Clark's trust account attributable to the Janusz deposit.

- 84. On March 31, 2009, Clark deposited a \$444.44 check from the law firm of McGranahan & Stawski Ltd. into his client trust account. The memo line stated "Ortiz referral fee."
- 85. Clark paid the entire \$444.44 to himself by writing checks 1938 and 1939 in the amounts of \$304.80 and \$139.64 from his trust account to himself. Clark cashed the checks at U.S. Bank on March 31 and April 4, 2009.
- 86. Clark told OLR that the two checks deposited in his trust account on October 9, 2008 and March 31, 2009 represented his share of attorney's fees from the Janusz and Ortiz matters that Clark had referred to the law firm of McGranahan & Stawski.

Re: Ruth Schaefer

- 87. On March 5, 2008, Clark deposited a \$500 check from Ruth Schaefer into his trust account. The memo line stated "down payment on bill".
- 88. The same day, Clark made a cash withdrawal in the amount of \$450. As of February 29, 2012, \$50 remained in Clark's client trust.

Re: Brian Torreano

89. On November 28, 2008, Clark deposited a \$568 check from Brian J. Torreano into his trust account. The memo line appears to state "unemp."

90. Clark paid himself the entire \$568 by writing a \$425 check to himself on November 28, 2008 and a \$143 check to himself on November 29, 2008, cashing the checks at U.S. Bank.

Cash Withdrawals

- 91. Clark made cash withdrawals from his trust account and/or cash withdrawals from deposits into his trust account on March 5, 2008, September 26, 2008, October 6, 2008, March 18, 2009, May 14, 2009, October 14, 2009, January 13, 2010, August 11, 2010, and October 26, 2011.
- 92. Clark also issued trust account checks payable to cash on June 2, 2009, June 15, 2009, June 26, 2009, July 2, 2009 and August 19, 2009.

Disbursements from Trust Account Leading to Negative Balances

93. Between January 31, 2008 and February 29, 2012, Clark made disbursements from his trust account that paid out more than he was holding in trust for various client matters, thereby creating a negative trust account balance with respect to those client matters.

Re: Andrea Azzolina

94. As of January 22, 2008, Clark was holding \$5.50 in his trust account for Andrea Azzolina. On that date he disbursed

- \$101.45, via trust account check number 1846, causing a negative balance of \$95.95 for Azzolina.
- 95. Clark deposited a \$60.95 check from Andrea Azzolina into to his trust account. The memo line stated "Atty Fees". The Azzolina balance in Clark's trust account after the deposit was a negative \$35.
- 96. On June 7, 2008, Clark deposited a \$500 check from Azzolina into his trust account. The memo line stated "Atty. Fees". After depositing the \$500 check, Clark's trust account balance relating to Azzolina was \$465. However, Clark immediately disbursed \$500 to himself, once again causing a negative balance attributable to the Azzolina matter of \$35.
- 97. On July 28, 2008, Clark disbursed \$72 attributable to Azzolina, causing the trust account balance relating to Azzolina to diminish to negative \$107.
- 98. Clark's trust account balance relating to Azzolina remained negative until September 11, 2008.

Re: Anderson

99. As of October 13, 2010, Clark was holding \$20 in his trust account relating to a client matter identified as Anderson.

100. On October 13, 2010, Clark paid himself \$50 via trust account check number 2027, which caused a negative \$30 balance attributable to the Anderson matter.

Re: Michael Baron

- 101. On March 17, 2009, Clark was holding \$35 in his trust account related to a client identified as Michael Baron. On that date, Clark paid himself \$50 via trust account check number 1934, which caused a negative balance of \$15 in Clark's trust account attributable to Baron.
- 102. On March 18 and 25, 2009, Clark made additional disbursements and withdrawals from his trust account, which resulted in a cumulative negative balance relating to Baron of \$315.
- 103. On September 2, 2009, Clark deposited a \$500 check resulting in a positive balance of \$185 relating to Baron.
- 104. On September 8, 2009, Clark disbursed \$200 to himself via trust account check number 1975, resulting in a negative balance of \$15 relating to Baron.

Re: John Boehnlein

105. On February 2, 2012, Clark was holding \$15 in his trust account related to a client matter identified as John Boehnlein.

106. On February 2, 2012, Clark disbursed \$35 via trust account check number 2045, causing a negative balance of \$20 attributable to the Boehnlein matter.

Re: Jacob

- 107. On March 22, 2010, Clark was holding \$3 in his trust account related to a client matter identified as Jacob.
- 108. On March 22, 2010, Clark disbursed \$20 via trust account check number 2003, causing a negative balance of \$17 attributable to the Jacob matter.

Re: Raymond MacDonald

- 109. On January 7, 2010, Clark was holding \$90 in his trust account related to a client matter identified as Raymond MacDonald.
- 110. On January 7, 2010, Clark disbursed \$148.85 via trust account check number 1951, resulting in a negative balance of \$58.85 attributable to the MacDonald matter.

Re: Tina Campbell

- 111. On July 14, 2009, Clark was holding \$59.73 related to a client matter identified as Tina Campbell.
- 112. On July 14, 2009, Clark disbursed \$600 to himself via trust account check number 1970, resulting in a negative balance of \$540.27 attributable to the Campbell matter.

- 113. On August 13, 2009, Clark disbursed \$50 to Tina Campbell, by trust account check number 1971, resulting in a further negative balance of \$590.27 attributable to the Campbell matter.
- 114. The Tina Campbell matter did not carry a positive balance in Clark's trust account until February 16, 2010, when Clark deposited \$1,846.05 of his own funds into his trust account.

Non-cooperation in OLR's Investigation

- 115. Clark had outstanding tax warrants filed by the Wisconsin Department of Revenue and federal tax liens filed by the Internal Revenue Service ("IRS") since at least 1991.
- 116. Clark told OLR that between January 31, 2008 and February 29, 2012, he had outstanding money due to the IRS; he had engaged in communications with the IRS regarding his assets and accounts during that time; and that he was subject to payment plans with the IRS.
- 117. Clark told OLR that he had a personal checking account at Twin Cities Financial ("TCF Bank") identified as account number XXXXXXXX89, and that he uses the TCF Bank account to pay his personal expenses and expenses related to his law practice.

⁷ Full account number not cited for security reasons.

- 118. However, OLR's audit of Clark's records revealed a pattern of Clark depositing checks that represented earned fees into his trust account and then disbursing the fees back to himself over a period of time in smaller amounts from his client trust account, which he always cashed at U.S. Bank, rather than depositing his earned fees in his personal TCF bank account.
- 119. Clark told OLR that he used his client trust account to clear checks. Clark stated that this meant that he passed checks through a financial institution to cash the checks.
- 120. When OLR asked Clark why he didn't deposit the earned fees checks into his personal checking account to "clear" them or deposit the disbursement checks from his trust account into his personal account, Clark had no explanation.
- 121. Clark provided inconsistent statements to OLR regarding his pattern of obtaining money from his trust account by cashing checks at U.S. Bank, rather than by using his own bank account at TCF Bank.
- 122. Clark told OLR that his pattern of depositing earned fees in his trust account and then disbursing the money to himself with checks he cashed at U.S. Bank occurred because the U.S. Bank branch office was more geographically convenient than the TCF Bank branch office.

- 123. When OLR advised Clark that his pattern, combined with the outstanding tax warrants filed by the Wisconsin Department of Revenue and outstanding amounts owed to the IRS, suggested Clark may have been intentionally hiding earned income in his trust account from the tax authorities, Clark denied to OLR on December 26, 2013 and January 9, 2014, that he maintained a pattern of depositing earned fees in his trust account to hide income from the tax authorities.
- 124. However, during a February 11, 2014 telephone conversation with OLRs investigator, Clark admitted that he allowed earned fees to "languish" in the trust account in order to protect them from levy by the tax authorities. OLR's investigator asked Clark if he was admitting that he had been depositing earned funds in his trust account to protect them from levy by the tax authorities, to which Clark replied, "Yes."
- 125. By letter to OLR dated March 12, 2014, Clark retracted his prior statements, and advised that he regretted making those statements because they are "not true" and he "did not mean it the way it sounds."
- 126. During a November 21, 2013 telephone call, Clark agreed to send OLR his tax returns for tax years 2008 through 2011 and to send whatever other records were available to show that he disclosed all of the income that passed through the

trust account to the tax authorities and that he disclosed his client trust account as one that may hold his assets.

- 127. On December 16, 2013, Clark provided OLR with his tax returns for tax years 2008 through 2011, but did not provide OLR with any other documents to support that he disclosed to the tax authorities the income flowing through his trust account or that he was comingling his own funds with client funds in the trust account.
- 128. During a January 9, 2014 telephone call with OLR, Clark agreed to send OLR copies of Quicken reports that he asserted would document his contemporaneous tracking of his own funds deposited in the trust account for purposes of reporting his income to the tax authorities. Clark failed to provide the Quicken reports to OLR as agreed, although he provided a partial response on February 26, 2014.
- 129. Clark agreed to provide OLR with copies of his "433 Forms" which are forms used by the IRS in collection efforts which relate to taxpayer disclosures to the IRS concerning the amount and location of income, as well as disclosure of accounts that hold personal funds. Clark failed to provide the 433 Forms to OLR as agreed, although he provided a partial response on February 26, 2014.

- asserted that in preparing his annual income tax returns, he would run a report of Profit and Loss on his Quicken account which would detail the income and expenses for the year. Clark asserted that he would prepare his Federal and Wisconsin income tax returns from that report.
- 131. Clark did not provide OLR with a copy of the Quicken reports or records or the Forms 433 with his January 19, 2014 letter.
- 132. On February 11, 2014, Clark told OLR's investigator that he had not been able to find copies of the 433 forms he had filed with the IRS.
- 133. Clark told OLR that he has been on monthly payment plan with the IRS which at times got cut off due to issues related to his failure to make the monthly payments, but that the IRS was now taking the monthly amount directly from Clark's social security checks.
- 134. On Clark's federal tax return for 2008, he reported gross receipts or sales of \$16,581 from his law practice.
- 135. OLR's audit revealed that in 2008, Clark made payments of at least \$15,841.20 from his trust account to himself through checks and cash withdrawals.

- 136. Clark was also holding at least \$5,764.04 of additional earned fees in his trust account which were deposited, but not disbursed, in 2008.
- 137. Clark therefore had gross receipts from his law practice in 2008 of at least \$21,605.24, before accounting for any fees or income that he did not flow through the trust account.
- 138. For taxable year 2009, Clark reported gross receipts to the IRS from his law practice of \$9,778. OLR's audit revealed that Clark disbursed at least \$12,346.81 to himself from his trust account in 2009.
- 139. On February 26, 2014, Clark provided OLR with some of the documents he had previously failed to provide, including documents labeled Profit and Loss Statements, copies of Forms 433-F Clark filed with the IRS in 2009 and 2011, and a copy of a Form 433-A which Clark had filed with the IRS in 2012.
- 140. On the 433 Forms Clark filed with the IRS, Clark failed to disclose that he was using his trust account for his personal financial transactions and failed to disclose the amounts of personal assets he was holding in his client trust account.

141. On Form 433-F, filed on May 5, 2009 with the IRS, Clark did not include at least \$3,027.04 of his earned fees he was holding in his trust account in various client matters.

COUNT SIX

142. By engaging in a course of conduct to protect or hide income and assets from the Wisconsin Department of Revenue and/or the Internal Revenue Service, including by depositing earned fees and funds belonging to Clark and/or the Law Offices of Raymond M. Clark in his client trust account, Clark placed and retained funds in his trust account that did not reasonably relate to monthly service charges, in violation of SCR 20:1.15(b) (3)8.

COUNT SEVEN

143. By engaging in a course of conduct to protect or hide income and assets from the Wisconsin Department of Revenue and/or the Internal Revenue Service, including by depositing earned fees and funds belonging to Clark and/or the Law Offices of Raymond M. Clark in his client trust account, Clark placed and retained funds in his trust account that did not reasonably relate to monthly service charges, in violation of 20:8.4(c).

⁸ SCR 20:1.15(b)(3) provides: "No funds belonging to the lawyer or law firm, except funds reasonably sufficient to pay monthly account service charges, may be deposited or retained in a trust account."

COUNT EIGHT

144. By taking cash withdrawals from his client trust account, taking cash from his deposits to his client trust account, and by issuing checks payable to cash from his client trust account, Clark made prohibited transactions from his client trust account and from deposits to his client trust account, in violation of SCR 20:1.15(e)(4) a.

COUNT NINE

145. By disbursing funds from his client trust account in excess of the amount he was then holding in trust for specified client matters, Clark disbursed funds from an IOLTA account and created a negative balance with respect to individual clients or matters, in violation of SCR 20:1.15(f)(1)b⁹.

COUNT TEN

146. By making misrepresentations to OLR about the purpose and intent of his course of conduct that included his depositing of earned fees and funds belonging to Clark and/or the Law Offices of Raymond M. Clark in his client trust account, Clark willfully failed to provide relevant information, failed to

⁹ SCR 20:1.15(f)(1)b provides: "A lawyer shall not disburse funds from an IOLTA account or any pooled trust account that would create a negative balance with respect to any individual client or matter."

answer questions fully, or to furnish documents to OLR, in violation of SCR $22.03(6)^{10}$, and SCR $20:8.4(h)^{11}$.

WHEREFORE, the Office of Lawyer Regulation asks that Attorney Raymond M. Clark be found in violation of the Supreme Court Rules as alleged in connection with Counts One through Ten of this complaint; that the Court suspend Clark's license to practice law in Wisconsin for 15 months; and that the Supreme Court of Wisconsin order such other and further relief as may be just and equitable, including an award of costs.

Dated this 9th Day of October, 2014.

OFFICE OF LAWYER REGULATION

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scr 22.03(6) provides: "In the course of the investigation, the respondent's wilful failure to provide relevant information, to answer questions fully, or to furnish documents and the respondent's misrepresentation in a disclosure are misconduct, regardless of the merits of the matters asserted in the grievance..."

SCR 20:8.4(h) provides: "It is professional misconduct for a lawyer to...fail to cooperate in the investigation of a grievance filed with the office of lawyer regulation as required by... SCR 22.03(6)...