

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

In the Matter of

ISAAC H. MARKS, SR., ESQUIRE

Respondent

**A Member of the Bar of the District
of Columbia Court of Appeals**

Bar Number: 411706

Date of Admission: September 2, 1987

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Disciplinary Docket No. 2013-D208

PETITION INSTITUTING FORMAL DISCIPLINARY PROCEEDINGS

A. This Petition (including the attached Specification of Charges which is made part of this Petition) notifies Respondent that disciplinary proceedings are hereby instituted pursuant to Rule XI, § 8(c), of the District of Columbia Court of Appeals' Rules Governing the Bar (D.C. Bar R.).

B. Respondent is an attorney admitted to practice before the District of Columbia Court of Appeals on the date stated in the caption of the Specification of Charges.

C. A lawyer member of a Hearing Committee assigned by the Board on Professional Responsibility (Board) pursuant to D.C. Bar R. XI, § 4(e)(5), has approved the institution of these disciplinary proceedings.

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

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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).

Jurisdiction for this disciplinary proceeding is prescribed by D.C. Bar Rule XI. Pursuant to D.C. Bar Rule XI, 1(a), jurisdiction is found because:

1. Respondent is a member of the Bar of the District of Columbia Court of Appeals, having been admitted by Motion on September 2, 1987, and assigned Bar number 411706.

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

Background

2. In 2002, June C. McCloud's grandson, Benjamin Brown, died after being transported from the District of Columbia jail to a hospital for a medical procedure. Ms. McCloud hired Respondent to sue the District of Columbia, which he did. The city settled the civil suit, and Ms. McCloud received approximately \$200,000 from the settlement.

3. At that time, Respondent practiced law with the firm of O'Malley, Miles, Nylen & Gilmore, P.A. In March 2012, Respondent left the O'Malley firm, and in April 2012, Respondent opened his own law firm. Both offices were in Beltsville, Maryland.

4. Ms. McCloud had a granddaughter, Stormy J. Hill, who suffered from brain damage that caused cognitive impairment. Because of her disability, Ms. Hill received \$649 per month in social security benefits. Ms. Hill lived with Ms. McCloud at her home located at 4519 Georgia Ave., N.W., Washington, D.C. 20010. Ms. McCloud took care of Ms. Hill and managed her financial affairs.

5. In February 2006, Ms. McCloud hired Respondent to create a revocable trust (McCloud Trust). Ms. McCloud was the trustee, Ms. Hill was the sole beneficiary, and Respondent was designated as successor trustee after Ms. McCloud's death.

6. The McCloud Trust was funded with (1) the house that Ms. McCloud owned and lived in with Ms. Hill (titled to the McCloud Trust), (2) at least one bank account, and (3) several outstanding loans owed to Ms. McCloud to be collected, including, at least \$12,300 loaned to Pastor Tucker, at least \$6,500 loaned to New Commandment Baptist Church (the Church), where Pastor Tucker was employed, and at least \$38,000 loaned to Jobs Partnership, Inc., where Pastor Tucker held the position of President and served on the board.

7. The McCloud Trust provided that after Ms. McCloud's death, Respondent, as successor trustee, take the following actions: (1) sell the family home where Ms. Hill lived "as expeditiously as practicable so as not to unnecessarily minimize the value of the Trust Estate and to allow my granddaughter, Stormy J. Hill, to find safe living accommodations . . ."; (2) place proceeds from the sale of the house in a special needs trust for the benefit of Ms. Hill; and (3) provide an accounting to Ms. Hill.

8. On October 22, 2009, Ms. McCloud died intestate, and Respondent became the trustee of the McCloud Trust. Ms. Hill was the sole surviving heir and the only beneficiary of Ms. McCloud's estate.

9. After he became trustee, Respondent did not manage the McCloud Trust in accordance with its intent and provisions to treat it as a special needs trust for the benefit of Stormy Hill, including selling the property and attempting to collect the outstanding loans.

10. When Ms. McCloud died, the McCloud Trust bank account held approximately \$70,000. Respondent took control of the account and changed its billing address from Ms. McCloud's home address to Respondent's office address.

11. On November 5, 2009, Respondent filed a petition in the District of Columbia Superior Court (Superior Court) seeking the appointment of a guardian and conservator for Ms. Hill. *In re Stormy Hill*, 2009 INT 302. The court appointed Karen S. Walker, Esquire, as guardian *ad litem* for Ms. Hill and appointed Mathew Hertz, Esquire, to represent Ms. Hill.

12. In December 2009, Mr. Hertz asked Respondent for an inventory and accounting of the McCloud Trust assets, including the amount held in trust, the amount of liquid assets, the current balance owed on a reverse mortgage, and all payments made from trust funds. Respondent did not answer these questions.

13. In November and December 2009, the Social Security Administration continued to deposit Ms. Hill's monthly benefits in the amount of \$649 directly into the McCloud Trust bank account. Before Ms. McCloud died, she would distribute the funds to Stormy as needed. As of December 31, 2009, Respondent held \$1,298 in the McCloud Trust account that belonged to Ms. Hill. Mr. Hertz asked Respondent to provide the funds belonging to Ms. Hill, but Respondent did not do so.

Respondent's Fees

14. On December 16, 2009, the O'Malley firm generated an invoice seeking \$14,414 of attorney's fees for services Respondent purportedly rendered from October 20, 2009, through December 15, 2009, as trustee of the McCloud Trust.

15. On December 22, 2009, Mr. Hertz, Ms. Hill's court-appointed attorney in the Hill intervention proceeding, deposed Respondent to ask him questions about the creation of the McCloud Trust, and the status of its assets. At the deposition, Respondent provided Mr. Hertz with a copy of the McCloud Trust bank statements showing that, as of December 11, 2009, the account had a balance of \$67,379.90.

16. On December 29, 2009, a week after his deposition, Respondent paid himself \$14,400 of attorney's fees from the McCloud Trust.

17. On January 4, 2010, the court conducted a hearing to determine Ms. Hill's capacity and whether Ms. Hill required appointment of a guardian or conservator. Ms. Hill agreed to the appointment of Ms. Walker as her guardian. The court did not appoint a conservator to manage Ms. Hill's finances.

Request for Accounting

18. On January 22, 2010, a month after Respondent's December 22, 2009 deposition, Ms. Walker filed an emergency petition seeking a full inventory and accounting of the McCloud Trust.

19. On January 28, 2010, the court ordered Respondent to appear for a show cause hearing on February 26, 2010, to explain why he should not provide to Ms. Walker and Mr. Hertz a full accounting and access to McCloud Trust assets.

20. On February 2, 2010, Respondent filed what he titled as a response to fee petition of Mr. Hertz, court-appointed counsel, but Mr. Hertz had not filed a petition for compensation with the court. Respondent's pleading did not address Ms. Walker's emergency petition.

21. In Respondent's February 2, 2010 pleading, Respondent wrote that Mr. Hertz had asked for \$13,105.25 of fees, to be paid from Ms. Hill's estate. Respondent told the court the McCloud Trust bank account had a "date-of-death balance of approximately \$70,000." Respondent did not disclose to the court, Ms. Walker, or Mr. Hertz that on December 29, 2009, he paid himself attorney's fees in the amount of \$14,400 from the McCloud Trust account, or that the current trust account balance was approximately \$52,000.

22. On February 17, 2010, Respondent filed an opposition to Ms. Walker's January 22, 2010 emergency petition seeking an inventory and full accounting. Respondent denied Ms. Walker's claim that he had not provided an inventory and accounting, and wrote that her claim was "patently false." Respondent stated that he had accounted for the trust assets by providing Ms. Walker with a copy of the McCloud Trust document, which identified the assets, and by providing copies of McCloud Trust bank statements at his December 22, 2009 deposition. Respondent attached copies of the December 2009 bank records that he gave to Mr. Hertz at his deposition, which showed the McCloud Trust account balance of approximately \$70,000 as of December 11, 2009. Respondent did not attach current bank statements, disclose that he had paid himself \$14,400 of attorney's fees from trust assets on December 29, 2009, or notify the court that the current trust account balance was approximately \$52,000.

23. On February 26, 2010, the court held a show cause hearing. Respondent, Ms. Walker, Mr. Hertz, and Ms. Hill appeared. Respondent told the court he would provide the requested financial records to Ms. Walker and Mr. Hertz. The court directed Respondent to provide bank

records, including copies of checks by March 2, 2010, and denied Ms. Walker's petition as moot. On March 1, 2010, Respondent provided Ms. Walker and Mr. Hertz copies of the McCloud Trust bank statements for January and February 2010.

24. On February 26, 2010, Ms. Walker filed a petition for unsupervised probate of the administration of Ms. McCloud's estate in Superior Court in the matter of *In re McCloud*, Case No. 2010 ADM 189. As guardian of the sole heir, Ms. Walker requested her appointment as the personal representative, and the court granted it.

25. On March 3, 2010, Ms. Walker, serving as Ms. Hill's guardian, asked Respondent to send her the SSI funds belonging to Ms. Hill in the amount of \$1,298 that Respondent held in the McCloud Trust, by a check made payable to Ms. Hill. Respondent did not respond or deliver the funds.

Removal of Respondent as Trustee

26. After he became trustee of the McCloud Trust, Respondent did not manage the McCloud Trust in accordance with its intent and provision for the benefit of Ms. Hill. Respondent did not attempt to sell the house, or attempt to collect the outstanding loans owed by Pastor Tucker, the Church, and Jobs Partnership, Inc.

27. Respondent did not pay property taxes for the 2011 tax year or the first half of the 2012 tax year. As a result, the District of Columbia assessed penalties and interest.

28. On March 16, 2010, Respondent had the O'Malley firm generate an invoice addressed to Respondent seeking payment of \$5,619.59 for services Respondent purportedly rendered from January 15, 2010 – March 5, 2010. The invoice reflected the past due balance of \$5,574 as listed on the January 15, 2010 bill, and a total balance due of \$11,193.59.

29. On March 25, 2010, Ms. Walker again asked Respondent to pay Ms. Hill the \$1,298 belonging to Ms. Hill. Respondent did not pay Ms. Hill the funds.

30. On March 30, 2010, Respondent paid himself \$10,074.59 from the McCloud Trust.

31. In a letter dated April 14, 2010, Respondent declined to provide Ms. Walker with records relating to the McCloud Trust bank account, the home, and outstanding loans owed to the Church and Pastor Tucker because they “have no bearing on or relation to the McCloud Estate.” Respondent did not pursue collection of the outstanding loans.

32. In March 2011, Ms. Walker sent Respondent the property’s tax bill for the first half of 2011. Respondent did not pay the tax bill.

33. On July 10, 2012, Ms. Walker sent to Respondent a notice from the District of Columbia dated June 25, 2012, stating its intent to sell the house based on Ms. McCloud’s failure to pay taxes for 2011 and the first six months of 2012.

34. On July 16, 2012, Respondent paid the District of Columbia \$1,508.08 from the McCloud Trust to pay its property taxes.

35. On July 19, 2012, Ms. Walker filed a petition to remove Respondent as successor trustee of the McCloud Trust. Ms. Walker alleged that Respondent had failed to act in accordance with the terms of the trust, including, among other things, his failure to (1) provide necessary financial support to the beneficiary, Stormy Hill; (2) maintain the home, an asset of the trust; and (3) pay taxes on the property.

36. On August 8, 2012, Respondent filed an opposition to the petition to remove him and described Ms. Walker’s petition as “frivolous and without merit.” In response to the allegation that he “refused to use trust assets to maintain or repair the real property . . .”, Respondent wrote: “[T]he Guardian has *never* notified the Successor Trustee that Ms. Hill lived in the Property, much less that

the Property required funds for upkeep.” Respondent did not tell the court that he knew that Ms. Hill lived in the McCloud Trust property.

37. In response to the assertion that Respondent “compensate[ed] himself for administering the trust while failing to carry out his duties,” Respondent wrote (1) he had not filed an annual report of the trust assets “due to inactivity in the Trust estate,” and (2) he would provide a report to the Guardian within 30 days. Respondent did not provide Ms. Walker a report or an accounting.

38. On August 22, 2012, the court denied Ms. Walker’s petition to remove Respondent, without prejudice, and allowed her to re-file the petition with payment of the applicable filing fee and certificate of service. Ms. Walker did not re-file the petition.

39. On November 15, 2012, Respondent went to Bank of America, and using a debit card, withdrew \$1,750 cash from the McCloud Trust bank account. Respondent did not use the funds to benefit the McCloud Trust or Ms. Hill.

Superior Court Auditor Master Proceedings

40. On March 14, 2013, Ms. Walker filed an Emergency Petition relating to Ms. Hill’s medical condition, but unrelated to the financial matters or Respondent’s administration of the McCloud Trust.

41. On April 2, 2013, the court issued a Memorandum Order responsive to the Emergency Petition, and *sua sponte* addressed issues relating to Respondent’s conduct as trustee of the McCloud Trust. The court noted that no one had “created a special needs trust for [Ms. Hill], as Ms. McCloud’s trust would appear to direct . . .” Judge Peter Wolf wrote:

The court has no idea why a petition to establish the subject’s special needs trust has not been filed, whether [Respondent] has complied with the docket entry of February 26, 2010 above ‘to provide bank statements and copies of any checks from December

2009 – February 2010 to the Guardian by March 2, 2010,’ what has happened in the three years since, whether any accountings exist or should be made, whether [Respondent] has paid himself any fees as McCloud trustee

42. In the April 2, 2013 Memorandum, the court ordered that before May 13, 2013, Respondent must (1) “file and serve a complete initial inventory of the McCloud trust, and yearly accountings therefor from its inception through March 31, 2013; (2) “file and serve a complete chronological explanation and description of the history of said trust through the current time;” and (3) appear at a hearing “fully informed and cooperative about the McCloud Trust and prepared to answer any questions about it by the court”

43. On April 10, 2013, Judge Christian held a hearing pursuant to Judge Wolf’s April 4, 2013 order. Multiple interested parties appeared at the hearing, including Respondent, Ms. Hill, Ms. Walker (guardian) and newly-appointed counsel for Ms. Hill, Allison Alvarado, Esquire. When questioned by the court, Respondent stated that the McCloud Trust bank account currently held approximately \$38,000. Respondent stated that he was not sure that the beginning balance was \$70,000, he could not explain the \$32,000 difference, and stated that “I didn’t make any expenditure that large.” Respondent told Judge Christian that he had “paid [himself] initially in 2010 when I filed the petition for Ms. Hill, and that’s the first and last time funds have been used.” Respondent had paid himself fees on December 31, 2009, and March 30, 2010. Judge Christian observed that Respondent “seem[ed] to be hesitant on that,” and asked him “have you used the monies any other way?” Respondent answered: “No, sir. . . . There are no major expenses from that account. There are a handful.”

44. Judge Christian ordered Respondent to file an accounting by April 12, 2013, showing “where all the money went, every cent,” and continued the hearing until April 15, 2013.

45. On April 15, 2013, over three years after Ms. McCloud died, Respondent filed the

first accounting of the McCloud Trust covering the period October 23, 2009, through April 12, 2013.

46. On Schedule F (Other Collections), Respondent showed that in 2009, the McCloud Trust account received by direct deposit two checks from social security payable to Ms. Hill for a total of \$1,298 – \$649 per check. Respondent had not disbursed to Ms. Hill the funds that belonged to her.

47. On Schedule H (Administrative Expenses) of the accounting, Respondent showed the November 15, 2012 withdrawal in the amount of \$1,750, but he did not explain the purpose or identify the payee. Respondent wrote that the payment was “to be confirmed.” Respondent did not provide bank statements or financial records to the court or interested parties in support of his accounting.

48. At the April 15, 2013 hearing, the court found that Respondent had not administered the trust effectively. The home where Ms. Hill lived was in significant disrepair, including faulty electrical wiring, the house was infested with rodents and cockroaches, it did not have plumbing in all the bathrooms, and it was filthy. The court deemed the property uninhabitable.

49. In an order dated May 27, 2013, Judge Christian removed Respondent as successor trustee, in part, because Respondent had collected \$24,500 in fees, which the court described as “an incredibly large amount considering the failure of [Respondent] to follow the provisions of the trust instrument.” Judge Christian cited Respondent’s failure to establish a special needs trust for Ms. Hill, attempt to sell the house, or attempt to collect outstanding loans owed to the trust.

50. The court referred the matter to the Auditor Master office for a full review and investigation of the accounting that Respondent filed on April 15, 2013, and appointed Patrick T. Hand, Esquire, as the successor trustee.

51. On June 20, 2013, the court opened a trust proceeding for the McCloud Trust, encaptioned *In re McCloud Revocable Trust*, Case No. 2013 TRP 9.

Auditor Master Proceedings

52. The Auditor Master's investigation included both matters – *In re Stormy Hill* (intervention) and *In re McCloud* (trust). Respondent participated in the proceedings. He provided records, attended the hearing, testified at the hearing, and called a witness to testify on his behalf.

53. The Auditor Master conducted a hearing held on June 25, 2013, and September 18-19, 2013.

54. In June 2013, Respondent filed an Amended First Accounting. Respondent explained that the \$1,750 "withdrawal was in error and is to be repaid at 10% interest." In July 2013, Respondent returned to the trust \$1,750, plus interest (\$102.13), for a total of \$1,852.13.

55. On September 18, 2013, Mr. Hand, the successor trustee, reached a settlement with Pastor Tucker, the Church, and Jobs Partnership, who agreed to re-pay \$125,000 of outstanding loans, an amount that exceed the amount identified in the McCloud Trust document. Pastor Tucker and the Church agreed to pay the McCloud Trust in monthly installments.

56. On September 19, 2013, Mr. Hand reached a settlement with Respondent relating to the amount of fees he had paid himself. Respondent agreed to pay the McCloud Trust \$17,624.84 of the \$24,474.59 attorney's fees he had collected by a date certain, but if he did not meet the deadline, Respondent agreed that the court should enter a judgment against him in the amount of \$24,474.59. On September 27, 2013, Respondent paid the funds in a timely manner.

57. On February 6, 2014, the Auditor Master filed its report with the court. Among other things, the Auditor Master found that Respondent misappropriated \$1,750 from the trust, and referred the case to Disciplinary Counsel.

58. On March 14, 2014, the court conducted a hearing to show cause to determine whether the court should approve the Auditor Master report. All the interested parties appeared, including Respondent, Mr. Hand (Trustee), Ms. Hill, Ms. Walker, and Ms. Alvarado. The court approved the Auditor Master report without objection from any of the parties, including Respondent.

59. Respondent's conduct violated the following provisions of the District of Columbia Rules of Professional Conduct, and/or the Maryland Rules of Professional Conduct, as made applicable by D. C. Rule 8.5(b)(1) and/or 8.5(b)(2)(ii):

(a) D.C. Rule 1.1(a) (Md. Rule 1.1), in that Respondent failed to provide competent representation to his client;

(b) D.C. Rule 1.3(a) (Md. Rule 1.3), in that Respondent failed to zealously and diligently represent the client within the bounds of the law;

(c) D.C. Rule 1.3(b)(1), in that Respondent failed to seek the lawful objectives of his client;

(d) D.C. Rule 1.3(c) (Md. Rule 1.3), in that Respondent failed to act with reasonable promptness in representing the client;

(e) D.C. Rule 1.15(a) (Md. Rule 1.15(a) and Business Occupations and Professions Articles §§ 10-306 and 10-307), in that Respondent failed to properly safeguard estate trust funds, and instead, intentionally or recklessly misappropriated the funds and failed to maintain and/or preserve complete records of account funds;

(f) D. C. Rule 1.15(b) (Md. Rule 1.15(d)), in that Respondent failed to promptly deliver funds that the client and/or third person was entitled to receive and/or failed to promptly render a full accounting regarding such property;

(g) D.C. Rule 8.4(b) (Md. Rule 8.4(b), in that Respondent committed a criminal

act (Theft - D.C. Code §§ 22-3211 and 22-3212, and/or Md. Code Ann. Criminal Law §§ 7-104 and/or 7-113) that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer;

(h) D.C. Rule 8.4(c) (Md. Rule 8.4(c)), in that Respondent engaged in conduct involving dishonesty; and

(i) D.C. Rule 8.4(d) (Md. Rule 8.4(d)), in that Respondent engaged in conduct that seriously interferes with the administration of justice.

Respectfully submitted,


Hamilton P. Fox III
Disciplinary Counsel


Becky Neal
Assistant Disciplinary Counsel

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VERIFICATION

I do affirm that I verily believe the facts stated in the Specification of Charges to be true.


Becky Neal
Assistant Disciplinary Counsel

Subscribed and affirmed before me in the District of Columbia this 5th day of June 2018.

My Commission Expires:




Notary Public

