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ISB No. 2576

BEFORE THE PROFESSIONAL CONDUCT BOARD
OF THE IDAHO STATE BAR

IDAHO STATE BAR,)	
)	
Plaintiff,)	File No. FC 11-11
)	
v.)	
)	COMPLAINT
JOHN T. BUJAK,)	
)	
Respondent.)	
_____)	

The Idaho State Bar ("ISB"), by and through its counsel Bradley G. Andrews, hereby charges John T. Bujak, an attorney admitted to practice before the courts of Idaho, with professional misconduct as follows:

1. John T. Bujak (hereinafter referred to as "Respondent"), was admitted to the practice of law in the State of Idaho in 1997, at which time he took the oath required for admission, wherein he agreed to abide by the rules of professional conduct adopted by the Idaho Supreme Court. At all times mentioned herein, Respondent has continuously been under the jurisdiction of the Idaho Supreme Court as a member of the ISB on active status.

2. The Idaho Supreme Court has adopted the Idaho Rules of Professional Conduct ("I.R.P.C."), governing the professional conduct of attorneys licensed to practice in the State of Idaho, which Rules were in effect at all times relevant herein.

3. Pursuant to Rule 511(a) of the Idaho Bar Commission Rules ("I.B.C.R."), the Board of Commissioners has approved the filing of these charges against the Respondent.

COUNT ONE

4. On October 15, 2004, M.K. Littleton ("M.K.") entered into a Contract and Bill of Sale for Real Property ("Contract") with Danny Miller ("Miller"). Pursuant to the Contract, Miller agreed to purchase M.K.'s real property and mobile home (collectively "Property") for \$32,400, with monthly payments of \$540 for the first six months and monthly payments of \$270 thereafter. On October 22, 2004, Miller provided M.K. with a \$540 check for the first installment. M.K. cashed that check on October 25, 2004.

5. In November 2004, attorney Randolph Farber assisted M.K. in putting his affairs in order because M.K.'s health was deteriorating. Mr. Farber learned about the Contract, questioned its validity and advised Miller not to make any further payments because M.K.'s mental competency was at issue.

6. On November 17, 2004, Miller sent M.K. a letter stating that he considered the Contract binding but would hold all further payments in his bank account until the matter was resolved.

7. On February 6, 2005, M.K. passed away.

8. In April 2005, M.K.'s son, Rocky, met with Mr. Farber to discuss the settlement of M.K.'s estate ("Estate"). At or around that time, Miller informed Rocky that he considered the Contract binding.

9. On May 18, 2005, at Rocky's request, Mr. Farber filed a Petition for Formal Probate of Will and related documents in Canyon County. On June 20, 2005, the Court appointed Rocky as Personal Representative of the Estate.

10. In July and September 2005, Miller filed two separate claims against the Estate in the probate proceedings. The Court denied both claims.

11. In October 2005, Miller filed a Petition against the Estate. Mr. Farber determined that he would likely be called as a witness at trial to testify about M.K.'s competency and therefore advised the Estate to retain substitute counsel.

12. In December 2005, Mr. Farber contacted Respondent, who agreed to represent the Estate and accepted a \$500 initial retainer from Rocky. Thereafter, Respondent was unable to negotiate a rescission of the Contract and trial on the Petition was scheduled.

13. On May 22, 2006, Respondent represented the Estate at trial. After oral argument, the Court denied Miller's Petition.

14. On July 18, 2006, Miller filed a civil action against the Estate, alleging breach of contract. On November 22, 2006, Respondent filed the Estate's Answer and Counterclaim. Thereafter, the parties engaged in discovery.

15. On February 4, 2008, the Estate and Miller filed a Stipulated Trial Memorandum. On April 4, 2008, after oral argument, the Court found that the Estate had breached the Contract.

16. On April 23, 2008, the Court entered an Order providing that the Contract would be effective as of May 1, 2008, and instructing the parties to establish an escrow account for Miller's payments.

17. On April 30, 2008, Miller delivered to Respondent's office a \$1,080 check, made payable to the "Estate of M.K. Littleton." Respondent gave Miller a receipt confirming the \$1,080 payment to the "Littleton Estate Account" and negotiated Miller's check. Respondent did not deposit the funds into his trust account.

18. On or around April 30, 2008, Respondent sent Rocky a letter informing him of the Court's decision. He stated that Miller had delivered to his office a \$1,080 check, payable to the Estate, and recommended that an escrow account be established for future payments. Thereafter, Respondent failed to deliver any portion of Miller's \$1,080 payment to the Estate.

19. On May 6, 2008, Respondent filed a Motion to Alter/Amend Judgment in the breach of contract case.

20. On May 14, 2008, Respondent filed a motion to disallow Miller's attorney's fees and costs. A hearing on the Estate's pending motions was scheduled for September 25, 2008.

21. On June 2, 2008, Miller delivered to Respondent's office a \$540 check, made payable to the "Estate of M.K. Littleton." Respondent provided Miller with a receipt confirming the \$540 payment to the "M.K. Littleton Estate." Thereafter, Respondent negotiated Miller's check but did not deposit the funds into his trust account, inform Rocky about the payment or deliver any funds to the Estate.

22. On or around July 1, 2008, an escrow account was opened at Pioneer Title Company ("Pioneer Title") for Miller's payments to the Estate.

23. On July 2, 2008, Pioneer Title sent Respondent a \$540 check made payable to "Estate of M.K. Littleton c/o John T. Bujak." Respondent negotiated that check but did not deposit the funds into his trust account, inform Rocky about the payment or deliver any funds to the Estate.

24. On August 1, 2008, Pioneer Title sent Respondent a \$540 check made payable to "Estate of M.K. Littleton c/o John T. Bujak." Respondent negotiated that check but did not deposit the funds into his trust account, inform Rocky about the payment or deliver any funds to the Estate.

25. On September 8, 2008, Pioneer Title sent Respondent a \$270 check made payable to "Estate of M.K. Littleton c/o John T. Bujak." Respondent negotiated that check but did not deposit the funds into his trust account, inform Rocky about the payment or deliver any funds to the Estate.

26. On September 25, 2008, the Court denied the Estate's pending motions after hearing.

27. On October 27, 2008, Respondent filed a Motion to Withdraw as the Estate's attorney. A hearing on that motion was scheduled for November 25, 2008.

28. On November 3, 2008, Pioneer Title sent Respondent a \$270 check made payable to "Estate of M.K. Littleton c/o John T. Bujak." Respondent negotiated that check but did not

deposit the funds into his trust account, inform Rocky about the payment or deliver any funds to the Estate.

29. On November 25, 2008, the Court granted Respondent's Motion to Withdraw. Thereafter, Mr. Farber represented the Estate.

30. On December 4, 2008, Pioneer Title sent Respondent a \$270 check made payable to "Estate of M.K. Littleton c/o John T. Bujak." Respondent negotiated that check but did not deposit the funds into his trust account, inform Rocky or Mr. Farber about the payment or deliver any funds to the Estate.

31. On January 6, 2009, Pioneer Title sent Respondent a \$270 check made payable to "Estate of M.K. Littleton c/o John T. Bujak." Respondent negotiated that check but did not deposit the funds into his trust account, inform Rocky or Mr. Farber about the payment or deliver any funds to the Estate.

32. On February 4, 2009, Pioneer Title sent Respondent a \$270 check payable to "Estate of MK Littleton c/o John T. Bujak." Respondent received but did not negotiate that check. He failed to inform Rocky or Mr. Farber about the payment or deliver the check or any funds to the Estate.

33. On August 6, 2009, Pioneer Title sent Respondent a \$270 check payable to "Estate of MK Littleton c/o John T. Bujak." Respondent received but did not negotiate that check. He failed to inform Rocky or Mr. Farber about the payment or deliver the check or any funds to the Estate.

34. On October 2, 2009, Pioneer Title sent Respondent a \$270 check payable to "Estate of MK Littleton c/o John T. Bujak." Respondent received but did not negotiate that check. He failed to inform Rocky or Mr. Farber about the payment or deliver the check or any funds to the Estate.

35. Also on October 2, 2009, Mr. Farber sent Respondent a letter indicating that, according Respondent, certain of the Estate's funds were held in Respondent's trust account. He asked Respondent to advise him of the amount of Estate funds held in the trust account.

36. On November 30, 2009, Respondent sent Mr. Farber a letter stating:

At the point you took over the case, payments were made by Danny Miller to Pioneer Title Company for the benefit of the Littleton Estate. I continued to receive these checks in the mail on behalf of the estate. Since I no longer have authority to act on behalf of Mr. Littleton, the checks have been returned.

Respondent provided the escrow account number and indicated that Pioneer Title could provide an accounting of the funds paid thus far and disburse funds pursuant to Rocky's instructions.

37. On January 20, 2010, Mr. Farber sent Pioneer Title a letter advising of his representation and requesting complete copies of all checks issued to the Estate. Mr. Farber also obtained copies of the two checks delivered by Miller directly to Respondent. During their subsequent communications about the missing funds, Respondent informed Mr. Farber that he would deliver the funds from his trust account as soon as he received a final accounting of the Estate.

38. On August 20, 2010, Mr. Farber sent Rocky a letter stating that Respondent had made it "very clear" that he would reimburse the Estate "once it is determined how much money

he took in from [sic] [the Estate]." Mr. Farber agreed to send Respondent a formal demand upon confirmation of the total amount due.

39. On November 1, 2010, Respondent and his wife, Pepper, filed a Chapter 7 Bankruptcy Petition and related documents in the U.S. Bankruptcy Court for the District of Idaho. Respondent did not list the Estate as a creditor in the bankruptcy.

40. On November 23, 2010, Mr. Farber filed a grievance against Respondent.

41. On December 8, 2010, the creditors meeting was held in Respondent's bankruptcy case. Mr. Farber attended and questioned Respondent about his trust account funds.

42. On March 10, 2011, Respondent submitted a response to Mr. Farber's grievance. He stated that, contrary to his instructions to Pioneer Title that all payments be sent directly to Rocky, Pioneer Title continued to send the payment checks to him. He stated that he initially notified Rocky about the payments and deposited the checks. However, after he withdrew from the representation, he "stopped accepting the checks" from Pioneer Title. Respondent stated that he had informed Mr. Farber that he "may still have some of the Estate's money in [his] trust account" and believed they were "working towards satisfactorily resolving any outstanding issues" until he was advised otherwise at the creditors meeting.

43. On March 16, 2011, Rocky filed a Client Assistance Fund ("CAF") claim, contending that Respondent negotiated checks to the Estate and refused to provide those funds to the Estate despite repeated requests.

44. On April 21, 2011, Respondent submitted a response to the CAF claim, denying that he engaged in dishonest conduct.

45. On September 8, 2011, the Client Assistant Fund Committee ("Committee") held a hearing. Mr. Farber appeared for Rocky and the Estate. Respondent did not participate. Miller testified that he delivered two checks, totaling \$1,620, to Respondent's office and obtained receipts confirming those payments. Anna Engman, a Home Federal Bank employee, testified that the two checks Miller delivered to Respondent were negotiated. Respondent signed both checks. Deanna Spjute, a Pioneer Title employee, testified that with the exception of three checks dated February 4, 2009, August 6, 2009 and October 2, 2009, all checks submitted by Pioneer Title to Respondent were negotiated. Rocky testified that he did not receive any of the funds paid by Miller to the Estate and did not authorize Respondent to negotiate the checks or deposit funds belonging to the Estate.

46. On September 26, 2011, the Committee issued its Findings of Fact, Conclusions of Law and Recommendation ("Recommendation"), finding that Respondent engaged in dishonest conduct, as defined in I.B.C.R. 601(e) as:

wrongful acts committed by a lawyer in the nature of theft or embezzlement of money or the wrongful taking or conversion of money, property or other things of value, including but not limited to:

- (1) Refusal to refund unearned fees received in advance as required by Rule 1.16 of the Idaho Rules of Professional Conduct; or
- (2) The borrowing of money from a client without intention to repay it, or with disregard of the lawyer's inability or reasonably anticipated inability to repay it.

The Committee found that Respondent received Miller's payments on behalf of the Estate and failed to provide those funds to the Estate. The Committee noted that in the disciplinary matter, Respondent acknowledged that he received and endorsed the payment checks but failed to

provide any explanation as to why he did not promptly disburse the funds to the Estate. The Committee found that Respondent received a total of \$3,780 on the Estate's behalf, negotiated the payments without authorization and failed to disburse the funds to the Estate as required under I.R.P.C. 1.15. According to the Committee, Respondent's conduct constituted the wrongful taking or conversion of money and recommended that the CAF reimburse the Estate a total of \$3,780 due to Respondent's dishonest conduct. Respondent did not file any exceptions to the Recommendation as provided in I.B.C.R. 605(d)(3).

47. The conduct described in paragraphs 1 through 46 of this count constitutes violations of Idaho Rules of Professional Conduct 1.4 [Failure to reasonably communicate with client]; 1.15(a) [Failure to hold property of clients or third persons separate from lawyer's own property]; 1.15(c) [Failure to promptly notify client upon receipt of funds and promptly deliver to client funds that the client is entitled to receive]; 8.1 [Knowingly making a false statement of material fact in connection with a disciplinary matter]; 8.4(c) [Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation]; and 8.4(d) [Engaging in conduct that is prejudicial to the administration of justice].

COUNT TWO

48. In March 2001, Charlotta Hook ("Charlotta") retained Respondent to represent her on charges that she left the scene of an accident. That case was dismissed in April 2001. Thereafter, Charlotta continued to visit Respondent's office and befriended his assistant, Mary Ann Hanks ("Mary Ann").

49. In or around April 2006, Charlotta, then 80 years old, requested that Respondent prepare her estate planning documents.

50. On May 1, 2006, Charlotta executed a Last Will and Testament of Charlotta Hook ("Will") prepared by Respondent. The Will appointed Respondent as personal representative and Mary Ann as an alternate personal representative, bequeathed Charlotta's entire estate to Respondent and Mary Ann in equal shares and specifically excluded Charlotta's sister. In making the bequests, Charlotta acknowledged that Respondent "advised [her] to seek independent legal counsel regarding this matter and ha[d] encouraged [her] to consider leaving [her] estate to charity, churches and/or other members of [her] family." However, because of her "friendship" with Respondent and Mary Ann, Charlotta decided to leave them her entire estate and not seek other legal counsel before executing the Will. Upon information and belief, Charlotta executed the Will at her bank.

51. In or around July 2006, Charlotta requested that Respondent prepare trust documents to protect her assets from creditors. On July 26, 2006, Charlotta executed an Irrevocable Trust Agreement ("Trust Agreement") prepared by Respondent that established the Novotny Trust ("Trust"). The Trust Agreement provided that Charlotta, as grantor, desired to "create trusts for the benefit of her friends Mary Anne Hanks and John Bujak" and irrevocably assigned to Mary Ann, as Trustee, real property ("Property") consisting of her home. A bank account and motor vehicle were also transferred to the Trust. Respondent was named successor Trustee.

52. Pursuant to the Trust Agreement, the Trustee, Mary Ann, was to hold the Property for the "primary benefit" of Charlotta during her lifetime. Upon Charlotta's death, Respondent and Mary Ann were entitled to receive the entire net income of the Trust as beneficiaries in equal shares. The Trust Agreement provided that if Respondent or Mary Ann experienced a "financial emergency" in the meantime, the Trustee would pay those sums deemed necessary and

appropriate from the Trust corpus for the beneficiaries' benefit, provided those sums could not be used to satisfy any judgments or debts. According to the Trust Agreement, the Trust was "irrevocable" and Charlotta waived "all rights and powers" to amend the Trust or the terms of the Trust Agreement. Charlotta also "relinquish[ed] absolutely and forever all [her] possession or enjoyment of, or right to the income from, the trust property, and all [her] right and power, whether alone or in conjunction with others, to designate the persons who shall possess or enjoy the trust property, or the income." Charlotta executed the Trust Agreement as grantor and Mary Ann executed the Trust Agreement as "Original Trustee" at Respondent's office. Respondent was present when the Trust Agreement was executed.

53. Also on July 26, 2006, Charlotta executed a Quitclaim Deed ("Deed") transferring her Property to the Trust. The Deed was notarized by Suzanne Hill, who was Respondent's assistant. Respondent's firm, Bujak Law, recorded the Deed on August 10, 2006.

54. Sometime in 2011, Charlotta contacted attorney Kathy Edwards to review the Will and Trust documents.

55. On April 21, 2011, Ms. Edwards filed Charlotta's Petition for Declaratory Relief in Canyon County against Respondent and Mary Ann. Charlotta sought to remove Mary Ann as Trustee and requested a declaration by the Court that the Trust Agreement was null and void. In the Petition, Charlotta alleged that Respondent and/or Mary Ann made representations that the Trust would "preserve and protect her assets for her heirs" and that it was "legal and appropriate" to list Respondent and Mary Ann as beneficiaries. Charlotta was allegedly informed that she could change the beneficiaries at a later time but subsequently learned that the Trust was irrevocable and did not protect her assets for her heirs. She alleged that Respondent was

prohibited from preparing the Will and Trust Agreement, both of which named him as a beneficiary, and that he had engaged in fraud and undue influence based on Charlotta's advanced age, their attorney-client relationship and her lack of any family present when the Will and Trust Agreement were prepared and executed.

56. In a supporting Affidavit, Charlotta stated that she had asked Respondent to prepare documents to preserve her assets for use by herself and her heirs. She contended that Respondent and Mary Ann convinced her to execute the Trust Agreement by informing her that all of her assets would be protected and disbursed to her heirs upon her death. She further contended that Respondent and Mary Ann informed her that she could amend the Trust Agreement and/or Trust at any time and that she should "just list them as beneficiaries because [she] needed to list someone rather than having no beneficiaries." Charlotta stated that she did not intend for Respondent or Mary Ann to inherit her property and asserted that she did not consider either of them a personal friend at the time of the transactions or thereafter. She stated that Respondent and/or Mary Ann also caused her to execute the Deed and made that transaction "permanent and unchangeable, which was not [her] wish."

57. Between April 28, 2011 and July 20, 2011, Respondent and Ms. Edwards corresponded about a possible resolution in the civil case. At no time during those communications did Respondent indicate that he did not prepare the Will and/or Trust documents. On May 26, 2011, Respondent advised Ms. Edwards that neither he nor Mary Ann would admit any wrongdoing. On July 6, 2011, Ms. Edwards sent Respondent a proposed Stipulation for Entry of Order for Declaratory Relief ("Stipulation"), which declared the Trust null and void, restored the Property to Charlotta and provided that the Court made no findings as to the fault of any party.

58. On July 20, 2011, Respondent and Mary Ann executed the Stipulation. Ms. Edwards and Charlotta executed the Stipulation the next day and filed it with the Court on July 25, 2011.

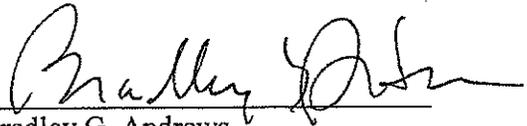
59. On August 9, 2011, the Court entered an Order for Declaratory Relief consistent with the Stipulation.

60. The conduct described in paragraphs 48 through 59 of this count constitutes violations of Idaho Rules of Professional Conduct 1.7(a) [Conflict of interest] and 1.8(c) [Solicitation of substantial gift from a client, including a testamentary gift, or preparation on behalf of a client an instrument giving the lawyer or a person with whom the lawyer has a close relationship any substantial gift].

WHEREFORE, based on the matters alleged above, Plaintiff prays for judgment against the Respondent as follows:

That Respondent be suspended from the practice of law; that he be ordered to pay restitution; that he be ordered to pay the costs and expenses incurred in investigating and prosecuting this matter; and for other such relief as is deemed necessary and proper.

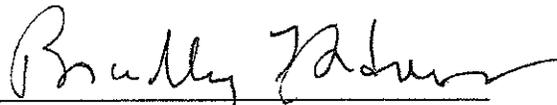
Dated this 21st day of October, 2011.


Bradley G. Andrews
Bar Counsel

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of October, 2011, I served a true and correct copy of the foregoing **COMPLAINT** upon the following by U.S. certified mail, return receipt requested, to the address indicated below:

John T. Bujak
10400 W. Overland Road, Ste. 348
Boise, ID 83709



Bradley G. Andrews
Bar Counsel