



# THE SUPREME COURT *of* OHIO

BOARD OF COMMISSIONERS ON GRIEVANCES & DISCIPLINE

## DISCIPLINARY HANDBOOK Volume V ■ Cases 2008-2011 Updated through December 31, 2011



# DISCIPLINARY HANDBOOK: VOLUME V

[CASES FROM 2008-2011; CURRENT THROUGH 12/31/2011]

Links within this document lead either to publications on the Supreme Court's website or to other pages within this document. Links in the Table of Cases will direct the user to the corresponding Case Summary; links within the Case Summaries will direct the user to the Index. This document is also fully searchable (hit Ctrl+F, type in the exact term or phrase, and then hit Enter).

The case summaries were prepared by Board staff and may not reflect all aspects of a case in their entirety. The summaries are meant to assist the reader by providing a brief overview of the misconduct committed by the attorney, the rules violated, and the sanction imposed. The summaries should be a beginning point that ends with reading the actual court opinion.

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**Mullaney, Brooking, Moeves**, *Cincinnati Bar Assn. v.*

119 Ohio St.3d 412, 2008-Ohio-4541. Decided 9/16/2008.

**Muntean**, *Disciplinary Counsel v.*

127 Ohio St.3d 427, 2010-Ohio-6133. Decided 12/20/2010.

**Murraine**, *Disciplinary Counsel v.*

130 Ohio St.3d 397, 2011-Ohio-5795. Decided 11/17/2011.

**Nance**, *Cleveland Metropolitan Bar Assn. v.*

124 Ohio St.3d 57, 2009-Ohio-5957. Decided 11/19/2009.

**Nance**, *Cuyahoga Cty. Bar Assn. v.*  
119 Ohio St.3d 55, 2008-Ohio-3333. Decided  
7/9/2008.

**Newcomer**, *Disciplinary Counsel v.*  
119 Ohio St.3d 351, 2008-Ohio-4492. Decided  
9/11/2008.

**Newman**, *Cincinnati Bar Assn. v.*  
127 Ohio St.3d 123, 2010-Ohio-5034. Decided  
10/21/2010.

**Newman**, *Cincinnati Bar Assn. v.*  
124 Ohio St.3d 505, 2010-Ohio-928. Decided  
3/17/2010.

**Nicks**, *Disciplinary Counsel v.*  
124 Ohio St.3d 460, 2010-Ohio-600. Decided  
2/25/2010.

**Niermeyer**, *Disciplinary Counsel v.*  
119 Ohio St.3d 99, 2008-Ohio-3824. Decided  
8/5/2008.

**Niles**, *Disciplinary Counsel v.*  
126 Ohio St.3d 23, 2010-Ohio-2517. Decided  
6/10/2010.

**Nittskoff**, *Disciplinary Counsel v.*  
130 Ohio St.3d 433, 2011-Ohio-5758. Decided  
11/10/2011.

**Noel**, *Disciplinary Counsel v.*  
126 Ohio St.3d 56, 2010-Ohio-2714. Decided  
6/17/2010.

**O'Brien**, *Disciplinary Counsel v.*  
120 Ohio St.3d 334, 2008-Ohio-6198. Decided  
12/4/2008.

**Ohlin**, *Disciplinary Counsel v.*  
126 Ohio St.3d 384, 2010-Ohio-3826. Decided  
8/24/2010.

**O'Malley**, *Disciplinary Counsel v.*  
126 Ohio St.3d 443, 2010-Ohio-3802. Decided  
8/24/2010.

**Palombaro**, *Mahoning Cty. Bar Assn. v.*  
121 Ohio St.3d 351, 2009-Ohio-1223. Decided  
3/24/2009.

**Parrish**, *Cleveland Bar Assn. v.*  
121 Ohio St.3d 610, 2009-Ohio-1969. Decided  
5/5/2009.

**Patterson**, *Geauga Cty. Bar Assn. v.*  
124 Ohio St.3d 93, 2009-Ohio-6166. Decided  
12/2/2009.

**Peden**, *Columbus Bar Assn. v.*  
118 Ohio St.3d 244, 2008-Ohio-2237. Decided  
5/15/2008.

**Peskin**, *Ohio State Bar Assn. v.*  
125 Ohio St.3d 244, 2010-Ohio-1811. Decided  
4/29/2010.

**Pfundstein**, *Disciplinary Counsel v.*  
128 Ohio St.3d 61, 2010-Ohio-6150. Decided  
12/21/2010.

**Pheils**, *Toledo Bar Assn. v.*  
129 Ohio St.3d 279, 2011-Ohio-2906. Decided  
6/23/2011.

**Plough**, *Disciplinary Counsel v.*  
126 Ohio St.3d 167, 2010-Ohio-3298. Decided  
7/21/2010.

**Podor**, *Cleveland Metro. Bar Assn. v.*  
121 Ohio St.3d 131, 2009-Ohio-358. Decided  
2/5/2009.

**Poole**, *Cuyahoga Cty. Bar Assn. v.*  
120 Ohio St.3d 361, 2008-Ohio-6203. Decided  
12/4/2008.

**Portman**, *Butler Cty. Bar Assn. v.*  
121 Ohio St.3d 518, 2009-Ohio-1705. Decided  
4/16/2009.

**Potter**, *Disciplinary Counsel v.*  
126 Ohio St.3d 50, 2010-Ohio-2521. Decided  
6/10/2010.

**Powers**, *Cincinnati Bar Assn. v.*  
119 Ohio St.3d 473, 2008-Ohio-4785. Decided  
9/25/2008.

**Pullins**, *Disciplinary Counsel v.*  
127 Ohio St.3d 436, 2010-Ohio-6241. Decided  
12/23/2010.

- Ramos**, *Cleveland Bar Assn. v.*  
119 Ohio St.3d 26, 2008-Ohio-3235. Decided  
7/3/2008.
- Randall**, *Dayton Bar Assn. v.*  
118 Ohio St.3d 408, 2008-Ohio-2709. Decided  
6/12/2008.
- Ranke**, *Cleveland Metro. Bar Assn. v.*  
127 Ohio St.3d 126, 2010-Ohio-5036. Decided  
10/21/2010.
- Ranke**, *Disciplinary Counsel v.*  
130 Ohio St.3d 139, 2011-Ohio-4730. Decided  
9/22/2011.
- Raso**, *Disciplinary Counsel v.*  
129 Ohio St.3d 277, 2011-Ohio-2900. Decided  
6/22/2011.
- Rathburn**, *Disciplinary Counsel v.*  
126 Ohio St.3d 502, 2010-Ohio-4467. Decided  
9/28/2010.
- Resnick**, *Ohio State Bar Assn. v.*  
128 Ohio St.3d 56. 2010-Ohio-6147. Decided  
12/21/2010.
- Ricketts**, *Disciplinary Counsel v.*  
128 Ohio St.3d 271, 2010-Ohio-6240. Decided  
12/23/2010.
- Ridenbaugh**, *Disciplinary Counsel v.*  
122 Ohio St.3d 583, 2009-Ohio-4091. Decided  
8/20/2009.
- Riek**, *Disciplinary Counsel v.*  
125 Ohio St.3d 46, 2010-Ohio-1556. Decided  
4/12/2010.
- Ritson**, *Toledo Bar Assn. v.*  
127 Ohio St.3d 89, 2010-Ohio-4504. Decided  
10/29/2010.
- Roberts**, *Disciplinary Counsel v.*  
117 Ohio St.3d 99, 2008-Ohio-505. Decided  
2/14/2008.
- Robinson**, *Lorain Cty. Bar Assn. v.*  
121 Ohio St.3d 24, 2009-Ohio-262. Decided  
1/29/2009.
- Robinson**, *Disciplinary Counsel v.*  
126 Ohio St.3d 371, 2010-Ohio-3829. Decided  
8/25/2010.
- Rohrer**, *Disciplinary Counsel v.*  
124 Ohio St.3d 65, 2009-Ohio-5930. Decided  
11/17/2009.
- Rozanc**, *Lake Cty. Bar Assn. v.*  
123 Ohio St.3d 78, 2009-Ohio-4207. Decided  
8/27/2009.
- Russo**, *Disciplinary Counsel v.*  
124 Ohio St.3d 437, 2010-Ohio-605. Decided  
2/25/2010.
- Rust**, *Toledo Bar Assn. v.*  
124 Ohio St.3d 305, 2010-Ohio-170. Decided  
1/28/2010.
- Ryan**, *Lake Cty. Bar Assn. v.*  
123 Ohio St.3d 178, 2009-Ohio-4232. Decided  
8/27/2009.
- Sabol**, *Disciplinary Counsel v.*  
118 Ohio St.3d 65, 2008-Ohio-1594. Decided  
4/9/2008.
- Sabroff**, *Disciplinary Counsel v.*  
123 Ohio St.3d 182, 2009-Ohio-4205. Decided  
8/27/2009.
- Sakmar**, *Mahoning Cty. Bar Assn. v.*  
127 Ohio St.3d 244, 2010-Ohio-5720. Decided  
12/1/2010.
- Sanz**, *Cincinnati Bar Assn. v.*  
128 Ohio St.3d 373, 2011-Ohio-766. Decided  
2/24/2011.
- Sargeant**, *Disciplinary Counsel v.*  
118 Ohio St.3d 322, 2008-Ohio-2330, Decided  
5/20/2008.
- Saunders**, *Greene Cty. Bar Assn. v.*  
127 Ohio St.3d 241, 2010-Ohio-5708. Decided  
11/30/2010.
- Sawers**, *Toledo Bar Assn. v.*  
121 Ohio St.3d 229, 2009-Ohio-778. Decided  
3/3/2009.

**Saylor**, *Cleveland Metro. Bar Assn. v.*  
125 Ohio St.3d 403, 2010-Ohio-1810. Decided  
4/29/2010.

**Schiller**, *Disciplinary Counsel v.*  
123 Ohio St.3d 200, 2009-Ohio-4909. Decided  
9/23/2009.

**Schmaltz**, *Cincinnati Bar Assn. v.*  
123 Ohio St.3d 130, 2009-Ohio-4159. Decided  
8/29/2009.

**Schram**, *Dayton Bar Assn. v.*  
122 Ohio St.3d 8, 2009-Ohio-1931. Decided  
4/30/2009.

**Schramski**, *Allen County Bar Assn. v.*  
124 Ohio St.3d 465, 2010-Ohio-630. Decided  
3/2/2010.

**Scott**, *Toledo Bar Assn. v.*  
129 Ohio St.3d 479, 2011-Ohio-4185. Decided  
8/25/2011.

**Shaver**, *Disciplinary Counsel v.*  
121 Ohio St.3d 393, 2009-Ohio-1385. Decided  
4/1/2009.

**Shaw**, *Disciplinary Counsel v.*  
126 Ohio St.3d 494, 2010-Ohio-4412. Decided  
9/23/2010.

**Shea**, *Columbus Bar Assn. v.*  
117 Ohio St.3d 55, 2008-Ohio-263. Decided  
1/30/2008.

**Sherman**, *Cleveland Metro. Bar Assn. v.*  
126 Ohio St.3d 20, 2010-Ohio-2469. Decided  
6/9/2010.

**Shuler**, *Disciplinary Counsel v.*  
129 Ohio St.3d 509, 2011-Ohio-4198. Decided  
8/30/2011.

**Siehl**, *Disciplinary Counsel v.*  
123 Ohio St.3d 480, 2009-Ohio-5936. Decided  
11/18/2009.

**Siewert**, *Disciplinary Counsel v.*  
130 Ohio St.3d 402, 2011-Ohio-5935. Decided  
11/23/2011.

**Simmons**, *Disciplinary Counsel v.*  
120 Ohio St.3d 304, 2008-Ohio-6142. Decided  
12/3/2008.

**Simon**, *Disciplinary Counsel v.*  
128 Ohio St.3d 359, 2011-Ohio-627. Decided  
2/16/2011.

**Slavin**, *Cleveland Bar Assn. v.*  
121 Ohio St.3d 618, 2009-Ohio-2015. Decided  
5/6/2009.

**Smith**, *Cleveland Bar Assn. v.*  
120 Ohio St.3d 298, 2008-Ohio-6138. Decided  
12/3/2008.

**Smith**, *Disciplinary Counsel v.*  
128 Ohio St.3d 390, 2011-Ohio-957. Decided  
3/9/2011.

**Smith**, *Disciplinary Counsel v.*  
124 Ohio St.3d 49, 2009-Ohio-5960. Decided  
11/19/2009.

**Smithern**, *Akron Bar Assn. v.*  
125 Ohio St.3d 72, 2010 Ohio-652. Decided  
3/3/2010.

**Spector**, *Cleveland Metro Bar Assn. v.*  
121 Ohio St.3d 271, 2009-Ohio-1109. Decided  
3/18/2009.

**Squire**, *Disciplinary Counsel v.*  
130 Ohio St.3d 368, 2011-Ohio-5578. Decided  
11/3/2011.

**Stafford**, *Disciplinary Counsel v.*  
128 Ohio St.3d 446, 2011-Ohio-1484. Decided  
4/5/2011.

**Stahlbush**, *Toledo Bar Assn. v.*  
126 Ohio St.3d 366, 2010-Ohio-3823. Decided  
8/24/2010.

**Stoll**, *Erie-Huron Grievance Comm. v.*  
127 Ohio St.3d 290, 2010-Ohio-5985. Decided  
12/14/2010.

**Stridsberg**, *Cincinnati Bar Assn. v.*  
123 Ohio St.3d 69, 2009-Ohio-4182. Decided  
8/26/2009.

**Stuard, Becker, Bailey, Disciplinary Counsel v.**  
121 Ohio St.3d 261, 2009-Ohio-261. Decided  
1/29/2009.

**Stubbs, Disciplinary Counsel v.**  
128 Ohio St.3d 344, 2011-Ohio-553. Decided  
2/15/2011.

**Taylor, Disciplinary Counsel v.**  
120 Ohio St.3d 366, 2008-Ohio-6202. Decided  
12/4/2008.

**Theisler, Mahoning Cty. Bar Assn. v.**  
125 Ohio St.3d 144, 2010-Ohio-1472. Decided  
4/8/2010.

**Thomas, Columbus Bar Assn. v.**  
124 Ohio St.3d 498, 2010-Ohio-604. Decided  
2/25/2010.

**Thomas, Cleveland Metro. Bar Assn. v.**  
125 Ohio St.3d 24, 2010-Ohio-1031. Decided  
3/24/2010.

**Thompson, Cincinnati Bar Assn. v.**  
129 Ohio St.3d 127, 2011-Ohio-3095. Decided  
6/30/2011.

**Tomlan, Disciplinary Counsel v.**  
118 Ohio St.3d 1, 2008-Ohio-1471. Decided  
4/3/2008.

**Trainor, Cincinnati Bar Assn. v.**  
129 Ohio St.3d 100, 2011-Ohio-2645. Decided  
6/7/2011.

**Trivers, Ohio State Bar Assn. v.**  
123 Ohio St.3d 436, 2009-Ohio-5285. Decided  
10/13/2009.

**Troxell, Columbus Bar Assn. v.**  
129 Ohio St.3d 133, 2011-Ohio-3178. Decided  
7/6/2011.

**Troy, Lake Cty. Bar Assn. v.**  
121 Ohio St.3d 51, 2009-Ohio-502. Decided  
2/12/2009.

**Troy, Lake Cty. Bar Assn. v.**  
130 Ohio St.3d 110, 2011-Ohio-4913. Decided  
9/29/2011.

**Van Sickle, Columbus Bar Assn. v.**  
128 Ohio St.3d 376, 2011-Ohio-774. Decided  
2/24/2011.

**Veneziano, Cuyahoga Cty. Bar Assn. v.**  
120 Ohio St.3d 451, 2008-Ohio-6789. Decided  
12/30/2008.

**Vivyan, Disciplinary Counsel v.**  
125 Ohio St.3d 12, 2010-Ohio-650. Decided  
3/3/2010.

**Vogel, Columbus Bar Assn. v.**  
117 Ohio St.3d 108, 2008-Ohio-504. Decided  
2/14/2008.

**Vogtsberger, Disciplinary Counsel v.**  
119 Ohio St.3d 458, 2008-Ohio-4571. Decided  
9/17/2008.

**Walker, Disciplinary Counsel v.**  
119 Ohio St.3d 47, 2008-Ohio-3321. Decided  
7/8/2008.

**Watkins, Akron Bar Assn. v.**  
120 Ohio St.3d 307, 2008-Ohio-6144. Decided  
12/3/2008.

**Weisberg, Toledo Bar Assn. v.**  
124 Ohio St.3d 274, 2010-Ohio-142. Decided  
1/27/2010.

**Willard, Disciplinary Counsel v.**  
123 Ohio St.3d 15, 2009-Ohio-3629. Decided  
7/30/2009.

**Willette, Columbus Bar Assn. v.**  
117 Ohio St.3d 433, 2008-Ohio-1198. Decided  
3/20/2008.

**Williams, Disciplinary Counsel v.**  
130 Ohio St.3d 341, 2011-Ohio-5163. Decided  
10/13/2011.

**Williams, Columbus Bar Assn. v.**  
129 Ohio St.3d 603, 2011-Ohio-4381. Decided  
9/7/2011.

**Williamson, Butler Cty. Bar Assn. v.**  
117 Ohio St.3d 399, 2008-Ohio-1196. Decided  
3/20/2008.

- Wilson***, *Dayton Bar Assn. v.*  
127 Ohio St.3d 10, 2010-Ohio-4937. Decided  
10/14/2010.
- Wineman***, *Disciplinary Counsel v.*  
121 Ohio St.3d 614, 2009-Ohio-2005. Decided  
5/6/2009.
- Wittbrod***, *Akron Bar Assn. v.*  
122 Ohio St.3d 394, 2009-Ohio-3549. Decided  
7/28/2009.
- Wittbrod***, *Akron Bar Assn. v.*  
130 Ohio St.3d 72, 2011-Ohio-4706. Decided  
9/21/2011.
- Wolanin***, *Disciplinary Counsel v.*  
121 Ohio St.3d 390, 2009-Ohio-1393. Decided  
4/1/2009.
- Yeager***, *Disciplinary Counsel v.*  
123 Ohio St.3d 156, 2009-Ohio-4761. Decided  
9/17/2009.
- Zaccagnini***, *Disciplinary Counsel v.*  
130 Ohio St.3d 77, 2011-Ohio-4703. Decided  
9/21/2011.
- Zaffiro***, *Cleveland Metro. Bar Assn. v.*  
127 Ohio St.3d 5, 2010-Ohio-4830. Decided  
10/7/2010.
- Zapor***, *Disciplinary Counsel v.*  
127 Ohio St.3d 372, 2010-Ohio-5769. Decided  
12/2/2010.
- Zigan***, *Disciplinary Counsel v.*  
118 Ohio St.3d 180, 2008-Ohio-1976. Decided  
5/1/2008.

## Case Summaries

*Allerding, Columbus Bar Assn. v.*

123 Ohio St.3d 382, 2009-Ohio-5589. Decided 10/29/2009.

Respondent failed to diligently assist a client in administering a decedent's estate, to return property belonging to prospective clients, and to appropriately cooperate in a disciplinary proceeding. The board adopted the panel's findings of misconduct and recommended sanction. As to Count I, in June 2007 he agreed to handle an uncomplicated estate and accepted \$1,200 for his services. The client became frustrated with his delay and filed a grievance. In response to the grievance he promised to open the estate before the end of the year. He did open the estate and in March 2008 he applied to release the estate from administration and for the transfer of the two vehicles. That month he met with the client to obtain signatures on papers that he thought were sufficient to finalize and close the estate. But despite the filings, the estate remained open. In May 2008, the client hired another attorney who at some additional expense completed the estate administration. Respondent did not account for the fee, nor return any unearned fees, despite his client's requests. Board found that respondent violated Prof.Cond.R. 1.1, 1.3, and 1.15(d). As to Count II, in the fall of 2006 respondent consulted with a couple regarding a dispute with previous owners of their home and accepted documents regarding the sale of the home from the couple in anticipation of giving them legal advice, but then failed to return their calls. In April 2008, the couple demanded return of their documents, but respondent had vacated his office and had stopped responding to voice mail messages. Respondent failed to respond to two letters of inquiry from respondent. Board found respondent violated DR 6-101(A)(3) and Prof.Cond.R. 1.3; DR 9-101(B)(4) [sic, DR 9-102(B)(4)] and Prof.Cond.R. 1.15; Gov.Bar R. V(4)(G) and Prof.Cond.R. 8.1(b). As to Count III, the board found respondent violated Gov.Bar R. V(4)(G) and Prof.Cond.R. 8.1(b) and 8.4(h) by failing to appear for his deposition by relator. As to Count IV, board found respondent violated DR 1-102(A)(6) and Prof.Cond.R. 8.4(h), citing medical evidence that respondent suffers from "[s]ubstance-induced mood disorder (depression) due to alcohol use." The Supreme Court agreed with the board's findings and conclusions except for Count IV. The court dismissed Count IV, noting that "[n]either the board's findings nor relator's complaint, however, specified in Count IV an act or omission by respondent. Both instead relied solely on the fact that respondent has a mental illness and is addicted to alcohol, conditions that often lead to ethical violations but are not themselves ethical violations." In aggravation, respondent committed multiple offenses. BCGD Proc.Reg. 10(B)(1)(d). In mitigation, respondent had no prior disciplinary record and did not act dishonestly or out of self-interest. BCGD Proc.Reg. 10(B)(2)(a) and (b). Board recommended a suspension stayed for two years, stayed on conditions aimed at managing his alcoholism, including monitored probation. The Supreme Court of Ohio noted that the board did not mention the four-pronged test in BCGD Proc.Reg. 10(B)(2)(g) which affords mitigation effect to a chemical dependency upon the proof required in (i) through (iv). The court found evidence of the first two elements in the Dr. Beech's diagnosis and respondent's testimony of respondent that he was intoxicated daily during the events at issue. The record also shows he is in an approved treatment program and is able to return to competent, ethical, and professional practice. Based on this mitigating evidence, the court ordered a two-year suspension, all stayed on condition that respondent completes a two- year probation period under a monitor appointed by relator, and that during probation, respondent stay in compliance with the OLAP contract entered into on February 17, 2009, and refrain from further action in violation of the Rules of Professional Conduct.

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**Rules Violated:** Prof.Cond.R. [1.1](#), [1.3](#), [1.15](#), [1.15\(d\)](#), [8.1\(b\)](#), [8.4\(h\)](#); DR 1-102(A)(6), 6-101(A)(3), 9-102(B)(4); [Gov.Bar R. V\(4\)\(G\)](#)

<b>Aggravation:</b> (d)		<b>Mitigation:</b> (a), (b), (g)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Two-year suspension, stayed</a>		

*Andrews, Disciplinary Counsel v.*

124 Ohio St.3d 523, 2010-Ohio-931. Decided 3/17/2010.

Respondent failed to perform his duties as counsel for the board of trustee of a church in a civil action, including failing to respond to filings in that case and he was convicted of a felony and a misdemeanor in a criminal case in which he solicit sex acts from an adult posing as a minor child. On August 3, 2006, respondent received an interim felony suspension from the practice of law in *In re Andrews*, 110 Ohio St.3d 1445, 2006-Ohio-3936. In Count 1, a church's board of trustees initiated a civil action in September 2002. Upon receipt of the discovery requests from the defendants, the church hired respondent for \$2500. Respondent said he would respond to requests, but never did. Respondent entered an appearance in the case and engaged in settlement discussions, but did not reply to requests for discovery and to depose the church board's expert. He did not reply to motions to compel discovery and for summary judgment and did not inform the board about them. Near the time that court scheduled a hearing on defendant's motion for summary judgment, the defendants made a written settlement offer which respondent advised the board to accept. The board accused him of being on the defendant's side. Respondent told then he intended to file a motion to withdraw, which he then filed. The church board requested return of the case file and full accounting of the retainer, but respondent did not reply. The court held a hearing on defendant's motion for summary judgment and respondent's motion to withdraw. The court granted defendant's motion for summary judgment and ordered the church to pay the defendant \$9208. The court granted respondent's motion to withdraw, but denied respondent's motion for a continuance to allow the church board to retain new counsel. The church learned of this when it received the court's notice of judgment. The defendant initiated an action against the church board and secured liens on the board members' properties. The church's new attorney filed a motion to set aside the verdict because of respondent's failure to notify the church board of the hearing. The court held a hearing, but declined to enter a judgment at that time. Pursuant to subpoena respondent appeared at the hearing with the case file. The church's new attorney refused to accept the file when respondent offered it. Respondent did not comply with later requests for the case file. The church brought a malpractice claim against the respondent and his former law firm, which was later dismissed by a court. Respondent admitted to violating DR 1-102(A)(5), 2-110(A)(2), 6-101(A)(3), 7-101(A)(1), 7-101(A)(2), and 9-102(B)(4). As to Count 1, the board adopted the panel's findings of these violations. In Count 2, in December 2004, a grand jury returned a five-count indictment charging respondent with various offenses arising from two online conversations where he attempted to solicit sexual activity from an adult posing as a 13-year old girl. In 2006, he pled no-contest and was found guilty of attempted tampering with evidence in violation of R.C. 2921.12, a felony of the fourth degree, and attempted importuning in violation of R.C. 2923.02, a misdemeanor of the first degree. He was sentenced to three years of community control, 500 hours of community service, fined \$5000, and required to register as a sex offender. He admitted to violating DR 1-102(A)(3) and 1-102(A)(6). As to Count 2, the board adopted the panel's findings of these violations. No aggravating factors were cited. In mitigation, he had no prior disciplinary record and he provided full and free disclosure and cooperation with the disciplinary investigation. BCGD Proc.Reg. 10(B)(2)(a) and (d). The Board adopted the panel's recommend sanction of an indefinite suspension with no credit for time served. The court noted that although respondent violated multiple disciplinary rules, the court was persuaded by the lack of any aggravating factors and his lack of prior discipline and his cooperation that an indefinite suspension is warranted. Citation to *Winkfield* (2006). The Supreme Court adopted the Board's findings of violations and recommended sanction and so ordered an indefinite suspension with no credit for time served under the interim suspension.

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**Rules Violated:** DR 1-102(A)(3), 1-102(A)(5), 1-102(A)(6), DR 2-110(A)(2), 6-101(A)(3), 7-101(A)(1), 7-101(A)(2), 9-102(B)(4)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Archer, Northwest Ohio Bar Assn. v.*  
129 Ohio St.3d 204, 2011-Ohio-3142. Decided 7/5/2011.

Respondent failed to pay unemployment and income taxes and failed to withhold certain money for his employee. Respondent received a public reprimand in 1993. Respondent failed to file the appropriate forms and pay unemployment taxes as required by Ohio law for his employee. Respondent also retained local, state, and federal taxes from his employee, but converted them for his personal use instead of remitting them to the appropriate government agency. Respondent's conduct caused a delay in his secretary receiving unemployment benefits. Respondent eventually filed the necessary paperwork, and paid all taxes and penalties. This conduct violated DR 1-102(A)(4)/ Prof.Cond.R. 8.4(c) (conduct involving dishonest, fraud, deceit, or misrepresentation), and DR 1-102(A)(6)/ Prof.Cond.R. 8.4(h) (conduct that adversely reflects on the fitness to practice law). In aggravation, respondent had a prior disciplinary record, engaged in a pattern of misconduct, and harmed a vulnerable employee. BCGD Proc.Reg. 10(B)(1)(a), (d), and (h). The board also noted that respondent allowed his malpractice insurance to lapse without informing his clients, in violation of Prof.Cond.R. 1.4(c), and found that as an aggravating factor. In mitigation, respondent paid money sanctions for late payment of taxes, cooperated in the disciplinary process, and presented evidence of good character. BCGD Proc.Reg. 10(B)(2)(c), (d), (e). The board rejected a finding that respondent conduct was not driven by a dishonest or selfish motive. Respondent presented testimony of severe health issues that inhibited his ability to pay the taxes, but did not present any evidence of it. The parties stipulated to a one-year suspension with 6 months stayed; the board rejected this stipulation and instead recommends a one-year suspension. The Court adopted the board's findings of fact and conclusions of law. Upon reviewing *Abood* (2004), *Large* (2009), and *Bruner* (2003), the Court adopted the board's recommended sanction of a one-year suspension.

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**Rules Violated:** Prof.Cond.R. 8.4(c), 8.4(h); DR 1-102(A)(4), 1-102(A)(6)

<b>Aggravation:</b> (a), (d), (h)		<b>Mitigation:</b> (c), (d), (e)	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> One-year suspension		

**Baker, Toledo Bar Assn. v.**

122 Ohio St.3d 45, 2009-Ohio-2371. Decided 5/28/2009.

Respondent failed to diligently represent clients, commingled client funds, failed to appropriately account for client funds in his possession, converted settlement proceeds, and other ethical breaches. His license to practice was suspended in January 9, 2009 for failure to comply with CLE requirements in *In re Baker*, 120 Ohio St.3d 1462, 2009-Ohio-40. Board adopted the panel's findings and recommendation. As to Count I, respondent represented a client [Copeland] in a federal lawsuit against his labor union, but failed to apprise the client of a order granting summary judgment in the union's favor. Respondent claimed he had not received notice, but federal court records showed he was twice notified. The client testified he lost the opportunity to appeal because of respondent's neglect. Board found a violation of DR 6-101(A)(3). As to Count II, respondent represented a couple [the Suttons] in a personal injury claim and disbursed settlement checks totaling \$2,049.40, but did not account to them for the \$617.85 legal fee he retained. Board found a violation of DR 9-102(B)(3). As to Count III, he settled a personal injury case in October 2005 for \$2,500 but did not immediately give the client [Ector] his share of the settlement. In March 2006, respondent distributed \$900 as proceeds, but for the most part had no explanation of what happened to the remaining \$1,600, although no evidence shows that he misappropriated the funds. Board found a violation of DR 9-102(B)(3) and Gov.Bar R. V(4)(G) for his failure to respond to relator's investigation. As to Count IV, respondent was paid \$750 in May 2004 to represent a client [Catchings] in a dispute regarding the sale of real property. Catchings complained to relator regarding respondent's performance, but respondent failed to cooperate with relator's investigation. Board found a violation of Gov.Bar R. V(4)(G). As to Count V, respondent was hired by a client [Brown] in November 2005 to recover damages for injuries sustained in a February 2004 accident. Respondent did not deposit into a client trust account, \$500 paid by the client for expenses. Respondent failed to file suit before the two year statute of limitation expired, but continued to mislead the client into thinking the claim was actionable. He did not tell Brown of the negligence, disclose the possibility of a malpractice claim, or suggest Brown consult independent counsel. In September 2007, respondent gave Brown a \$1,500 check purportedly paid for by an insurance company to settle the case, but actually drawn from respondent's client trust account. The bank dishonored the check and the client incurred \$239 in bank fees and service charges. Respondent did not have malpractice insurance and did not disclose this to Brown. He promised to pay Brown's losses, but has not done so as of the October 2008 hearing. Board found violations of DR 1-102(A)(4), 1-102(A)(6), 1-104(A), 1-104(B), 6-101(A)(3), Prof.Cond.R. 1.8(h)(2), 1.15, 8.4(b), 8.4(c), 8.4(h). As to Count VI, respondent was retained in 2006 by a client [Smith] to prepare and record quitclaim deeds. Respondent prepared all or some of the deeds but then failed to record them and now cannot find the deeds. Board found a violation of DR 6-101(A)(3). As to Count VII, respondent was retained by a client [Welch] in November 2004 to recover damages for injuries sustained in a traffic accident, but he did not inform the client he did not have professional liability insurance and he failed to file the suit before the statute of limitations expired. Board found violations of DR 1-104(A) and (B) and 6-101(A)(3). As to Count VIII, respondent was hired by a client [Welch] to seek reinstatement of her disability insurance benefits that were terminated in 2004. Respondent filed suit in June 2005, but dismissed it in September 2006 with the agreement of counsel but without obtaining the client's consent for the dismissal. In November 2007, he misled the client, implying that the case was still pending. In December 2007, after filing a grievance, the client learned the case had been dismissed and by then her claim had expired. Board found violations of DR 1-102(A)(4), 6-101(A)(3), Prof.Cond.R. 8.4(c). As to Count IX, respondent represented some debtors (Lincoln, etc.) after their property caught fire. A mortgage company (WaMu) had previously obtained a judgment in foreclosure against the debtors. Respondent negotiated a \$34,380 settlement and the insurer sent him a check made payable to him, Lincoln, and WaMu. Respondent held the check while negotiating with WaMu. In May 2006, WaMu agreed to have respondent deposit the check in his client trust account while they completed their negotiations. Respondent made the deposit into his trust account, but retained \$1,500 in cash, which depleted the funds to be held in trust to \$32,880. Before the deposit, respondent's trust account was overdrawn by \$40 and bank records show that the account was

intermittently overdrawn during eight months in 2006. The bank closed the account in January 2007, reopened it, but closed it again because of overdrafts in September, October, and November 2007. In November 2006, WaMu sued respondent and Lincoln for conversion of the settlement check and obtained a default judgment against respondent for \$34,380, plus interest, costs, and attorney fees. The judgment entry directed respondent to remit the funds within seven days of the order, but he had not done so as of the hearing. Board found violations of DR 1-102(A)(3), 1-102(A)(4), 1-102(A)(6), 9-102(B)(3), Prof.Cond.R. 1.15(a), 3.4(c), 8.1(b), 8.4(d), and 8.4(h). As aggravating factors were respondent's dishonest and selfish motives, pattern of offenses, multiple offenses, lack of cooperation, vulnerable victims, failure to make restitution. BCGD Proc.Reg. 10(B)(1)(b), (c), (d), (e), (h), and (i). In mitigation, his suffers from a qualifying mental disability under BCGD Proc.Reg. 10(B)(2)(g)(i) through (iv). Since April 2007, he has been under the care of a clinical psychologist who diagnosed respondent with depression and posttraumatic stress disorder partially related to his military service in Vietnam during the early 70's. Board accepted the testimony was offered by the clinical psychologist and an OLAP clinical director, as well as the compelling testimony of respondent. The board recommended an indefinite suspension with conditions for reinstatement to include full restitution to Brown in the amount of \$1,739.00 in bank fees and service charges; full payment of judgment in the WaMu matter in the amount of \$34,380.00 plus interest, costs and attorney fees, evidence of ongoing compliance with OLAP; evidence from competent mental health professional certifying compliance with OLAP treatment recommendations and that respondent is capable of returning to the competent practice of law. The Supreme Court of Ohio noted that attorneys are routinely disbarred for the host of ethical infractions, including misappropriation of client funds that respondent committed, but that when mitigating factors significantly outweigh aggravating factors the court has ordered indefinite suspension. The court agreed with the Board's findings of violations and recommended sanction of indefinite suspension with the additional conditions of reinstatement and so ordered.

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**Rules Violated:** Prof.Cond.R. 1.8(h)(2), 1.15, 1.15(a), 3.4(c), 8.1(b), 8.4(b), 8.4(c), 8.4(d), 8.4(h); DR 1-102(A)(3), 1-102(A)(4), 1-102(A)(6), 1-104(A), 1-104(B), 6-101(A)(3), 6-101(A)(3), DR 9-102(B)(3); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> (b), (c), (d), (e), (h), (i)		<b>Mitigation:</b> (g)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

***Bandman, Disciplinary Counsel v.***

125 Ohio St.3d 503, 2010-Ohio-2115. Decided 5/20/2010.

Respondent wrote checks drawn on a client's family trust account, payable to himself, his business, and his fiancée and business partner without knowledge or approval from the grantor of the trust or her granddaughter who serves as the attorney-in-fact. Respondent wrote checks totaling approximately \$60,500 against a client's trust without authorization. In October 2005, at the client's request, respondent prepared a family trust, with respondent as trustee. Client was a 96-year old woman whom he considered a "surrogate mom or grandmother" as she had worked for his mother and family for years and helped raise him. The trust agreement was executed in November 2005 and funded with \$59,000 from the sale of client's home. Respondent waited until June 2007 to submit the bill of preparation for the trust. The client was diagnosed with dementia in 2006; her attorney-in-fact paid respondent the \$6000 fee with non-trust funds. Respondent testified that he was not initially going to charge the client, but that the client insisted. When he decided to charge for his services, he did not inform the client or the attorney in fact that he was going to start charging. From April 2007 to March 2008, respondent wrote 31 checks totaling \$60,500. As of June 2008, only \$4805.18 remained in the trust. The checks were made payable to himself and to his business partner and fiancée. He testified that some of it represented earned fees, but some was borrowed on a short-term basis to alleviate financial difficulties. He did not create or sign a promissory note setting forth the repayment terms. He told the attorney-in-fact in Spring 2008 that he had improperly taken funds, but did not share the trust account records or advise her to speak with another attorney before agreeing to resolve the matter and he did not obtain a written waiver of the inherent conflict of interest. In June 2008, respondent repaid \$45,000 without interest. Respondent claimed that \$15,500 represented earned legal fees (which totaled roughly ¼ of the trust's value) and that the other \$45,000 was borrowed without the trust owner's permission. He wrote five checks on one day but dated them as if issued on different day. He wrote misleading and inaccurate notations on the memo line for some 31 checks, to falsely indicate those check represented payments for services. Respondent admitted that after the attorney in fact asked for records, he altered bank statements and other documents to conceal from the attorney in fact the payments to himself and the true amount in the trust. Respondent's records of administration of the trust were incomplete approximations; he never kept contemporaneous records of any of business with the trust, preparing only a "recap." The charges for some of the services were questionable. The board found that respondent violated Prof.Cond.R. 1.7(a)(2), 8.4(c), 8.4(d) and 8.4(h). The Supreme Court of Ohio accepted the board's findings of violations. In aggravation, there was a dishonest or selfish motive, a pattern of misconduct, multiple offenses and harm to a vulnerable victim. BCGD Proc.Reg. 10(B)(1)(b), (c), (d) and (h). In mitigation, respondent had a lack of prior disciplinary record and cooperated with the disciplinary process. BCGD Proc.Reg. 10(B)(2)(a) and (d). Additionally, the respondent showed genuine remorse, paid \$45,000 in restitution to the trust, and self-reported the misconduct on the advice of an attorney friend who had filed a grievance with relator. The Board recommended an indefinite suspension, with reinstatement conditioned on respondent making full restitution, including interest, to the client's trust or reimbursed the Client Security Fund for any claims paid as a result. The Court noted that it regularly disbars people for misappropriating client funds. See e.g., *Churilla* (1997). However, as in *Dietz* (2006) and *Nagorny* (2004), the Court does indefinitely suspend an attorney when sufficient mitigating factors are present. The Court adopted the Board's findings of fact, conclusions of law, and recommended sanction of an indefinite suspension.

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**Rules Violated:** Prof.Cond.R. 1.7(a)(2), 8.4(c), 8.4(d), 8.4(h)

<b>Aggravation:</b> (b), (c), (d), (h)		<b>Mitigation:</b> (a), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Bartels, Allen Cty. Bar Assn. v.*

124 Ohio St.3d 527, 2010-Ohio-1046. Decided 3/25/2010.

Respondent engaged in sexual activity with a client. Relator and respondent entered into a consent-to-discipline agreement. In February 2008, client retained respondent in a post-divorce matter involving custody and visitation. Respondent met with the client and the client's wife and attended court conferences on their behalf. Respondent attended a hearing at which there was a settlement of the case. A judgment entry was submitted to and signed by the court on May 22, 2008. That same day, respondent and client engaged in sexual activity. They had no prior romantic or sexual relationship between them. After this encounter, respondent sent a letter to the client with the judgment entry and a bill. She also faxed a copy of the judgment entry modifying custody and visitation to the county child support enforcement agency. The sexual relationship with the client continued until September 2008. In September 2008, respondent received a letter, which she forwarded to the client, notifying her of problems regarding visitation, custody and payment of medical bills for her client's minor child. Respondent admitted to sexual activity with her client after a confrontation with the client's wife in late September. The client's wife filed a grievance. In the consent-to-discipline agreement respondent admitted to violating Prof.Cond.R. 1.8(j). The Court quoted Comment 17 to Prof.Cond.R. 1.8 as it explains the rationale of prohibiting sexual activity between clients and their attorneys. There were no aggravating factors. In mitigation, the isolated misconduct had no adverse impact upon the representation and was not part of a pattern of misconduct; there is a lack of prior disciplinary record, a cooperative attitude by respondent in the disciplinary process, an absence of a dishonest or selfish motive, and positive character evidence. BCGD Proc.Reg. 10(B)(2)(a), (b), (d), and (e). Review of case precedent included *Schmalz* (2009) (public reprimand), *Sturgeon* (2006) (disbarment) and *Krieger* (2006) (suspension). The Board recommended acceptance of the consent-to-discipline agreement. The Court accepted the consent-to-discipline agreement and so ordered a public reprimand for a violation of Prof.Cond.R. 1.8(j).

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**Rules Violated:** Prof.Cond.R. 1.8(j)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (b), (d), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Public Reprimand</a>		

***Bennett, Disciplinary Counsel v.***

124 Ohio St.3d 314, 2010-Ohio-313. Decided 2/4/2010.

In 2007, respondent pled guilty to a felony for unlawfully structuring financial transactions and was sentenced to 24 months in prison and a \$4,000 fine. In 2008, respondent received an interim felony suspension from the practice of law in *In re Bennett*, 117 Ohio St.3d 1401, 2008-Ohio-594. Federal laws and regulations require domestic financial institutions to prepare and file a certain form whenever they are involved in a payment, receipt, or transaction of U.S. Currency exceeding \$10,000. Respondent was aware of this regulation and structured several transactions, meaning that he would break larger transactions into a series of transactions that were under \$10,000 and thus avoid the reporting. Respondent did this with approximately \$124,300 over a five-month span by depositing amounts in several branches of Fifth Third Bank in Cincinnati. A majority of the money was respondent had obtained from previously cashed paychecks issued to respondent from his employer. A certain unspecified portion of the currency transactions originated from income respondent received but improperly failed to report and account to the IRS. As part of his plea agreement, he agreed that if necessary he would file corrected federal income tax returns within 120 days of the plea, but at the date of the stipulations neither the IRS nor the U.S. Department of Probation had advised him of the need to amend his taxes. Respondent stipulated to these facts and to violating DR 1-102(A)(4) and (6). The board adopted the panel's findings of violations of DR 1-102(A)(4) and (6) and recommended sanction of a one-year suspension with credit for time served. In mitigation, respondent had: a lack of prior disciplinary record, provided full and free disclosure and a cooperative attitude, and offered positive character evidence. BCGD Proc.Reg. 10(B)(2)(a), (d), and (e). Also, the parties stipulated as mitigation respondent's previous penalties and sanction, including a fine and jail time related to his criminal sentence. BCGD Proc.Reg. 10(B)(2)(f). The Court found that respondent's previous punishment was only for a portion of the violations he committed thus reducing the weight of that mitigating factor. The Court also found aggravating factors that the parties, panel, and board do not mention including that respondent had: a pattern of misconduct and a dishonest and selfish motive. BCGD Proc.Reg. 10(B)(1)(b) and (c). The Court rejected the Board's recommended sanction, instead imposing an indefinite suspension with credit for time served. Justice Pfeifer dissented; he would have adopted the Board's recommended sanction.

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**Rules Violated:** DR 1-102(A)(4), 1-102(A)(6)

<b>Aggravation:</b> (b), (c)		<b>Mitigation:</b> (a), (d), (e), (f)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

**Blair, Disciplinary Counsel v.**

128 Ohio St.3d 384, 2011-Ohio-767. Decided 2/24/2011.

Respondent mishandled and misappropriated funds belonging to an incompetent ward and failed to properly supervise her employees resulting in the filing of a false guardian account and a forged affidavit. The parties stipulated to the following findings of fact, conclusions of law, and recommended sanction. In Count I, respondent was appointed to serve as guardian for an incompetent ward's estate. After deducting her court-approved fees, respondent held \$16,972.83 of the ward's assets in her IOLTA, and not in an interest-bearing account on the ward's behalf. Within six months, respondent had withdrawn all of this money, but not used it for the ward's benefit. The board agreed with the panel that this conduct violated DR 1-102(A)(4) and Prof.Cond.R. 8.4(c), DR 1-102(A)(6) and Prof.Cond.R. 8.4(h); DR 9-102(B)(3) and Prof.Cond.R. 1.15(a)(2); DR 9-102(E)(1), and Prof.Cond.R. 1.15(a). The panel and board recommended dismissal of alleged violations of DR 1-102(A)(5) and Prof.Cond.R. 8.4(d). The court noted that in addition to the panel's and board's factual findings that during a 6-month period, respondent wrote 31 checks, 26 to herself totaling \$33,150, from her IOLTA. By July 2006 respondent's client trust account had a negative balance. Respondent also failed to file an account in a guardianship matter despite the probate court's January 2007 notice to file and March 2007 citation to file account. Respondent requested and obtained 8 separate 30-day extensions until the court granted the final extension in November 2007 and removed her as the fiduciary. By December 2007, respondent had accumulated over \$20,000 in earned fees in her client trust account, and she returned the ward's \$16,972.83, plus \$2000 to compensate the ward for interest. In Count II, respondent authorized her staff to prepare and file pleadings in the guardianship matter addressed in Count I with no oversight and supervision. The staff falsely prepared a motion to correct an inventory previously filed to reflect that the true value of the wards assets was \$25,656 instead of the previously reported \$30,000 and they prepared a false affidavit stating that respondent had put the entire amount of the ward's money in her trust account and had only taken out \$8,683.17 for attorney fees. A staff member signed respondent's name. Relying on these misrepresentations, the court "corrected" the inventory of the account to reflect the lower, incorrect amount. Respondent's staff later prepared a guardian's account that falsely represented the disbursements and remainder of the ward's assets, signed respondent's name, and filed it with the court. The board agreed with the panel that this conduct violated Prof.Cond.R. 8.4(d), 8.4(h), and 5.3(a). As to both Counts I and II, the Court adopted the board's findings of fact and conclusions of law. In mitigation, respondent has no prior disciplinary record, has made a timely and good-faith effort of restitution, has made full and free disclosure to the board, demonstrated a cooperative attitude toward the disciplinary process, and has a positive reputation in the legal community. BCGD Proc.Reg. 10(B)(2)(a), (c), (d), and (e). A psychiatrist diagnosed respondent with alcohol dependence and recurrent major depressive disorder, and determined that these conditions contributed to the misconduct in Count II. Respondent has been sober since January 2, 2008 and actively participates in AA and OLAP, and remains under the care of her treating psychiatrist and a licensed social worker who report that she will be able to return to competent, ethical practice of law. BCGD Proc.Reg. 10(B)(2)(h) and (g). In aggravation, respondent acted with a dishonest or selfish motive in misappropriating guardianship funds. BCGD Proc.Reg. 10(B)(1)(b). The panel and board, citing lack of criminal consequences for the misappropriation of funds and lack of expert opinion causally linking the conduct to the chemical dependency or the depression, rejected the stipulated recommended sanction of a 12-month suspension with 6 months conditionally stayed. The panel and board recommended a two-year suspension with 18 months stayed on the conditions that respondent serve 18 months of monitored probation, continue to comply with her OLAP contract, continue receiving counseling for alcohol and mental-health issues, and complete an additional CLE course in law-office management. Consideration was given to *Kostelac* (1997) and *Diehl* (2005). The court noted that in *Thompson* (1982) it recognized that "[t]he mishandling of clients' funds either by way of conversion, commingling, or just poor management, encompasses an area of the gravest concern on this court in reviewing claimed attorney misconduct." The court agreed with the board's recommended sanction and so ordered.

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**Rules Violated:** Prof.Cond.R. 1.15(a), 1.15(a)(2), 8.4(c), 8.4(h); DR 1-102(A)(4), 1-102(A)(6), 9-102(B)(3), 9-102(E)(1)

<b>Aggravation:</b> (b)		<b>Mitigation:</b> (a), (c), (d), (e), (h), (g)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Two-year suspension, 18 months stayed		

**Boggs, Columbus Bar Assn. v.**  
129 Ohio St.3d 190, 2011-Ohio-2637. Decided 6/7/2011.

Respondent failed to inform his clients that he lacked professional liability insurance, comingled funds, and failed to act with diligence in representing his clients. Respondent has been disciplined twice before; he received a public reprimand in 1988 and a one-year stayed suspension in 2004. In Count 1, respondent accepted \$1200 to represent a client in divorce proceedings and deposited all of it into his operating account. The client later terminated respondent and requested a refund. The client asked relator for assistance in obtaining his refund and presented proof that respondent had agreed to refund \$750. Respondent refunded the money from his IOLTA account by moving money from his business account to this IOLTA account. Respondent stipulated that he did not have malpractice insurance at this time and did not advise his client of this fact. The parties stipulated that this conduct violated Prof.Cond.R. 1.4(c), 1.15(a), and 1.15(c). Relator also charged a violation of Prof.Cond.R. 1.15(d), but failed to present any evidence of it; the board treated this as a dismissal. In Count 2, a client paid respondent \$1300 for representation in a bankruptcy matter, which respondent deposited into his business account. The client executed the proper forms, but failed to attend required counseling. The client later terminated respondent and requested a refund, which respondent provided from his business account. Respondent lacked professional liability insurance and did not advise his client of this fact. The parties stipulated that this conduct violated Prof.Cond.R. 1.4(c), 1.15(a), and 1.15(c). Relator also charged a violation of Prof.Cond.R. 1.3, but failed to present any evidence of it; the board treated this as a dismissal. The panel found that relator did not adequately prove the allegations in Count 3, and treated it as a dismissal; the board agreed. In Count 4, a client paid respondent \$9700 for matters relating to her father's death and estate. There was no written fee agreement. When the client requested an accounting of the retainer, and a refund of any unused money, respondent stated the entire retainer was used. He never filed a legal action on the client's behalf and never provided an accounting. Respondent stipulated that his conduct violated Prof.Cond.R. 1.15(a) and 1.15(c). In addition, the board found that respondent violated Prof.Cond.R. 1.1, 1.3, 1.4(a)(3), 1.5(a), and 8.4(h). Relator also charged a violation of Prof.Cond.R. 1.15(d), but failed to present any evidence of it, so the board treated it as dismissed. Respondent objected, arguing that the panel's findings of fact were insufficient to find the non-stipulated violations. The Court overruled the objections, noting that it will defer to the panel's determinations of credibility when those determinations are supported by evidence, which they were in this case. *Heiland* (2008). In Count 5, a client paid \$4000 for respondent to pursue a wrongful termination case, which respondent deposited in an account other than his IOLTA. Respondent advised his client to pursue arbitration and administrative remedies with the EEOC. Respondent was not permitted to appear at the EEOC proceeding, but did provide some advice. The client was returned to his job, but did not receive back pay or benefits. Respondent advised the client that the arbitration award was binding and irreversible, and that he could do no more. He also refused to refund any of the money paid to him, and did not provide the client with an accounting. Respondent lacked professional liability insurance and did not advise his client of this fact. The parties stipulated that this conduct violated Prof.Cond.R. 1.4(a)(3) and 1.4(c). Relator also charged a violation of Prof.Cond.R. 1.15(d), but failed to present any evidence of it; the board treated this as a dismissal. In addition, the panel and board found that respondent violated Prof.Cond.R. 1.1, 1.3, 1.5(a), 1.15(c), and 8.4(h). The Court adopted the findings of fact and conclusions of law as to each count. In aggravation, respondent had a prior disciplinary record, acted with a dishonest or selfish motive, and engaged in a pattern of misconduct involving multiple offenses. BCGD Proc.Reg. 10(B)(1)(a), (b), (c), and (d). In mitigation, respondent made full and free disclosure to the board and cooperated in the disciplinary proceeding. BCGD Proc.Reg. 10(B)(2)(d). The panel and board were concerned that respondent took large sums of money from his clients that he could not account for. The board recommended an indefinite suspension. Respondent objected and asked for the panel's recommendation of a two-year suspension with one year stayed. The Court, relying on *Kaplan* (2010) and *Wise* (2006), overruled the respondent's objection, noting that this is his third sanction and that the previous two sanctions have not worked to rectify his serious misuse of his trust account, which was at issue in his prior disciplinary cases. The Court indefinitely suspended respondent from the practice of law.

**Rules Violated:** Prof.Cond.R. 1.1, 1.3, 1.4(a)(3), 1.4(c), 1.5(a), 1.15(a), 1.15(c), 8.4(h)

<b>Aggravation:</b> (a), (b), (c), (d)		<b>Mitigation:</b> (d)	
<b>Prior Discipline:</b> YES (x2)	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

**Bowling, Disciplinary Counsel v.**  
127 Ohio St.3d 138, 2010-Ohio-5040. Decided 10/21/2010.

Respondent, a magistrate of a probate/juvenile court, was charged with possession of drug paraphernalia, a fourth-degree misdemeanor and possession of marijuana, a minor misdemeanor in December 2008. After suffering from a debilitating stroke in March 2008, respondent, who occasionally used marijuana on weekends, started using it every day as self-medication to alleviate some of the physical and psychological effects of the stroke. Respondent was eventually cited for misdemeanor possession of marijuana and drug paraphernalia. By agreement, the paraphernalia charge was dismissed, and the possession charge was resolved by forfeiture of a \$168 bond. Respondent did not plead guilty to, nor was he convicted of, any crime. Since the charge, respondent has not used alcohol or any illegal drugs; he has entered into a five-year OLAP contract, completed a two-day detox program followed by a four-day inpatient program, and finished an intensive 90-day outpatient program. He attends aftercare meetings and 12-step meetings and regularly talks with his sponsor. Relator dismissed the charged violation of Prof.Cond.R. 8.4(h). Respondent and relator entered into a consent-to-discipline agreement as to a violation of Canon 2 of the former Code of Judicial Conduct and a recommended sanction of a public reprimand. Both the panel and board accepted the consent-to-discipline agreement. There were no aggravating factors present; in mitigation, there was no prior disciplinary history, no dishonest or selfish motive, a timely good-faith effort to rectify the situation, full and free disclosure, a cooperative attitude with the disciplinary proceedings, and good character and reputation. BCGD Proc.Reg. 10(B)(2)(a), (b), (c), (d), and (e). *Resnick* (2005) was cited as a similar case in which a justice violated Canon 2 based upon a single conviction for driving under the influence of alcohol. The court accepted the consent-to-discipline agreement and ordered a public reprimand.

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**Rules Violated:** Code of Judicial Conduct (former) Canon 2

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (b), (c), (d), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> YES	<b>Sanction:</b> Public Reprimand		

**Brenner, Disciplinary Counsel v.**

122 Ohio St.3d 523, 2009-Ohio-3602. Decided 7/29/2009.

Respondent engaged in an extended pattern of fraud and deception, concealing fee agreements from his law firm and retaining funds of which the firm was unaware; and writing or directing to be written checks from the firm's operating account for expenses he attributed to his representation of clients, but which actually represented payment for personal expenses incurred by respondent and his family members. As to Count I, in 2002 respondent was retained by his stepgrandmother (Mary Stailey) in a personal-injury case. Respondent stated there was no written fee agreement because she was a close family member and he was not seeking a fee. He settled the case for \$35,000 and after speaking with Stailey and his stepfather (Stailey's son) it was agreed Stailey would receive \$25,000 immediately and respondent would keep the balance in his law firm's client trust account for payment of any outstanding medical bills. It is undisputed that Stailey directed him to keep whatever funds remained after payment of medical bills as a token of appreciation. Respondent did not inform the law firm of the arrangement or the \$10,000 in the trust account. He immediately transferred nearly \$5,000 from the client trust account into the office operating account. Over the next four month he wrote or directed to be written three checks totally almost \$9,650 from the operating account. He recorded them as expenses in Sailey's case, but they were written to three different payees to pay for personal expenses incurred by respondent or his wife. Respondent billed his office account over \$400 in travel expenses he alleged were related to Sailey's case but never actually incurred. As to Count II, he was hired by Linda Weaver to represent her in a personal-injury matter. A written contingent fee agreement provided that the firm would receive one-third of any settlement proceeds. He settled the case eight months later for \$23,500. Respondent and Weaver met to discuss fund disbursement. Slightly more than \$7,800 was owed the firm under the contingent fee agreement. Two options were discussed. One was that Weaver could take the balance and pay the outstanding medical bills herself. The other was that Weaver could take an agreed upon portion of the proceeds and respondent retain the rest to pay known bills he hoped to negotiate to a lower amount. Weaver chose the latter and elected to take \$6,000 and told respondent to keep whatever amount remained after all her medical bills were paid. None of this agreement was reduced to writing or disclosed to the law firm. Respondent settled the outstanding medical bills for \$2,100. He met with Weaver again and they agreed that he would take an additional \$2,700 and out of concern that there might be a last-minute invoice from a medical provider he would continue to retain the remaining approximately \$4,790 until the statute of limitations on her personal-injury action passed at which time respondent would keep the remaining funds irrespective of the amount. No further medical bills were submitted. Respondent did not tell his firm about the fee. He wrote or had written for him, from the operating account, four checks totaling \$4,790 that were attributed to Sailey's case. Board adopted panel's findings and conclusions as to violations of DR 1-102(A)(4), (A)(5), (A)(6) as to both Counts I and II, and adopted the panel's findings of no violations of DR 2-106(A) and DR 5-101(A)(1) and the panel's recommendation that those charges be dismissed. In mitigation, there was no prior disciplinary record, full cooperation, and good faith effort at restitution. In aggravation, there was a dishonest or selfish motive, pattern of misconduct, and multiple offenses. BCGD Proc.Reg. 10(B)(1)(b), (c), and (d). Panel recommended suspension for 18 months, with 12 months suspension stayed. Board recommended a suspension for two years, with one year stayed. Relator objected to the Board's dismissal of DR 2-106(A) and 5-101(A)(1) in Count II. Respondent objected to the finding that he twice violated DR 1-102(A)(5) and he proposed that the rule required that misconduct take place in an administrative or judicial proceeding. Respondent also objected to the board's proposed sanction and he disputed the characterization of his acts as exhibiting a pattern of misconduct. The Supreme Court of Ohio adopted the Board's findings, conclusions, and recommended sanction and so ordered a suspension for two years, with one year stayed. The court cited *Crossmock* (2006), *Yajko* (1977), *Crowley* (1994), and *Osipow* (1994) for the proposition that actual suspension is warranted where attorney misappropriated law-firm funds.

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**Rules Violated:** DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6)

<b>Aggravation:</b> (b), (c), (d)		<b>Mitigation:</b> (a), (c), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Two-year suspension, 12 months stayed		

***Broschak, Disciplinary Counsel v.***

118 Ohio St.3d 236, 2008-Ohio-2224. Decided 5/14/2008.

Respondent was under a child support default suspension from 9/28/2004 to 10/5/2004. Now, respondent has engaged in a pattern of misconduct by intentionally failing to pursue client cases, causing multiple criminal appeals to be dismissed due to failure to act, and repeatedly failing to cooperate with disciplinary counsel. Upon granting relator's motion for default, a master commissioner made findings, conclusions, and a recommendation which the Board adopted. As to Count I, he agreed to represent a defendant in the appeal of felony convictions and at a trial on additional felony criminal charges. The defendant paid a total of \$13,430 to respondent, \$6,430 for the transcript of the first criminal case which defendant ordered for the appeal. The court of appeals granted respondent four extensions to file a brief or face dismissal, but respondent failed to file the brief. The court then issued an entry ordering respondent to file the brief, but respondent did not file, resulting in dismissal of the appeal based on failure to prosecute. The defendant filed a pro se request asking that respondent be removed from the criminal proceeding for failure to communicate and failure to file a brief in the appellate case. Respondent failed to attend a pretrial because he was appearing on behalf of another client in another county. The judge issued a show-cause order to explain why he should not be held in contempt and be removed. The court removed respondent and appointed a state public defender. Respondent informed the court he no longer had the \$7,000 the client paid in attorney fees. When respondent was deposed by relator, he promised to provide a complete written response to the grievance and provide a refund of \$5,000 to the client, but he did not do so. Board found violations of DR 1-102(A)(4), (A)(5), (A)(6), 1-102(A), (B), 6-101(A)(3), 7-101(A)(1), (A)(2), (A)(3), and 9-102(B)(3). As to Count II, respondent found violations of DR 1-102(A)(6) and 9-102(B)(4) for his failure to provide a defendant's file regarding representation in a felony case in which the defendant was sentenced to four years' incarceration when requested to do by the defendant's wife and by another attorney. When the wife filed a grievance, the bar association dismissed the case when he promised to immediately forward the file. He did not forward the file as promised. As to Count III, respondent received a flat fee of \$2,500 to represent a man in an appeal of his gross-sexual imposition conviction. Board found violations of DR 1-102(A)(4), (A)(5), (A)(6), 6-101(A)(3), 7-101(A)(1), (A)(3) for his failure to respond to inquiries from the defendant and family for two months, failure to file the appellate brief, even after an order from the court to file with a motion for showing good cause for failure to timely file; telling the defendant and his sister he allowed the appeal to be dismissed to pursue the judicial-release motion; stating he would file, but not filing the judicial release motion. As to Count IV, respondent was paid \$2,500 to represent a defendant in the appeal of his gross-sexual imposition conviction. Board found violations of DR 1-102(A)(4), (A)(5), (A)(6), 6-101(A)(3), 7-101(A)(1), (A)(2), and (A)(3) for failing to file an appellate brief after receiving two extensions to file the appellate brief; not returning calls to the defendant's sister who learned of the court's dismissal of the case by checking with the court; not refunding the \$2,500; and not responding to relator's inquiries. As to Count V, respondent was paid \$5,000 by a defendant's mother to represent a defendant in an appeal. Board found violations of DR 1-102(A)(4), (A)(5), (A)(6), 6-101(A)(3), 7-101(A)(1), (A)(2), (A)(3) by failing to file the appellate brief after requesting three extensions, by not responding to a show cause order, resulting in a dismissal with prejudice, and failing to inform the client of the dismissal of the appeal which the client learned of by writing the court; by falsely telling the client he was unaware of the dismissal and would investigate it, and by not refunding any of the fee. As to Count VI, respondent was paid \$15,000 to represent a defendant in the appeal of a murder conviction and sentence to life imprisonment. Board found violations of DR 1-102(A)(4), (A)(5), (A)(6), 6-101(A)(3), 7-101(A)(1), (A)(2), and (A)(3) for filing an appeal but failing to file the trial transcript even after requesting and being given additional time, by not filing a response to the court's show-cause order which resulted in the court's dismissal of the appeal for failure to file the trial transcript; by not responding to the client's and the client's relatives' letters and attempt to reach respondent; by not refunding any attorney fees; and by not responding to relator's inquiries. As to Count VII, respondent was paid \$5,000 to represent a defendant in an appeal of a drug conviction and sentence of three years' imprisonment. Board found violations of DR 1-

102(A)(4), (A)(5), (A)(6), 6-101(A)(3), 7-101(A)(1), (A)(2), and (A)(3) for filing the appeal but not the trial transcript, by failing to respond to the court’s show- cause order which resulted in a dismissal of the appeal with prejudice; by failing to communicate with the defendant or another person on his behalf; by failing to return the file or the attorney fee; and by not responding to relator’s inquiries. As to Count VIII, respondent was hired to pursue a criminal appeal of a defendant (Raypole) convicted of aggravated drug trafficking and was hired to represent a defendant (Welton) in the appeal of a rape conviction and ten- years-to life prison sentence. Board found violations of DR 1-102(A)(4), (A)(5), (A)(6), 6-101(A)(3), 7-101(A)(1), (A)(2), and (A)(3) for in the Raypole matter filing an appeal but failing to file a timely brief which resulted in the appeal being dismissed with prejudice; and in the Welton matter failing to file a brief after receiving an extension; failing to respond to the court’s show-cause order, and again failing to file a brief after the court granted additional time to file which resulted in dismissal of the appeal with prejudice for failure to file a brief.; and for failing to respond to Welton’s request for information and ignoring the family’s attempts to recover the fee; and failing to respond to relator’s inquires. Respondent expressed to relator an interest in participating in the disciplinary process, raised to relator that mental-health issues prevented him from responding to the previous letters and pleadings, and informed relator he was involved with OLAP. There was a pattern of misconduct resulting in harm to clients, a disciplinary record, as well as failure to cooperate. BCGD Proc.Reg. 10(B)(1)(a). The court adopted all the Board’s findings of misconduct and the recommended sanction of indefinite suspension.

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**Rules Violated:** DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 1-102(A) & (B), 6-101(A)(3), 7-101(A)(1), 7-101(A)(2), 7-101(A)(3), 9-102(B)(3), 9-102(B)(4)

<b>Aggravation:</b> (a), (c), (e), (h)		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Brown, Dayton Bar Assn. v.*

124 Ohio St.3d 124, 2009-Ohio-6424. Decided 12/15/2009.

Respondent failed to transfer property into trusts for two different couples and as to one couple when the spouse died he failed in his duty to attest to the veracity of the signature on affidavits of the surviving spouse and joint survivor. A master commissioner granted relator's motion for default. The board adopted the master commissioner's findings of misconduct and recommended sanction. A couple, who had attended a financial planning seminar in 2004, retained respondent to prepare various estate-planning documents, including wills, a revocable trust, and deeds to assure that three parcels of property would not become part of their estate. He charged the couple \$1650 which they paid in full. The couple gave him copies of the deeds to the three properties. In December 2004, the couple met with the respondent and signed various documents, including a revocable trust and quit claim deeds to transfer the real property into the trust. In June 2006, after her husband's death, the wife learned that respondent had not recorded one of the quitclaim deeds. He charged an additional \$166.50 to fix the problem. He told the wife she needed to sign affidavits as surviving spouse and joint survivor to put her "ownership of the \* \* \* properties on record." He mailed the affidavits to the wife, but she refused to sign because respondent had already notarized the blank signature line which violated the jurat on both affidavits and she realized the impropriety. The wife incurred additional attorney fees and expenses when she hired other counsel to resolve the transfer of property and close the husband's estate. Board found violations of DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), and 6-101(A)(3). A second couple consulted respondent about establishing an irrevocable trust. He agreed to create the trust and to transfer the couple's real estate into it. They paid respondent a \$2,000 fee. They executed the trust document he prepared. They also agreed to have title to vehicles and bank accounts transferred into the trust. As time passed, they continued to receive tax notices for the property in their name, not the trust name. They asked respondent to explain and he said he would look into it. Despite the couple's efforts to contact him, they never spoke with respondent again. They hired new counsel who completed the transfer of the trust property, but in doing so he discovered the declaration of trust had not been filed with the county recorder. He arranged for this filing which cost the couple an additional \$150 to \$200. With the irrevocable trust, the couple hoped to facilitate their eventual move into a nursing home and receipt of Medicaid benefits. Respondent's one and a half year delay in transferring their property into the trust, also delayed their Medicaid eligibility. Respondent did not return any of the \$2,000. Board found violations of Prof.Cond.R. 1.1; Prof.Cond.R. 1.3 and its earlier counterpart DR 6-101(A)(3); Prof.Cond.R. 8.4(d); Prof.Cond.R. 8.4(h) and its predecessor DR 1-102(A)(6). In mitigation, there was no prior discipline. BCGD Proc.Reg. 10(B)(2)(a). The board attributed no mitigating effect to his asserted alcohol dependence because he failed to satisfy the requirement of BCGD Proc.Reg. 10(B)(2)(g). In aggravation, he committed multiple offenses, failed to cooperate, harmed vulnerable victims, and failed to make restitution. BCGD Proc.Reg. 10(B)(1)(d), (e), (h), and (i). Board recommended an indefinite suspension. The Supreme Court of Ohio agreed with the Board's findings and recommended sanction and so ordered an indefinite suspension. The court noted that the single mitigating factor of no prior discipline did not warrant a departure from the holding in *Lieser* (1997) that an indefinite suspension is especially fitting where neglect and a failure to cooperate are coupled. The court, in overruling respondent's objections that he received inadequate notice of the disciplinary proceedings, agreed with relator that respondent voluntarily made himself inaccessible despite knowing that disciplinary proceedings were underway.

**Rules Violated:** Prof.Cond.R. 1.1, 1.3, 8.4(d), 8.4(h); DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 6-101(A)(3)

<b>Aggravation:</b> (d), (e), (h), (i)		<b>Mitigation:</b> (a)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Brown, Cincinnati Bar Assn. v.*

121 Ohio St.3d 445, 2009-Ohio-1249. Decided 3/25/2009.

Respondent misappropriated a client's funds, failed to administer a decedent's estate after losing the original copy of the will, ignored the client's requests for information and to return property, and then was uncooperative in the disciplinary process. After respondent failed to answer the complaint that was served on him, relator moved for default. A master commissioner, appointed by the board, made findings of fact, conclusions of law, and recommended an indefinite suspension. The board accepted these findings and the recommendation. In April 2007, respondent was hire to open and administer a decedent's estate. The client gave respondent a check for \$500 for his fees, a cashier's check that had been made payable to the decedent for \$739.42, and the decedent's will. Respondent deposited the unearned fee into his personal account and signed and cashed the cashier's check without his client's authorization. Respondent misappropriated the funds belonging to his client and the decedent's estate for his personal use. He also lost the original will, failed to disclose the loss to his client, and failed to open the estate in probate court. When the client tried to communicate with him, respondent failed to return the calls. On three separate occasions, the client requested in writing that respondent return his records and fee so that he could retain another attorney. Respondent never honored these requests. And the client filed this grievance. Respondent failed to respond to an investigator's letter of inquiry. In a phone conversation with an investigator, respondent admitted to losing the decedent's will. Respondent promised, but failed to provide a written response to the grievance. Respondent then canceled his appearance at one deposition, but appeared for a second one, where he promised to return the client's misappropriated funds of \$1,239.42 and files. Respondent did not return either. Accepting the master commissioner's report, the board found violations of Prof.Cond.R. 1.3 for failing to open the decedent's estate, 1.4(a)(1), 1.15(a), 1.15(c), and 8.4(c) for cashing the cashier's check made payable to the decedent without the client's consent and misappropriating the money and the legal fee, 1.4(a)(4) for failing to respond to the client's calls, and Gov.Bar R. V(4)(G) for failing to cooperate in the disciplinary investigation. In mitigation, respondent has no prior disciplinary record. In aggravation, respondent engaged in a pattern of misconduct, failed to fully cooperate in the disciplinary process, and failed to make restitution. The board recommended an indefinite suspension. The Supreme Court agreed with the findings of fact and conclusions of law and so ordered the indefinite suspension. The court noted that "[a]n indefinite suspension is an appropriate sanction when a lawyer violates the standard of professional competence, diligence, and integrity by neglecting to complete promised legal services, misappropriating funds, and failing to promptly return funds and other property to which the client is entitled." Citations to *Torian*, (2005), *Verbiski* (1999), *Smith* (2008), and *Harris* (2006).

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**Rules Violated:** Prof.Cond.R. 1.3, 1.4(a)(1), 1.4(a)(4), 1.15(a), 1.15(c), 8.4(c); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> (c), (e), (i)		<b>Mitigation:</b> (a)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Brown, Allen Cty. Bar Assn. v.*

124 Ohio St.3d 530, 2010-Ohio-580. Decided 2/24/2010.

Respondent neglected legal matters, failed to act with diligence and promptness, and failed to promptly notify a client of funds to which the client was entitled. The misconduct arose from respondent's representation of two clients in separate collection matters. In each case, respondent sought to collect on a money judgment, but in one instance respondent accepted a retainer then took no steps to collect on the judgment whereas in the other case respondent ceased all activity after collecting only a portion of the judgment and retained the funds until threatened with disciplinary action. Respondent repeatedly ignored both clients' written and verbal requests regarding the status of their cases. At the disciplinary hearing respondent claimed that as a solo practitioner she followed office-management procedures that were, at best, disorganized and she admitted to an avoidance response-she knew it was wrong but it was easier to do something else than to address the situations. She had rejected assistance from her local bar association in 2004 and 2008. She had a busy practice and a household to manage, including for a period of time, a son with medical problems. She let matters slide. Board adopted the panel's findings of violations of Prof.Cond.R. 1.1, 1.3, and 1.15 and the Board also recognized that certain acts occurred prior to February 1, 2007 and therefore also found violations of DR 6-101(A)(3) and 9-102(B)(1) as charged. In mitigation, there were cooperation with disciplinary authorities and sincere remorse, lack of a prior disciplinary record, and lack of selfish or dishonest motive. BCGD Proc.Reg. 10(B)(2)(a), (b), and (d). In aggravation, there were multiple offenses and a "disturbing pattern of misconduct." BCGD Proc.Reg. 10(B)(1)(c) and (d). Although respondent made restitution, the panel was reluctant to consider it a mitigating factor because respondent did not make restitution until after the disciplinary action had been threatened or initiated. BCGD Proc.Reg. 10(B)(2)(c). The panel noted that both judgments remained enforceable. Panel cited BCGD Proc.Reg. 10(B)(2)(H) noting that respondent had implemented changes to facilitate better case management, but the panel was concerned about the long-term effectiveness of the measures when by her own admission she had been overwhelmed at times as a solo practitioner, and had refused help in the past. The panel questioned what long term network she had in place. Board adopted the panel's recommended sanction of a one-year suspension, all stayed upon conditions of completing 12 hours of CLE in law-office management with instruction to cover office organization, time and task management, and basic software aids for management; submit to stress-management assessment by OLAP and enter into any follow up contract deemed necessary by OLAP; participate in a two-year mentoring program similar to the one previously offered by the bar association; and commit no further misconduct. The Supreme Court agreed with the board's findings, conclusions, and recommended sanction. The court agreed that the holding of *Sebree* (2002) should be applied in this case and the court noted that it had applied *Sebree* in cases with analogous patterns of misconduct, such as *Poole* (2008), *Sherman* (2004), *Norton* (2007), tailoring the conditions of stayed suspensions to address the misconduct. The court so ordered a suspension for one year, stayed upon the stated conditions.

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**Rules Violated:** Prof.Cond.R. [1.1](#), [1.3](#), [1.15](#); DR 6-101(A)(3), 9-102(B)(1)

<b>Aggravation:</b> (a), (b), (d), (h)		<b>Mitigation:</b> (a)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">One-year suspension, stayed</a>		

*Brown, Cleveland Metro. Bar Assn. v.*  
130 Ohio St.3d 147, 2011-Ohio-5198. Decided 10/13/2011.

Respondent neglected client matters, failed to communicate with his clients, failed to respond to requests for information, failed to properly keep and deliver client property, engaged in conduct involving dishonesty and fraud, and did not cooperate in the disciplinary investigation. Respondent was previously suspended for failure to register in 2009. Respondent did not respond to the complaint. A master commissioner was appointed, and made findings of fact and law, and recommended disbarment. In Count One, respondent accepted money to petition for an increase in his client's child support. He failed to file court paperwork for his client and lied about the fact that he had not filed it. As a result, the client could not make childcare payments and her child was removed from the program. Respondent did not respond to phone calls or certified letters from his client. He later admitted to relator that he owed his client money and promised to pay it back; respondent never did. This conduct violated Prof.Cond.R. 1.3 (reasonable diligence), 1.4(a)(3) (keep client reasonably informed), 1.4(a)(4) (reply to requests for information), 1.15(d) (promptly deliver client funds or property), and 8.4(c) (dishonest, fraud, deceit, or misrepresentation). In Count Two, respondent accepted money to file a bankruptcy, even though he was not admitted to the bankruptcy court, had no bankruptcy experience, and did not have filing privileges there. Over the course of a year, he continuously lied to his client about the case, telling her that he had filed the petition, he had spoken to the judge about the petition, and he would provide her with information relating to her case. This conduct violated Prof.Cond.R. 1.1 (competent representation), 1.2, 1.4(a)(3), 1.4(a)(4), 1.15(d), 8.4(c). In Count Three, respondent collected garnishment checks for a company, but never paid them any of the money he collected. Respondent also admitted that he did not have an IOLTA account. This conduct violated Prof.Cond.R. 1.4(a)(3), 1.4(a)(4), 1.15(a) (requiring client and attorney funds be separate), 1.15(d), and 8.4(c). The Court agreed with the above findings. In aggravation, respondent engaged in a pattern of misconduct involving multiple offenses, failed to make restitution, and harmed vulnerable clients. BCGD Proc.Reg. 10(B)(1)(b), (c), (d), (h), (i). There were no factors in mitigation; although the master commissioner found no prior disciplinary record, respondent was on suspension for failing to register; however, the master commissioner gave no weight to this in mitigation and thus the error was harmless. The board recommended that respondent be indefinitely suspended and that he pay restitution to his three clients. The Court adopted the recommendation, adding that the indefinite suspension should run consecutively to respondent's attorney registration suspension. Thus, the two year waiting period would begin only after respondent registered.

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**Rules Violated:** Prof.Cond.R. 1.1, 1.2, 1.3, 1.4(a)(3), 1.4(a)(4), 1.15(a), 1.15(d), 8.4(c)

<b>Aggravation:</b> (b), (c), (d), (h), (i)		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

**Brueggeman, Disciplinary Counsel v.**  
128 Ohio St.3d 206, 2010-Ohio-6149. Decided 12/21/2010.

Respondent failed to adequately communicate with his clients in multiple instances, and refused to cooperate in the related disciplinary investigations. The board adopted the panel's findings, conclusions, and recommended sanction. In Count One, in June 2007, a client obtained respondent to obtain a dissolution of her marriage, but he failed to respond to the client inquires and the client filed a grievance for his neglect in filing the dissolution and for failing to respond to her requests for information . When respondent received relator's first letter, he asked for a two-week extension to respond, but he never responded to that letter or to a second letter. He filed the dissolution in May 2008. The board found violations of Prof.Cond.R. 1.3, 1.4(a)(3), 1.4(a)(4), 8.1(b), and 8.4(h). The court agreed. As to Count II, respondent was retained by a client to prepare a deed, but prepared the deed incorrectly and it was rejected by the recorder's office. Respondent also misplaced the client's file. He never filed a corrected deed. The client had to resolve the problem himself. Respondent asked for an extension to respond to relator's first letter, but never responded to that letter or a second letter. The board found violations of Prof.Cond.R. 1.3, 1.4(a)(2), 1.4(a)(3), 1.4(a)(4), 8.1(b), and 8.4(h). The court agreed, except for Prof.Cond.R. 1.4(a)(3) or 1.4(a)(4) which the court did not find as violations because there was no evidence that respondent failed to respond to request for information from the client. In Count III, respondent was hired by a client and paid an initial fee to handle an estate, but he failed to complete the work to resolve the estate. The client filed a grievance when respondent did not respond to the client's letter expressing concerns about lack of information and requesting the return of the paid fee and the documents. The client also obtained a default judgment on an action she filed in small claims court seeking return of the fee. Respondent asked for an extension to respond to relator's first letter, but never responded to that letter or a second letter. He returned the client's documents and refunded the fee, fifteen months after agreeing to handle the estate. The board found violations of Prof.Cond.R. 1.3, 1.4(a)(3), 1.4(a)(4), 1.15(d), 8.1(b), and 8.4(h). The court agreed. In Count IV, a client filed a grievance about respondent for his lack of communication as to a family trust. Respondent asked for an extension to respond to relator's first letter, but never responded to that letter or a second letter. The board found violations of Prof.Cond.R. 8.1(b) and 8.4(h). The court agreed. In Count V, in 2005 respondent was hired by a client to provide assistance in resolving his father's estate. In late 2007, the client filed a grievance regarding respondent's failure to address matters relating to the disposition of a time-share property and a bank account. Respondent failed to respond to any of relator's three letters. The board found violations of Prof.Cond.R. 1.3, 1.4(a)(3), 1.4(a)(4), 8.1(b), and 8.4(h). The court agreed. In aggravation, respondent displayed a pattern of misconduct, committed multiple offenses, and failed to cooperate. BCGD Proc.Reg. 10(B)(1)(c), (d), and (e). In mitigation, there was no prior discipline. BCGD Proc.Reg. 10(B)(2)(b), (d), (e). Also in mitigation is his mental disability of depression. BCGD Proc.Reg. 10(B)(2)(g)(i) through (iv). In September 2009, respondent contacted OLAP. He testified that he felt "frozen in his practice", avoided matters, and did not handle conflict well. In December 2009, he signed a four-year contract with OLAP and had continued to comply. He consulted a psychologist and is continuing treatment. The therapist who testified by deposition and the Ms. Krznarich from OLAP testified in person. Both agreed he suffers from dysthymia, has made unusually good progress, and has a good prognosis. The therapist's opinion was that there is a causal connection between respondent's dysthymia and his neglect of clients and failure to respond to relator's inquires. The therapist testified that to a reasonable degree of professional certainty, respondent can maintain proper competent ethical and professional practice of law if he continues to make progress. The Board recommended a sanction of a 12-month stayed suspension, with conditions. The court agreed. Citation to *Allen* (2010) (12-month stayed suspension). The court ordered a suspension for 12 months, with the entire suspension stayed, on condition of one year of probation pursuant to Gov.Bar R. V(9), continue to comply with OLAP contract, and refrain from any additional misconduct.

**Rules Violated:** 1.3, 1.4(a)(2) , 1.4(a)(3), 1.4(a)(4), 1.15(d), 8.1(b), 8.4(h)

<b>Aggravation:</b> (c), (d), (e)		<b>Mitigation:</b> (a), (b), (d), (e), (g)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> One-year suspension, stayed		

*Bucciare, Cincinnati Bar Assn. v.*

121 Ohio St.3d 274, 2009-Ohio-1156. Decided 3/19/2009.

Respondent represented clients in a case while on inactive registration status. The parties entered into a consent-to-discipline agreement with a recommendation for a public reprimand. Respondent changed his attorney-registration status to inactive on December 29, 2005 for the remainder of the 2005-2007 biennium; however, from January 2007 through December 2007, he represented two clients in an appeal, obtaining a reversal and remand in their favor, then representing them in proceedings before a common pleas court. Throughout this time, he mistakenly believed that his assistant had arranged to register him for active status. While representing the clients in common pleas court, he attended a deposition and also agreed to participate in mediation to settle the dispute. Prior to the mediation proceedings, which were scheduled for mid-December 2007, opposing counsel moved for respondent's removal, citing his inactive registration status. On December 4, 2007, respondent registered for active status. He has conceded his responsibility for failing to do so before that date, while still practicing law. According to the consent-to-discipline agreement, there were no aggravating factors present. Mitigating factors include no prior disciplinary record, a lack of a dishonest or selfish motive, a timely and good-faith effort to rectify the consequences of his misconduct, and cooperation in the disciplinary proceedings. BCGD Proc.Reg. 10(B)(2)(a), (b), (c), and (d). The panel and board accepted the consent-to-discipline agreement to a public reprimand for violations of Gov.Bar R. VI(2)(A) for practicing law while registered on inactive status and Prof.Cond.R. 5.5(a) for practicing law in violation of the regulations for practicing law in that jurisdiction. The Supreme Court accepted the consent-to-discipline agreement and so ordered a public reprimand.

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**Rules Violated:** Prof.Cond.R. [5.5\(a\)](#)

<b>Aggravation:</b> None		<b>Mitigation:</b> (a), (b), (c), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Public Reprimand</a>		

***Bunstine, Disciplinary Counsel v.***

123 Ohio St.3d 298, 2009-Ohio-5286. Decided 10/13/2009.

Respondent served as a part-time prosecutor until May 2007. In 2006, respondent's wife was contacted by a couple who were friends from her church regarding their adult son who had been arrested and charged with disorderly conduct and resisting arrest. At her own initiative, the wife drafted a letter to a municipal court judge relaying the parents concerns their son might harm himself or others and would not undergo counseling unless ordered by the court and mentioning past incidents reflecting on the son's mental state that the wife believed substantiated the need for counseling. There was no signature on the letter, but there was a typed closing to the letter stating "Ed and Lynn Bunstine." Respondent gave the letter to the bailiff on the day on the arraignment and then respondent left to attend another hearing. All relevant parties received a copy of the letter. No prosecutor was assigned to the case at the time the letter was delivered, but later respondent was assigned. Respondent attended two pretrials and negotiated a plea agreement with defense counsel at the second. Respondent recused himself from the case after the plea agreement was accepted by the court. His explanation of this decision was that he spoke to the parents at the pretrial and told them if they needed his help, he would help them in any way as to the problems they were having with their son. He further explained that once he spoke to the victims (the parents) he felt he created a conflict. The board adopted the panel's findings and conclusions that respondent did not violate DR 5-101(A)(1), but did violate DR 1-102(A)(5) and adopted the recommended sanction of a suspension for six months with all six months stayed. Respondent filed objections to the board report alleging some factual inaccuracies and objecting to the finding of a DR 1-102(A)(5) violation. He explained to the court that he felt it his ethical duty to present the municipal court with evidence that defendant could be a danger to himself or others and that the letter was a timely and effective alternative since he had to be at another hearing and could not verbally present the information to the court. He argued that his recusal was not untimely because it was his conversation with the parents warranted the recusal. The Supreme Court of Ohio noted that it was not bound by the conclusions of the panel or the board, citing *Furth* (2001). The court adopted the Board's finding that respondent did not violate DR 5-101(A)(1), but did not adopt the board's finding that he violated DR 1-102(A)(5) and dismissed the charge because relator had not met is burden of proving the violations by clear and convincing evidence, citing Gov.Bar R. V(6)(J), *Jackson* (1998), *Reid* (1999), and *Ledford* (1954). The court dismissed the cause. One justice dissenting would have adopted the board's finding of a violation of DR 1-102(A)(5) and the recommended sanction.

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**Rules Violated:** None

<b>Aggravation:</b> None		<b>Mitigation:</b> None	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> YES	<b>Sanction:</b> Case Dismissed		

**Burkholder, Ohio State Bar Assn. v.**

121 Ohio St.3d 262, 2009-Ohio-761. Decided 2/26/2009.

Respondent has been suspended for failing to comply with attorney registration requirements, suspended for failing to comply with child support, and has been convicted of criminal offenses of violence. On September 17, 2008, in *Toledo Bar Assn. v. Burkholder*, 119 Ohio St.3d 1457, 2008- Ohio-4665, the Supreme Court found respondent in contempt of the court's order issued in *Toledo Bar Assn. v. Burkholder*, 109 Ohio St.3d 443, 2006-Ohio-2817, and revoked the stay of the six-month suspension imposed for professional misconduct involving improper sexual advances toward a client. In 2007, in *In re Attorney Registration Suspension*, 116 Ohio St.3d 1420, 2007-Ohio-6463, the Court suspended respondent's license for failure to properly register as an attorney. Before that, on April 16, 2007, the Court in *In re Burkholder*, 113 Ohio St.3d 1455, 2007-Ohio-1751, issued an interim suspension of respondent's license to practice because he was in default of court-ordered child support. At one time, respondent had a thriving domestic relations practice in Lucas County, Ohio. By September 2001, he and his wife had separated, eventually divorced. In October 2005, he turned his practice over to another lawyer so he could focus on recovering from his serious alcohol problem. Unable to maintain sobriety even with treatment, he moved to Boston, Massachusetts in September 2006 to seek help from a sister. While in Massachusetts, respondent was convicted of assault and battery, threatening to commit crimes against the person or property of another, and of twice violating an abuse-prevention order. The victim had been his fiancée. He served six months in jail and is on probation until October 7, 2009. Respondent remains under the above suspensions, continues to live in Boston, abides by his probation terms, and hopes to eventually return to Ohio. As stipulated by the parties, the panel and board found him in violation of DR 1-102(A)(6) and Prof.Cond.R. 8.4(h) on two counts; DR 1-102(A)(3) and Prof.Cond.R. 8.4(d); and Gov.Bar R. VI(1)(D) for his failure to register as an attorney at his current address. In aggravation, he has a prior disciplinary record and multiple disciplinary infractions, including multiple criminal convictions. BCGD Proc.Reg. 10(B)(1)(a) and (d). In mitigation, respondent freely disclosed his wrongdoing and is in the process of recovery from his longstanding battle with alcohol dependency. BCGD Proc.Reg. 10(B)(2)(d) and (g). He has a family history of alcoholism, began drinking at age 13 or 14, and the drinking increased in law school, but at age twenty nine he quit drinking for ten years during which time he served on the bar association's lawyer assistance committee. The board noted that at one point respondent was drinking a half gallon of vodka a day, but now has attended five AA meetings per week, has participated in domestic abuse counseling, successfully completed an eight month in-patient alcohol abuse program, and has contacted OLAP in the hopes to participate in that program upon his return to Ohio. The board noted that respondent is "a talented lawyer with much to offer his clients if clean and sober" and "appears committed to changing his life, conquering his addiction, and returning to permanent sobriety." Respondent testified that he is current with all his child support payments. The sanction was submitted jointly by the parties. The board recommended an indefinite suspension commencing from April 16, 2007, because a portion of this sanction follows from the interim suspension for default on orders to pay child support. Further, the board recommended that in addition to the requirements of Gov.Bar R. V(10)(B) through (E) for reinstatement, respondent must present evidence that he has and continues to participate actively and meaningfully in OLAP, that he has entered and continues treatment with a psychiatrist, psychologist, or other licensed health-care professional, that he has completed all CLE requirements, that he is in compliance with all court orders for child support payment, and present a report from a psychiatrist, psychologist, or other licensed health-care professional that to a reasonable degree of certainty respondent is emotionally and psychologically able to withstand the pressures and demands associated with the practice of law, and his mental health will not impair his ability to meet the demands of the practice of law. The Supreme Court agreed with the finding of violations and recommended sanction and so ordered an indefinite suspension with stated conditions for reinstatement.

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**Rules Violated:** Prof.Cond.R. 8.4(d), 8.4(h); DR 1-102(A)(3), 1-102(A)(6)

<b>Aggravation:</b> (a), (d)		<b>Mitigation:</b> (d), (g)	
<b>Prior Discipline:</b> YES (x3)	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Burse, Disciplinary Counsel v.*

124 Ohio St.3d 85, 2009-Ohio-6180. Decided 12/2/2009.

Respondent received an interim suspension from the practice of law in *Dayton Bar Assn. v. Bursey*, 119 Ohio St.3d 1465, 2008-Ohio-4989. Respondent misappropriated client funds held in trust; forged clients' signatures; commingled client funds with his own; and committed numerous other acts of misconduct. Respondent appeared for a deposition but did not answer complaints filed by Disciplinary Counsel and by Dayton Bar Association. The complaints were consolidated and upon relators' joint motion for default, a master commissioner granted the motion, made findings, conclusions, and a recommended sanction that the Board adopted. Disciplinary Counsel's allegations were contained in Counts I through IV. As to Count I, the board found violations of Prof.Cond.R. 1.3, 1.4(a)(3), 1.5(a), 1.5(c)(2), 1.15(d), 8.4(c), and 8.4(h) for his conduct after he received a \$91,948.64 settlement check. The client, pursuant to the contingent fee agreement, was to receive 75% of the settlement which was \$68,961.48. Respondent presented her with a check for \$66,948.64 and did not explain or account for the shortfall. The bank refused to honor the check because respondent had slightly altered the payee line. The client asked respondent for a replacement, but respondent paid only \$40,000 from his trust account leaving a balance of \$1,948.58. He later remitted to the client a check for another \$26,000 drawn from a credit union account. He stopped returning the client's calls and never paid her the rest of the settlement money. As to Count II, board found violations of Prof.Cond.R. 1.15(a), 1.15(d), 8.4(c), and 8.4(h) for his conduct in overdrawing his client trust account on 11 occasions between July 1 and November 30, 2007. He improperly withdrew most of a client's \$4,000 settlement proceeds, wrote the client a postdated check that was dishonored for insufficient funds, then later wrote the client a check using the Count I client's settlement funds. After drawing the account down to zero, he wrote a check to a casino and the check was dishonored four times. A trust account check he wrote to pay medical bills for a client was dishonored. On one day he wrote two trust account checks to himself (one check for \$900.00 which was \$66.67 more than his \$833.33 attorney fee and the other check for \$1400) leaving only a balance of \$705.67 when his client was entitled to receive \$1,468.67 from the settlement proceeds in the trust account. Another day, two checks were dishonored, one for \$1,468.67 to the client, the other to pay her medical bills—that day he cashed a \$700 check, leaving a \$5.67 balance. He later paid the client with a cashier's check. He attempted use trust account checks to pay for his personal rental car expenses and cell phone service, but the checks were dishonored. As to Count III, board found violations of Prof.Cond.R. 1.3, 1.4(a)(3), 1.16(d), and 8.4(h) for his conduct in first failing to keep a client apprised and rarely returning calls after agreeing to represent her on a 1/3 contingent fee basis; then after client filed a grievance agreeing to represent her on a 1/4 contingent fee basis and call her weekly until the claim was resolved, but failing to do so and not returning her file as requested upon his discharge. As to Count IV, board found violations of Prof.Cond.R. 1.15(a)(2), 1.15(a)(3), 1.15(a)(4), 1.15(a)(5), and 8.4(h) for not responding to letters of inquiry from relator, although he did, pursuant to subpoena, respond in writing to the inquiries, and did appear for deposition, at which time he provided an invalid address which he also supplied to the attorney registration office. He promised to provide records for his client trust account but he never did. The Dayton Bar Association's allegations involved six different clients. As to Client 1, board found violations of Prof.Cond.R. 1.4(a)(3), 1.5(c)(2), 1.15(a), 1.15(d), 8.4(c), and 8.4(h) for his conduct in negotiating a \$5,529 settlement check three days after he received it, without providing opposing counsel with a signed release or filing an entry of dismissal as required by the terms of the settlement agreement. He forged the client and the client's wife's names on the check. Both the client and opposing counsel had difficulty reaching respondent. He gave the client a release to sign and issued him a check for \$2,994, but did not give him a closing statement. The check was dishonored several times. Opposing counsel's motion to enforce the settlement was granted, but the client has not received any settlement money and the medical bills have not been paid as respondent promised. As to Client 2, board found violations of Prof.Cond.R. 1.4(a)(3) and 8.4(h) for his misconduct in not returning a clients' calls for the entire month before the hearing on a change-of-custody and contempt of visitation motions. As to Client 3, board found violations of Prof.Cond.R. 1.4(a)(3), 8.4(c), and 8.4(h) for misconduct when after agreeing to represent a client to recover damages from an automobile accident and

referring him to a chiropractor and telling the client the chiropractor's bill would be paid from settlement proceeds, he did not communicate with or return the file after the client asked for his file back when respondent advised the client that respondent's child had been hospitalized. Neither the client nor the chiropractor was able to locate respondent and the chiropractor has not been paid. As to Client 4, board found violations of Prof.Cond.R. 1.4(a)(3), 1.5(c)(2), 1.15(a), 1.15(d), 8.4(c), and 8.4(h) for his misconduct in representation of a client injured in an automobile accident. Respondent, without the client's authority, represented in writing to the other driver's insurer that he was authorized to settle all claims for \$15,000. Respondent received a check from the insurer payable to the law firm and the client for \$4,250. Respondent had earlier agreed not to negotiate the check until the client signed a release and all medical expenses were paid. Respondent forged the client's name on the check and deposited it into his bank account, but told the client he had returned a \$4,000 settlement check to the insurer because it was too low. Respondent has not paid the client or the medical provider. As to Client 5, the board found violations of Prof.Cond.R. 1.4(a)(3), 8.4(c), and 8.4(h) for his misconduct when a client paid for him to represent her with \$400 in cash and a postdated check for \$200 that respondent promised not to cash for two days, but cashed early which deleted the client's bank account. When the client spoke to him, he denied cashing the check early, thereafter the client was unable to contact him and he never files her divorce complaint. As to Client 6, board found violations of Prof.Cond.R. 4.1, 8.4(c), and 8.4(h) for his misconduct in making three separate withdrawals from the estate bank account of a minor for whom he had been appointed guardian after the guardianship had ended. He withdrew \$10,474, leaving \$10.92 in the account, and then failed to appear at a hearing before the presiding judge regarding the account. Board also found violations of Prof.Cond.R. 8.1(b) and Gov.Bar R. V(4)(G) ignoring the efforts of investigations for the Dayton Bar Association. Respondent left a message once giving the investigator a post office box address but did not schedule the requested appointment. Board recommended a permanent disbarment. Supreme Court of Ohio accepted the board's findings and recommended sanction and so ordered a permanent disbarment, citing both *Mason* (2008) and *Glatki* (2000) and noting that disbarment is generally the sanction for neglect coupled with misappropriation of client's money and other professional conduct.

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**Rules Violated:** Prof.Cond.R. 1.3, 1.4(a)(3), 1.5(a), 1.5(c)(2), 1.15(a), 1.15(a)(2), 1.15(a)(3), 1.15(a)(4), 1.15(a)(5), 1.15(d), 1.16(d), 4.1, 8.1(b), 8.4(c), 8.4(h); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <u>Disbarment</u>		

***Butler, Disciplinary Counsel v.***

128 Ohio St.3d 319, 2011-Ohio-236. Decided 1/27/2011.

In 2008, respondent received an interim felony suspension pursuant to Gov.Bar R. V(5)(A)(4) following his conviction and sentencing on ten felony counts involving pandering sexually oriented material involving a minor. *In re Butler*, 120 Ohio St.3d 1427, 2008-Ohio-6274. Relator charged respondent, and the parties stipulated that respondent's offenses that occurred in 2004-2005 violated DR 1-102(A)(3) and 1-102(A)(6). The board accepted these stipulated violations, and further agreed that mitigating factors are the absence of a prior disciplinary record, full and free disclosure to the board, and cooperative attitude toward the disciplinary proceedings. BCGD Proc.Reg. 10(B)(2)(a) and (d). There were no aggravating factors present. The board recommended the stipulated sanction of an indefinite suspension with no credit for time served under the interim suspension. Case citation to *Ridenbaugh* (2009) in which credit for time served was given for misconduct involving acts of voyeurism and use of child pornography. The court adopted the board's findings of fact and misconduct and the board's recommended sanction of an indefinite suspension and so ordered an indefinite suspension from the practice of law, with no credit for time served under the interim felony suspension order.

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**Rules Violated:** DR 1-102(A)(3), 1-102(A)(6)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Cameron, Medina Cty. Bar Assn. v.*  
130 Ohio St.3d 299, 2011-Ohio-5200. Decided 10/12/2011.

Respondent communicated with a party represented by counsel with the counsel's consent and made false statements to a tribunal as an expert witness. In Count One, respondent was sued by his expert witness for failing to pay his fee. After he was served with a motion for default judgment on the case, respondent contact the expert witness, who was represented by counsel, in an attempt to settle the case directly. In Count Two, respondent, in the same case as in Count One, represented to the court that a settlement had been reached, even though it had not. Although there was conflicting testimony on this fact, the panel believed the other witnesses more credible than respondent. As a result, this conduct was found to have violated Prof.Cond.R. 3.3 (making a false statement of fact to a tribunal) and 4.2 (prohibiting communication with a represented party). The Court agreed with these findings. In aggravation, respondent had a dishonest or selfish motive, engaged in multiple offenses, and failed to acknowledge the wrongful nature of his conduct. BCGD Proc.Reg. 10(B)(1)(b), (d), (g). The Court however did find that he acknowledged the wrongful nature of his conduct. In mitigation, respondent lacks a prior disciplinary record and provided evidence of good character. BCGD Proc.Reg. 10(B)(2)(a), (e). Relator requested a one-year suspension, respondent requested that the charges be dropped, and the panel and board recommended a six- month suspension. Citing *Cuckler* (2004), the Court sided with relator. Respondent was suspended for one year, stayed on the condition of no further misconduct.

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**Rules Violated:** Prof.Cond.R. [3.3](#), [4.2](#)

<b>Aggravation:</b> (b), (d), (g)		<b>Mitigation:</b> (a), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">One-year suspension, stayed</a>		

*Campbell, Disciplinary Counsel v.*

126 Ohio St.3d 150, 2010-Ohio-3265. Decided 7/15/2010.

Respondent, a municipal court judge, injected himself into a criminal investigation of a defendant, attempted to try an indigent defendant without appointing him counsel, failed to follow precedent and faithfully discharge his duties from an appellate court, and behaved in an undignified, unprofessional, and discourteous manner toward attorneys and litigants in his courtroom. The conduct took place during 2005 to 2007. The board adopted the panel's findings and recommended sanction. In Count 1, a defendant had been convicted of underage consumption of alcohol and later convicted of underage consumption and furnishing alcohol to a minor. Later that defendant was arrested and charged with physical control of a vehicle while intoxicated, underage consumption of alcohol, and possession of marijuana. At the arraignment, because he was on probation for his prior convictions, respondent ordered him incarcerated, with work and school release, pending his probation-violation hearing. The jail did not have space for him, so he was transferred to electronically monitored home arrest. When two other individuals who were arrested for underage consumption, appeared before respondent, he questioned them, but not under oath, about who brought the alcohol. Each stated the defendant had supplied the alcohol. The defendant's counsel was not present at this hearing. The respondent relayed this information to law enforcement, and the defendant was later charged with furnishing alcohol to minors. At the pretrial and probation violation hearing, counsel for this defendant tried to get this charge dismissed because the police had questioned the defendant outside the presence of counsel without Miranda warning. Respondent denied the motion, saying it didn't matter because of the testimony of the others. Later, when the two individuals appeared before the judge he questioned them again. Subsequently, at defendant's pretrial, respondent refused to accept a plea that would have dismissed the furnishing charge in exchange for a plea on other charges. At the pretrial, defendant's counsel said he did not want to depose witnesses because of the expense, so the respondent listened to audio recordings of the earlier hearings where defendant was implicated for bringing alcohol to the party. Respondent relayed this information to the attorneys. Respondent state he wanted to proceed with the probation violation hearing; but, defendant's counsel requested a continuance until the other charges were resolved, since the facts for both situations were analogous. Respondent set the case for a pretrial and probation-violation hearing, but before doing so he heard testimony from a police officer and later granted the continuance only after defendant's counsel renewed the objection. The board found violations of Canon 1 and 2, and DR 1-102(A)(5). As to Count I, the court noted that judges can give information about illegal conduct to the police, but respondent's conduct "crossed the line from the permissible relay of information to law enforcement to the impermissible active participation in the investigation and collection of evidence against the defendant." In Count 2, respondent told an attorney that he was "behaving like a horse's ass" because the attorney's client refused to accept a plea agreement. Respondent later spoke to the client in a holding cell without his attorney present, and told him he would be taken back to jail because there was not going to be a plea. The board found violations of Canons 2 and 3(B)(4). In Count 3, a defendant pled guilty to a an amended charge of reckless operation and received a fine. Although the case was closed, the respondent requested the file from the city law director's secretary, to see the results of the defendant's drug test. Respondent used his position to pressure another. The board found a violation of Canon 2. In Count 4, a defendant requested court-appointed counsel, claiming he was indigent. After questioning the defendant about his employment status as a union ironworker at the time the crime was committed, respondent denied defendant's request. Defendant repeatedly requested court-appointed counsel from jail, which was repeatedly denied by respondent. Respondent did grant a continuance so that defendant could obtain counsel. An attorney eventually appeared for defendant pro bono and a guilty plea was entered. Respondent admitted that he misunderstood the law for appointing counsel to the indigent, and that he handled the situation improperly. Board found violations of Canon 2 and DR 1-102(A)(5). In Count 5, three defendants who were in custody and in need of court-appointed counsel appeared in respondent's court, but no public defenders were available. Respondent criticized the county commissioners on the record for causing this problem and remanded the defendant's into custody. Board found a violation of Canon 2. In Count 6, respondent asked a defendant to submit to a drug

screening; while she was doing that he continued with his docket. The defendant returned while respondent was conducting other arraignments and said she would need a blood test because she had end-stage renal disease and was unable to produce urine. Respondent had the defendant put in a holding cell for 49 minutes while he finished his arraignments. Respondent admitted that the defendant was not disorderly and thus it was unnecessary to place her in a cell. Board found violations of Canons 2 and 3(B)(4). In Count 7, arraignments in respondent's courtroom could not be conducted because the new city law director had not been given a signed contract. Respondent called the mayor, who came to the court. Respondent appear in his robe and led the mayor to the courtroom, where the clerk declared court in session, and respondent called the mayor to the bench to question him on the record, but not under oath. Respondent admitted these actions were improper. Board found a violation of Canon 2. In Count 8, a defendant appeared pro se and pled guilty to a civil protection order (CPO) which was granted to protect her. Six days later, an attorney appeared for the defendant and cited case law holding that the person protected by a CPO cannot violate it. Respondent denied the request to withdraw the guilty plea. On appeal, the guilty plea was overturned based on prior precedent. On remand, respondent made it clear he would not dismiss the charge until a new charge was filed, and then discussed with the law director and the defense counsel as to which charge would be appropriate. Respondent claimed he misunderstood his role upon remand from the appellate court. He acknowledged he should not have been involved in the formulation or prosecution of charges. Board found violations of Canons 2 and 3(B)(2). In Count 9, respondent treated two separate, indigent defendants discourteously while assessing their eligibility for court-appointed counsel. Respondent admitted to taking a hard stance while questioning them, asking too many questions, and lapsing into "trial lawyer cross-examination" mode. Found to have violated Canons 2 and 3(B)(4). In mitigation, the Board found a lack of prior disciplinary record, the lack of a dishonest or selfish motive, and full and free disclosure by respondent during the investigation. BCGD Proc.Reg. 10(B)(2)(a), (b) and (d). In aggravation, the Court found, although the parties did not stipulate to aggravating factors and the Board did not make a finding, a pattern of misconduct involving multiple offenses which harmed vulnerable people. BCGD Proc.Reg. 10(B)(1)(c), (d) and (h). In *O'Neill* (2004) and *Squire* (2007) the court imposed two-year suspensions with one year stayed; but respondent's violations were not as numerous or egregious and warrant a less severe sanction. The Board recommended a twelve-month suspension, with six months stayed. The Supreme Court agreed with the Board's findings and recommended sanction of a twelve-month suspension with six months stayed on condition of no further misconduct.

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**Rules Violated:** DR 1-102(A)(5); Code of Judicial Conduct (former) Canons [1](#), [2](#), [3\(B\)\(2\)](#), [3\(B\)\(4\)](#)

<b>Aggravation:</b> (a), (b), (d)		<b>Mitigation:</b> (c), (d), (h)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> <a href="#">YES</a>	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> <a href="#">YES</a>	<b>Sanction:</b> <a href="#">One-year suspension, six months stayed</a>		

*Cantrell, Disciplinary Counsel v.*

125 Ohio St.3d 458, 2010-Ohio-2114. Decided 5/20/2010.

Respondent improperly used her IOLTA account, misappropriated client funds, and knowingly practiced law while her license was suspended. On December 14, 2009, respondent received an interim felony suspension unrelated to conduct at issue in this disciplinary proceeding in *In re Cantrell*, 123 Ohio St.3d 1517, 2009-Ohio-6503. Respondent participated in the disciplinary investigation and stipulated as to certain facts and misconduct, but did not appear at the disciplinary hearing. Counts I, II, VI, and VII relate to respondent's use of her IOLTA account for personal expenses. As to Count II, respondent continued to maintain an IOLTA account from 11/16/2007 until 5/15/2008 while her license was inactive and routinely deposited personal funds into the trust account and paid personal expenses and expenses of her son and brother who were not clients. As to Count VI, she borrowed \$18,000 from a friend to cover litigation costs in case her ex-husband sought custody of her son, deposited the money into her IOLTA, and used the money to pay her personal expenses. As to Count VII she made inconsistent statements about the beneficiary of certain checks issued from the IOLTA. In a letter to relator she stated she issued the check for the benefit of her brother, but at deposition she testified she made the expenditures for herself and her son. As to Count I, from 4/15/2008 to 12/2/2008, she failed to keep sufficient funds in the IOLTA, causing it to be overdrawn 38 times. As to Counts I, II, VI, and VII, the board found four violations of Prof.Cond.R. 1.15(a) and 8.4(h); and also found one violation of Prof.Cond.R. 8.1(a) for her conflicting statements regarding the beneficiary of certain checks issued from the IOLTA. The panel and board recommended dismissal of the violation of Prof.Cond.R. 8.1(a) alleged in Count Six and Gov.Bar R. V(4)(G) alleged in Counts Six and Seven because they did not find clear and convincing evidence that respondent made false statements regarding her alleged repayment of the \$18,000 personal loan or that she failed to cooperate in the disciplinary investigation regarding her misuse of her trust account. Counts III, IV, V, and VIII relate to the administration of an estate. As to Count III, on 4/15/2008, respondent accepted \$1000 retainer and agreed to represent an estate despite the fact that her license was inactive; she filed the initial probate documents before restoring her license. As to Counts IV and V, in October 2008, respondent withdrew all of the money from her IOLTA because she lost her checkbook; subsequent to the withdrawal, the bank paid two outstanding checks that respondent failed to record causing the account to be overdrawn. Respondent placed \$3439 from the estate into the IOLTA account, which she claims represents earned fees. Respondent did not file an application for approval of the estate's attorney fees until 12/15/2008. When failed to appear at the numerous hearings regarding her fee, the court denied her request. Thus, respondent was not entitled to the money she had deposited into her trust and used for personal expenses. As to Count VIII, in April 2009, the beneficiary of the estate filed a complaint for concealment against respondent and the executor. The beneficiary alleged that she only got \$25,000 of the \$50,000 distribution stated in the final accounting. Respondent claimed she put \$50,000 in her IOLTA and that she gave \$25,000 to one beneficiary and held the other \$25,000 while she negotiated a settlement with her. From December 2008 to March 2009, respondent wrote checks to "cash," depleting all but \$265 of the \$25,000. On August 10, 2009, the probate court found respondent guilty of concealing trust assets. As to Count III, the board found violations of Prof.Cond.R. 5.5(a) and Gov.Bar R. VI(2)(a) by representing the estate while her license was inactive. As to Count IV, the board found violations of Prof.Cond.R. 1.15(a) and 8.4(h) by receiving fees not approved by the probate court; and also found violations of 1.3, 1.5(a), and 8.4(d). The panel and board recommended dismissal of Count IV allegations of violations of 3.3(a)(1) or 8.4(c) because it did not find clear and convincing evidence that respondent's conduct regarding the \$3,439 payment of alleged attorney fees violated the rules. As to Count V, board found violations of 1.15(a) and 8.4(h); as to Count VIII, 1.15(a), 8.4(b), and 8.4(h) and 8.4(c) and 8.4(d). Count IX involved respondent's application to be appointed guardian of the estate of a minor. The probate court conditionally granted the application upon her posting a \$10,000 bond, but without posting the required bond, respondent signed a warranty deed as the guardian for the minor, conveying real property held in the minor's name to his mother. After executing the deed, she moved the court to waive the bond, but the court denied the motion and she never posted the bond. As to Count IX, board found violations of DR 1-102(A)(6), 1-102(A)(4),

1-102(A)(5), 7-101(A)(1), and 7-102(A)(5), but neither the panel nor the board found a violation of DR 7-101(A)(3). The court adopted the board's findings of fact and conclusions of law. In aggravation, there was a pattern of misconduct and multiple offenses. BCGD Proc.Reg. 10(B)(1)(c), and (d). In mitigation, the respondent had no prior disciplinary record in her 22 year career. BCGD Proc.Reg. 10(B)(2)(a). The board recommended an indefinite suspension. The sanction imposed in several cases was considered: *Wise* (2006) (indefinite suspension), *McCauly* (2007) (indefinite suspension), *Koury* (1990) (indefinite suspension) and *Hunter* (2005) (disbarment). The court, giving weight to the board's recommendation of the lesser sanction of indefinite suspension based on the mitigation evidence of her 22 years of practice without ethical violation, ordered an indefinite suspension.

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**Rules Violated:** Prof.Cond.R. 1.3, 1.5(a), 1.15(a), 5.5(a), 8.1(a), 8.4(b), 8.4(c), 8.4(d), 8.4(h); DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 7-101(A)(1), 7-102(A)(5)

<b>Aggravation:</b> (c), (d)		<b>Mitigation:</b> (a)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

***Cantrell, Disciplinary Counsel v.***

130 Ohio St.3d 46, 2011-Ohio-4554. Decided 9/14/2011.

Respondent was convicted of grand theft and possession of cocaine. In Count One, respondent was charged with tampering with records, grand theft, and falsification related to her illegally obtaining Section 8 housing. Respondent pleaded guilty to two counts of grand theft and was sentenced to 120 days in jail, three years of Community Control, complete NEOCAP, attend Alcoholics Anonymous, and complete 200 hours of community service. In Count Two, respondent was charged with possession of cocaine, trafficking in cocaine and complicity to traffic cocaine. Respondent pleaded guilty to possession of cocaine and was sentenced to the same sanctions as in Count One. Respondent has admitted that her conduct violated Prof.Cond.R. 8.4(b) (illegal act of dishonestly or untrustworthiness) and 8.4(h) (conduct adversely reflecting on fitness to practice law). The Court adopted these findings. In mitigation, respondent fully cooperated and received other penalties and sanctions. BCGD Proc.Reg. 10(B)(2)(d), (f). Respondent tried to submit mental health mitigation to the Board, but did not submit it to the panel, which is when such evidence is appropriate. Citing *Sterner* (1996), since there were no special circumstances, the Court agreed with the Board to reject the evidence. In aggravation, respondent had a prior disciplinary record, exhibited a dishonest or selfish motive, engaged in multiple criminal offenses, and failed to appear the board hearing. BCGD Proc.Reg. 10(B)(1)(a), (b), (d), (e). The Court noted that respondent's interim felony suspension does not constitute prior discipline under BCGD Proc.Reg. 10(B)(1)(a), but respondent's prior indefinite suspension does. The board recommended permanent disbarment. However, because it improperly weighted respondent's prior discipline, the Court rejected the sanction. Citing *LoDico* (2008), and *Saunders* (2010), the Court imposed an indefinite suspension to run consecutively to respondent's current indefinite suspension.

**Rules Violated:** Prof.Cond.R. [8.4\(b\)](#), [8.4\(h\)](#)

<b>Aggravation:</b> (a), (b), (d), (e)		<b>Mitigation:</b> (a)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Catanzarite, Akron Bar Assn. v.*

119 Ohio St.3d 313, 2008-Ohio-4063. Decided 8/14/2008.

Respondent tried to collect excessive legal fees from two prospective clients, sued them for an amount that he knew he had not earned, and then attempted to bully and threaten his way out of the disciplinary process. On January 13, 2006 respondent met with two prospective clients for one and a half to two hours to discuss a possible legal matter involving their third partner in a business partnership. By telephone, prior to the meeting he advised he would not charge for consultation, but if hired he would need \$1,000 retainer and would charge fees as necessary. He did not specify an hourly rate. At the meeting he mentioned the \$1,000 retainer and that he would cap his fees at \$5,000. The prospective clients explained that they would have to think about it after they met with another attorney the following week. In the initial meeting, respondent suggested that the two clients try and bring their third partner back as a team player. Respondent called and asked if progress had been made with the partner and he inquired about the \$1000 retainer. The client said he would send the retainer if they decided to hire him. The client told respondent he had tried to talk with the third partner before the meeting and tried again after the meeting, but the third partner would not meet with him. Respondent sent a fax after this phone call to the prospective clients that read "You have already begun implementation of our plan regarding your former partner. We have agreed to my legal fee of \$5,000, payable with \$1,000 immediately and \$1,000 on the 15th day of February, March, April, and May of 2006..." Respondent called a few more times offering first to charge a fee of \$1,000 and then of only \$300. The two partners did not accept. They later learned that respondent filed a lawsuit against their company for breach of contract, claiming they agreed to pay \$1000 retainer and \$5,000 in fees. Ultimately the prospective clients hired two attorneys: one to handle the third partner issue and the other to defend against respondent's lawsuit, which was eventually settled for \$300. During the hearing, he conceded he should have not filed the lawsuit or should have asserted a claim for quantum meruit. Board adopted panel's finding that he violated DR 2-106(A). During respondent's deposition, respondent's demeanor and explanation of his actions demonstrated that he was trying to exact punishment for what he believed to be an attempt to obtain free legal advice, "A breach of a contract is a breach of a contract. They got \$500 worth of advice, anyway. They were too ignorant to follow it . . . I'm glad they had problems. They deserve it. That is what shysters get for their dishonesty." The board adopted the panel's findings that respondent violated DR 7-102(A)(1) by taking action for the sole purpose to harass. During pre-hearing proceedings, relator successfully moved for a psychological examination. He ultimately complied, but first resisted the motion—he moved to strike, moved to dismiss the complaint, to vacate the order for the exam, for the chairwoman's recusal, and for sanctions. Also, respondent addressed a letter to the Disciplinary Counsel and sent it to relator's counsel, but not the Disciplinary Counsel, creating the impression that respondent had filed a grievance against relator's counsel. Board adopted panel's findings of violations of Gov.Bar R. V(4)(G) and DR 1-102(A)(6) by attempting to bully and intimidate his way out of the disciplinary process in violation. The board adopted the panel's recommendation of a one-year suspension with six months stayed under the conditions that respondent (1) consult with OLAP, enter into an OLAP contract to obtain whatever disability or dependency assistance he needs, and comply with all terms for the duration of the contract, and (2) complete a one-year probation under the supervision of a monitoring attorney, appointed by relator to ensure compliance with ethical and professional standards of practice. The Supreme Court noted that while it has disciplined attorneys for charging excessive fees, taking legal action merely to harass another, or attempting to intimidate disciplinary authorities, it has never had a case involving all three improprieties at a single time. As aggravating factors, respondent's misconduct manifested a selfish motive, showed an initial lack of cooperation in the disciplinary process and caused harm to the victims. BCGD Proc.Reg. 10(B)(1)(b), (e), and (h). Further, respondent did little to acknowledge his wrongdoing and remained indignant to the disciplinary process. The only mitigating factor is that respondent has no prior disciplinary record. BCGD Proc.Reg. 10(B)(2)(a). He adamantly denied any possibility of a mental disability or alcohol or drug dependency. The psychiatrist did not find mental illness within Gov.Bar.R. V(7)(A), but did find maladaptive paranoid personality, and suspected that this mental health condition and possible alcohol

abuse impede his ability to practice law. The court was troubled by his resistance to the possibility that his conduct was the result of disability or dependency. The Supreme Court agreed with the Board's findings and recommended sanction and so ordered. The court addressed the clear and convincing evidence standard, deference to panel's credibility determinations, and protection of the public as the purpose of discipline.

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**Rules Violated:** DR 2-106(A), 7-102(A)(1); Gov.Bar R. [V\(4\)\(G\)](#)

<b>Aggravation:</b> (b), (e), (h)		<b>Mitigation:</b> (a)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> <a href="#">YES</a>	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">One-year suspension, 6 months stayed</a>		

*Chambers, Disciplinary Counsel v.*

125 Ohio St.3d 414, 2010-Ohio-1809. Decided 4/29/2010.

Respondent neglected a legal matter entrusted to him, intentionally failed to carry out a contract of employment, failed to promptly pay or deliver funds the client was entitled to receive, and refused to assist in the disciplinary investigation. Relator initially charged respondent with a single count of failure to cooperate in the investigation of the Wilmore grievance, but later amended the complaint to add a second count arising from the Stump grievance. Relator moved for a default judgment when respondent did not answer either complaint. The board adopted the master commissioner's finding, conclusion and recommended sanction. The court, after hearing oral arguments on both relator's and respondent's objections to the board's report, placed respondent on monitored probation and remanded the matter to the board for further consideration. On remand, relator added additional facts and allegations to the Wilmore grievance. As to the Wilmore grievance, in June or July 2005, Wilmore sought representation to seek early release from prison. In August 2005, respondent sent Wilmore a letter stating he would not pursue the matter until he received his \$2,500 fee. Respondent accepted the fee, entered an appearance in the case, and obtained permission from the judge to review the presentence-investigation report, but did not file any motion on Wilmore's behalf. Respondent did not respond to relator's inquiries. After receiving a subpoena, he called relator and requested an extension of time to respond to the letters of inquiry, but then he failed to submit a response after relator extended the time and canceled the deposition. As to the Wilmore grievance, the board adopted the panel's findings of violations of DR 6-101(A)(3), 7-101(A)(2), 9-102(B)(4), Gov.Bar R. V(4)(G), DR 1-102(A)(5), 1-102(A)(6), and 7-101(A)(1). As to the Stump grievance, on December 7, 2006, respondent entered a plea of no contest to a charge of misdemeanor attempted aggravated disorderly conduct in municipal court arising out of an altercation with his neighbor Stump. He was sentenced to one year of probation. Stump filed a civil action and a grievance. Stump alleged in the grievance that respondent assaulted him because Stump had been called to testify as a witness in juvenile court matter involving respondent's children. Respondent did not respond to relator's letters of inquiry. Relator received two letters from Stump, one on December 11, 2007, seeking to withdraw his grievance so he could pursue civil remedies, and one on December 28, 2007, stating he refused to settle any of his claims against respondent. Attached to the December 28 letter was correspondence from respondent advising Stump's counsel that in order to settle the civil matter Stump would have to dismiss the grievance. Also attached was respondent's draft of a settlement and mutual release of claims which stated that a letter being sent to relator withdrawing the grievance and that if the court imposed any discipline due to the grievance or considered the allegations as an aggravating factor in any future disciplinary proceeding, Stump agrees to be the subject of a defamation lawsuit and waives the statute of limitations. Or, in lieu of filing a suit alleging defamation, respondent may compel liquidated damages from Stump in the amount of \$15,000. On the day of trial, respondent and Stump discussed settlement with the trial judge. They agreed to dismiss their respective claims and submitted the settlement and mutual release of claim for court's approval, but the judge crossed out several provisions, but left the sentence about Stump sending relator withdrawing the grievance. Stump sent a letter to relator requesting to withdraw the grievance, but relator replied that it had authority to investigate even if a grievant desired to withdraw a grievance. And, the letter advised that an attorney should not require a client to forgo filing, dismiss, or resolve a grievance outside of Gov.Bar R. V. Respondent did not reply. Board adopted the panel's findings of violations of Gov.Bar R. V(4)(G) and Prof.Cond.R. 8.4(d) and (h). The Board noted that in *Berger* (1992) the court found violations of DR 1-102(A)(5) and 1-102(A)(6) when two attorneys sought to limit the response of a former client to a disciplinary inquiry. The board found violations of Prof.Cond.R. 8.4(d) and (h) even though respondent and Stump never had an attorney-client relationship, and the court agreed. The court adopted the board's findings and conclusions as to both the Wilmore and Stump grievances. Although not considered as aggravation or mitigation, the board noted the following background. Respondent was a sole practitioner since 1997, with 90 percent of the practice devoted to criminal defense. He was divorced in June 1999. In June 2005, his ex-wife, without his knowledge, moved with the children to California which precipitated child-custody and child-visitation litigation and

respondent's depression. He had been sober since 1997, but began drinking after learning that his daughter had been molested. This was contemporaneous with relator's investigation of the Wilmore grievance. Shortly after he had a stroke and had surgery to repair a heart defect. He began to cooperate in the investigation after seeking treatment for alcoholism and other issues in 2008. In aggravation, he committed multiple offenses and failed to cooperate. BCGD Proc.Reg. 10(B)(1)(d) and (e). In mitigation, he did not have prior discipline, he made restitution in the Wilmore matter, but it took three years to do so; and had other sanctions imposed in the Stump matter, and he did not have dishonest or selfish motive. BCGD Proc.Reg. 10(B)(2)(a), (b), (c), and (f). Also in mitigation, he had bipolar affective disorder and alcohol dependence which met the criteria for mitigation. BCGD Proc.Reg. 10(B)(2)(g)(i) through (iv). Board recommended a suspension for one year, stayed upon conditions. The court noted the discipline imposed in *Goodlet* (2003) of a one-year suspension stayed on similar conditions for misconduct committed while the attorney suffered from severe and untreated depression, but since recognized the need for treatment and had significant chance of recovery. The court so ordered a one year suspension, stayed on conditions of a three-year probationary period during which he remain in compliance with his OLAP contract, continue to be monitored by an appointed monitoring attorney, regularly attend AA meeting, commit no further misconduct, and pay costs of the proceeding.

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**Rules Violated:** Prof.Cond.R. 8.4(d), 8.4(h); DR 1-102(A)(5), 1-102(A)(6), 6-101(A)(3), 7-101(A)(1), 7-101(A)(2), 9-102(B)(4); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> (d), (e)		<b>Mitigation:</b> (a), (b), (c), (f), (g)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> One-year suspension, stayed		

*Character, Disciplinary Counsel v.*

129 Ohio St.3d 60, 2011-Ohio-2902. Decided 6/23/2011.

Respondent, on multiple occasions, did not inform her clients that she lacked professional liability insurance, used a misleading firm name, failed to properly use a client trust account, charged excessive fees, failed to adequately prepare to handle legal matters, and failed to cooperate in the disciplinary process. Respondent has previously received a six-month stayed suspension in 1998, and an interim felony suspension and attorney registration suspension in 2009. Respondent was originally charged with over 20 counts, but after some dismissals and the bifurcation of Count 20, the panel eventually found over 40 violations in 10 counts. In Count 1, respondent accepted a fee but did not deposit it into her client trust account. In Count 4, respondent failed to appear at court hearings and was inadequately prepared to handle the case. In Count 10, respondent represented a mentally challenged individual with whom she had attained a position of trust. Respondent collected over \$20,000 for handling a postdecree and some real estate matters, even though the client, and not the respondent, did most of the work on these issues. Respondent also induced the client to invest money into a company in which respondent had a financial stake. In Count 12, respondent collected \$23,000 to represent a student in a criminal matter and the accompanying university suspension proceeding. Respondent did virtually nothing in either matter, and advised her client to plead guilty to avoid any jail time. The client was given 6 months and not permitted to return to the university. Respondent was terminated but did not provide an accounting of fees and expenses. In Count 13, respondent failed to attend 5 or 6 appointments to discuss her disciplinary violation with a Bar Association, failed to attend 3 depositions, and was uncooperative or completely disorganized when she did attend. Most requested records were not promptly produced, if produced at all. In Count 15 and 16, respondent induced her client to invest in the company, promising a big payoff in only 10 days. She failed to provide the client with a prospectus or information about the investment properties. The client received less than \$5000 of the \$33,000 owed, which respondent blamed on the market crash. Additionally, respondent was supposed to pay a client's judgment lien with investment proceeds from the company. The check was returned for insufficient funds, so the client paid the judgment. Respondent attempted to repay the client with a check she signed using the company's owner's name, but that check too was drawn on insufficient funds. In Count 17, respondent took money to represent a client, but never entered an appearance and allowed a court-appointed attorney to represent the client. Respondent also presented motions to the client's mother to evince work, but the motions were all prepared pro se, and the signatures on the documents were not those of the client. Furthermore, they each contain a certificate of service for a date that is not present on the court's docket. In Count 18, respondent falsely represented that she was licensed to practice law in Georgia when she was not, and failed to oppose a motion for summary judgment in a client's Ohio foreclosure proceeding. While the client saved her Ohio property from foreclosure, he lost the Georgia property. In Count 19, respondent had a business associate wire money to her parents back account as part of an investment agreement, and then failed to refund the money when the investor was unable to secure the necessary additional financing. In many of the above counts, respondent also used the firm name "Character, Character & Associates" despite working by herself, failed to inform her clients that she lacked professional liability insurance, and failed to cooperate in the disciplinary investigation. Respondent objected to various rule violations, arguing they were not supported by sufficient evidence. Upon the Court's review of the evidence, respondent was found to have committed the following misconduct: in Count 1, DR 1-104(A)-(C) (failing to disclose to the client that the lawyer lacks professional liability insurance), 1-102(A)(6) (conduct that adversely reflects on the lawyer's fitness to practice law), 2-102(B) (practicing under a name that is misleading), 2-102(C) (prohibiting a lawyer implying a partnership unless they are partners), 9-102(A) (holding clients property separately), 9-102(A)(2) (requiring funds disputed funds to be deposited in a trust account), and 9-102(E) (requiring funds of clients or third parties be placed in a trust account); in Count 4, 1-102(A)(5) and (6), 6-101(A)(2) (handling a legal matter without adequate preparation) and (A)(3), and 2-102(B) and (C); in Count 10, 1-102(A)(3) (illegal conduct involving moral turpitude) and (A)(4), 1-102(A)(6), 1-104, 2-106(A) and (B) (clearly excessive fee), 5-104 (entering a business transaction

with a client if they have differing interests), and 5-105 (requiring refusal of employment if the interests of another client may impair lawyer's judgment), and Gov.Bar R. V(4)(G) (cooperation with a disciplinary investigation); in Count 12, DR 1-102(A)(5), 2-102(B) and (C), 2-106(A) and (B), 6-101(A)(2) and (3), 7-101(A)(1)-(3), and 9-102(A); in Count 13, Gov.Bar R. V(4)(G); in Count 15, 1-102(A)(4) and (6) and 7-101(A)(3); in Count 16, 1-102(A)(4) and (6), 5-104(A), and 7-101(A)(3); in Count 17, Prof.Cond.R. 1.3 (requiring reasonable diligence), 1.4(c) (professional liability insurance), 1.5(a) (clearly excessive fee), 7.5(a) (practicing under a firm name containing names of lawyers not in the firm), 7.5(d) (state or imply partnership only when it is a fact), 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(h) (conduct that adversely reflects on the lawyer's fitness to practice law); in Count 18, 1.4(c), 8.4(c), and 8.4(h); and in Count 19, 8.4(c) and 8.4(h). In reaching these findings, the Court noted that the evidentiary requirements of *Sebree* (2004) do not apply when the respondent appears and defends herself, and also noted that an attorney is held to the ethical rules even for actions that do not pertain to her practicing law. Respondent also objected on three due process grounds, namely that her case was prejudiced by: that her criminal prosecution and conviction, her incarceration and inability to attend the hearings, and the use of a two-member panel instead of a three-member panel. Based on the parties bifurcation of the count dealing with respondent's incarceration, case precedent in *Acker* (1972) and *In re Colburn* (1987), and Gov.Bar R. V(6)(D)(3), the Court overruled respondent's due process objections. In aggravation, respondent had a prior disciplinary record, engaged in a pattern of misconduct involving multiple offenses, refused to acknowledge the wrongful nature of her conduct, caused harm to vulnerable clients, and failed to make restitution. BCGD Proc.Reg. 10(B)(1)(a), (c), (d), (g), (h) and (i). The board found no mitigating factors, refusing to accept respondent's incarceration as mitigation. Relator recommended disbarment. The panel recommended an indefinite suspension, but the board recommended disbarment. Respondent objected based on alleged procedural and evidentiary infirmities in relator's case. The Court, adopting the board's findings of fact and conclusions of law, and relying on *Mason* (2008), *Weaver* (2004), and *Gueli* (2008), accepted the board's recommended sanction and permanently disbarred the respondent.

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**Rules Violated:** Prof.Cond.R. 1.3, 1.4(c), 1.5(a), 7.5(a), 7.5(d), 8.4(c), 8.4(h); DR 1-102(A)(3), 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 1-104(A), 1-104(B), 1-104(C), 2-102(B), 2-102(C), 2-106(A), 2-106(B), 5-104, 5-105, 6-101(A)(2), 6-101(A)(3), 7-101(A)(1), 7-101(A)(2), 7-101(A)(3), 9-102(A), 9-102(A)(2), 9-102(E); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> (a), (c), (d), (g), (h), (i).		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> <a href="#">YES</a>	<b>Procedure/ Process Issues:</b> <a href="#">YES</a>	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Disbarment</a>		

*Chasser, Columbus Bar Assn. v.*

124 Ohio St.3d 578, 2010-Ohio-956. Decided 3/18/2010.

Respondent improperly obtained a referral from and divided fees with another attorney, made misrepresentations to his client, intentionally failed to carry out his employment contract, failed to keep proper records of funds and render accounts, retained property of a client, commingled client and personal funds, intentionally damaged his client during representation and failed to cooperate with the disciplinary process. Respondent, a sole practitioner, agreed to represent Lewis in a personal injury claim against a driver. Lewis was referred to respondent by Attorney Sullivan from whom respondent rented office space. Lewis was represented by Attorney Sullivan in a worker's compensation case arising from injuries suffered in an automobile accident during the course of Lewis's employment. Lewis and respondent entered into a contingent fee agreement whereby respondent would get 33⅓% if the case settled and 40% if the case proceeded to trial. Sullivan allegedly served as co-counsel, but the contingent fee agreement did not mention this or that he would receive attorney fees for the personal-injury claim. Respondent filed a complaint for Lewis and eventually settled his personal injury claim for \$95,000. Lewis agreed to settle the BWC subrogation claim for \$30,000. Sullivan had no active participation in the personal injury claim. Other than providing respondent with material he had prepared during the workers' compensation claim. Respondent provided Lewis with an itemized distribution sheet for the \$95,000 settlement showing \$31,666.67 attorney fees, \$30,000 to BWC for the subrogation payment, \$8,176.19 for deposition charges, and \$628.81 for miscellaneous costs, including copies, parking expenses, and office supplies. The distribution sheet further indicates that respondent shared \$10,555 of the attorney fee with attorney Sullivan and respondent received \$24,528.33. Respondent did not pay the \$30,000 owed the BWC, but instead transferred those funds from his trust account to his office operating account. Lewis questioned the deposition charges. Respondent claimed that he had taken the deposition of Lewis's doctor among others. Respondent had not taken any depositions. Respondent failed to return Lewis's phone calls on this matter. Respondent eventually sent Lewis a letter, refunding the \$8176.86 charge, but adding \$6333.33 in attorney's fees. This addition raised respondent's contingent fee from 33⅓% to 40%. The new distribution sheet also claimed that attorney Sullivan had received \$2111.11 of the additional fee, which never occurred. Five years later, Lewis saw an article about a class-action lawsuit against BWC that led to the return of money it collected pursuant to the subrogation statute. Lewis called respondent to ask about when BWC would reimburse the \$30,000, however, respondent never returned Lewis's phone calls. Through another attorney, Lewis discovered that respondent never paid the \$30,000 to BWC. Lewis filed a grievance. Respondent sent Lewis \$30,000 with a letter stating that BWC has not identified everyone to be repaid and suggesting that he was advancing Lewis the money while respondent awaited reimbursement from BWC. The same day respondent sent a similar letter to relator. He did not respond to relator's subsequent letter as to whether he had actually sent the BWC the money. During the investigation, respondent sent relator a letter claiming entitlement to the additional \$6333.33 fees because respondent claimed he was entitled to 40% of the settlement. Respondent also asserted that negotiations with BWC on the subrogation issue entitled respondent to a separate fee of \$8176, but that he agreed with Lewis to accept 40% of the recovery in exchange for waiving the fees for the negotiating the subrogation settlement. Respondent further blamed his bookkeeper for failing to pay the \$30,000 to BWC and explained that the \$8176 "deposition charge" was for negotiating the BWC subrogation claim and that it should have read "disposition charge." In Count I, for improper compensation for a referral and improper fee sharing, the Board found respondent had violated DR 2-103(B), and 2-107(A)(1), but not DR 5-101(A)(1) or Gov.Bar R. V(4)(G) as charged by relator. In Count II, for misrepresenting deposition charges to Lewis, the Board found a violation of DR 1-102(A)(4). In Count III, the Board found violations of DR 1-102(A)(4), 1-102(A)(6), 7-101(A)(2), 9-102(B)(3), 9-102(B)(4) and Gov.Bar R. V(4)(G) for the respondent's failure to honor his fee agreement by charging his client 40% instead of 33% and offering contradictory explanations. In Count IV, Lewis kept \$30,000 in client funds, ostensibly to satisfy the subrogation claim with BWC; the Board found that this conduct violated DR 1-102(A)(4), 1-102(A)(6), 7-101(A)(2), 7-101(A)(3), 7-102(A)(5), 9-102(A), 9-102(B)(3), and Gov.Bar R. V(4)(G), but

not DR 1-102(A)(5) or 6-101(A)(1) as charged by relator. In mitigation, respondent lacked a prior disciplinary record. BCGD Proc.Reg. 10(B)(2)(a). In aggravation, respondent: acted with a dishonest or selfish motive, engaged in multiple offenses and a pattern of misconduct, demonstrated lack of cooperation and deception in disciplinary investigation, harmed a vulnerable client, and failed to acknowledge the harm to that client. BCGD Proc.Reg. 10(B)(1)(b), (c), (d), (e), (f), (g), and (h). The Board also found a failure to make restitution, however, respondent did make full restitution of \$17,594.20 to Lewis after the Board had issued their report. The Board recommended an indefinite suspension. Citations to *Vild* (2005), *Wagner* (2007), *Zingarelli* (2000), and *Heiland* (2008) as applicable precedent and to *Agopian* (2006) noting that the goal of the disciplinary process is to protect the public from unworthy lawyers. The Supreme Court adopted the Boards findings of fact, conclusions of law, and recommended sanction, and so ordered an indefinite suspension.

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**Rules Violated:** DR 1-102(A)(4), 1-102(A)(6), 2-103(B), 2-107(A)(1), 7-101(A)(2), 7-101(A)(3), 7-102(A)(5), 9-102(A), 9-102(B)(3), 9-102(B)(4); Gov.Bar R. **V(4)(G)**

<b>Aggravation:</b> (b), (c), (d), (e), (f), (g), (h)		<b>Mitigation:</b> (a)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

**Church, Cuyahoga Cty. Bar Assn. v.**  
116 Ohio St.3d 563, 2008-Ohio-81. Decided 1/17/2008.

Upon granting relator's motion for default, a master commissioner made findings, conclusions, and a recommendation which the board adopted. As to Count I, in June 2005, respondent was hired to represent two individuals (the Copens) who had been sued by a company in common pleas court. Respondent filed an answer and a counter claim but eventually stopped communicating, failing to inform them of court dates and to return phone calls, resulting in the clients' failing to appear for a pretrial. Respondent did not respond when the company's filed a motion for and obtained summary judgment against the Copens in the amount of \$19,079.31 plus interest and court costs. Respondent did not respond to the client's request that he return the file. Board found violations of DR 6- 101(A)(3), 7-101(A)(1), 7-101(A)(2), 7-101(A)(3), and 9-102(B)(4). As to Count II, relator sent two letters (one by certified mail and one by regular mail) to notify him of and seek response to the grievance. The certified letter was returned unclaimed and the regular mail letter was not returned as undeliverable. Relator's investigator sent three letters requesting participation and cooperation in the investigation, but respondent did not reply. The investigator spoke with respondent who promised to cooperate and send his file to the investigator, but he did not send the file and did not appear for an interview. Respondent was served with a copy of the formal complaint, but did not answer. Board found a violation of Gov.Bar R. V(4)(G). In aggravation, there was a pattern of misconduct involving multiple offenses, a lack of cooperation, refusal to acknowledge wrongful nature of his conduct, and there was vulnerability of and resulting harm to clients. BCGD Proc.Reg. 10(B)(1)(c), (d), (e), (g), (h). There were no mitigating factors found. BCGD Proc.Reg. 10(B)(2). Board recommended an indefinite suspension. Supreme Court of Ohio agreed with the findings and the recommended sanction and so ordered an indefinite suspension. The court noted that an indefinite suspension had already been imposed for virtually identical misconduct in *Cleveland Bar Assn. v. Church*, 114 Ohio St.3d 41, 2007-Ohio-2744.

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**Rules Violated:** DR 6- 101(A)(3), 7-101(A)(1), 7-101(A)(2), 7-101(A)(3), 9-102(B)(4); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> (c), (d), (e), (g), (h)		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Clovis, Columbus Bar Assn. v.*

125 Ohio St.3d 434, 2010-Ohio-1859. Decided 5/5/2010.

Respondent accepted a flat fee of \$4000 but did not provide any requested legal services, and then failed to cooperate in the disciplinary process. Relator moved for default judgment and the board referred the case to a master commissioner. In April 2007, hired respondent was hired by an individual to represent her husband in his filing of a clemency petition with the Ohio Parole Board. Respondent and the individual executed a flat-rate fee agreement and the individual paid him \$4000. Respondent met with the husband twice during the summer of 2007. Respondent said he would file the petition by the end of October 2007. The individual had problems reaching the respondent for updates and was met with excuses when she could eventually reach him. The respondent never filed any documents with the parole board. In August 2008, the wife told respondent by letter that if he did not return the \$4000 and her paperwork by August 15 that she would file a grievance. Respondent did not respond. She filed a grievance in September 2008. More than two years after she sought representation, the individual serving as the husband's attorney-in-fact, filed the clemency petition. As of October 20, 2009, respondent had not returned the documents or refunded the money. As to this conduct, Board adopted the master commissioner's findings that respondent violated Prof.Cond.R. 1.3, 1.5(a), and 8.4(h). Relator also charged a violation of Prof.Cond.R. 8.4(c), but the master commissioner and the board did not find sufficient evidence as required by Gov.Bar R. V(6)(F)(1)(b) to support a finding and dismissed it. During the relator's investigation of this matter, respondent failed to respond to all attempts at communication by relator, including multiple letters and phone messages. The complaint was served upon respondent and signed for by Krista O'Neill, however, respondent never answered the complaint. As to this conduct, the board adopted the master commissioner's findings that respondent violated Prof.Cond.R. 8.1(b) and Gov.Bar R. V(4)(G). The record demonstrated that respondent failed to act with reasonable diligence and promptness, charged an excess fee, engaged in conduct adversely reflecting on fitness to practice law, failed to respond to relator's demand for information, and failed to cooperate in the disciplinary investigations. The following factors were found in aggravation, pursuant to BCGD Proc.Reg. 10(B)(1)(a), (e), (g), and (i): Respondent's prior suspension on November 3, 2009 for failing to register; failure to cooperate; failure to acknowledge wrongful nature of conduct; and not attempting to make restitution. There were no factors in mitigation. Citations to *Kaplan* (2010), *Goodlet* (2007), *Gosling* (2007), and *Wagner* that neglect and failure to cooperate generally warrant an indefinite suspension. Citations to *Weaver* (2004), *Fox* (2006) and *Tyack* (2005) that taking retainers and failing to carry out contracts of employment is tantamount to theft and indefinite suspensions have been imposed. The board adopted the master commissioner's recommended sanction of an indefinite suspension. The Court agreed with the Board's findings of fact, conclusions of law, and recommended sanction, and so ordered and so ordered.

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**Rules Violated:** Prof.Cond.R. 1.3, 1.5(a), 8.1(b), 8.4(h); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> (a), (e), (g), (i)		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Cook, Cuyahoga Cty. Bar Assn. v.*  
121 Ohio St.3d 9, 2009-Ohio-259. Decided 1/29/2009.

Respondent charged a client an excessive fee through a nonrefundable retainer and a contingent fee, failed to deposit those fees into a client trust account, and failed to maintain complete records of the client's funds and to render appropriate accounts. Relator charged respondent with three counts of professional misconduct involving a single client, but the panel of the board found violations in only one count. In Count III, Pauletta Buchanan retained respondent in August 2004 when she was facing a foreclosure action. In their fee agreement, respondent promised to represent Buchanan on various legal matters involving her mortgage lender and others. The terms of the agreements were that Buchanan would pay respondent a "flat rate retainer" of \$4,500 and that respondent would receive 20 percent of any recovery from a counterclaim alleging predatory lending. The parties stipulated that Buchanan paid respondent \$2,800 toward the flat fee, but documents at the hearing were inconsistent with each other and contradicted the stipulation. The parties stipulated that respondent did not deposit the funds into a client trust account. Respondent suggested he was entitled to his standard fee of \$4,500 in foreclosure cases, because the funds were earned upon receipt. He estimated having devoted 12 to 15 hours, but conceded he had not kept careful track of his time. Citing *Okocha* (1998), the supreme court stated it "generally disapproved of nonrefundable, earned-upon-receipt legal fees, absent a true 'general' retainer agreement, one that secures the services of a particular attorney for any contingency and requires the attorney to forgo employment by a competitor of the client." Citing *Halliburton-Cohen* (2006), *Watterson* (2004), and *Schram* (2003), the court noted it had cautioned against charging nonrefundable retainers because DR 2-110(A)(3) and successor Rule 1.16(e) "require in all but narrow circumstances that upon withdrawal from representation, a lawyer must return fees that the client has paid in advance and that the lawyer has not earned." The supreme court adopted the board findings of violations of DR 2-106(A) by charging a flat earned-upon-receipt plus a 20 percent contingent fee, DR 9-102(A) by failing to deposit unearned fees in a client trust account, and DR 9-102(B)(3) by failing to maintain records and account for client funds in his possession. In aggravation, respondent has a prior disciplinary record. BCGD Proc.Reg. 10(B)(1)(a). He was convicted of a felony for assisting his client in transactions funded by the client's illicit drug sales, where respondent acted with "reckless disregard" for the truth as to the source of the funds. In February 1999 he received an interim felony suspension and in *Disciplinary Counsel v. Cook*, (2000), 89 Ohio St.3d 80 he received a six-month suspension with credit for the year his license was under suspension. In mitigation, respondent cooperated in the disciplinary process. BCGD Proc.Reg. 10(B)(2)(d). The board recommended a six-month suspension, stayed on the condition that within the six-month period, respondent pay \$1,000 in restitution, complete six hours of continuing legal education in law office management, and commit no further misconduct. The Supreme Court agreed with the recommended sanction and so ordered, with the \$1,000 restitution to include interest at the judgment rate.

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**Rules Violated:** DR 2-106(A), 9-102(A), 9-102(B)(3)

<b>Aggravation:</b> (a)		<b>Mitigation:</b> (d)	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Six-month suspension, stayed		

*Corrigan, Geauga Cty. Bar Assn. v.*

130 Ohio St.3d 84, 2011-Ohio-4731. Decided 9/22/2011.

Respondent misappropriated and mishandled client funds, failed to maintain adequate financial records, and engaged in business relationships with clients. While under investigation for a grievance that is not at issue in this case, respondent frequently failed to respond to letters of inquiry, and phone calls and messages. Respondent offered many excuses, including that he was “semi-retired” and that he was often out of the country. Respondent was supposed to meet with the grievance committee to discuss his grievance, but phoned to say he would be late. After waiting for over an hour, the committee adjourned. Respondent admitted that he received some of the relator’s correspondence and phone messages. This conduct was found to have violated Prof.Cond.R. 8.1(b) (failure to cooperate in a disciplinary investigation). The Court agreed with the above findings. In aggravation, respondent failed to cooperate in a disciplinary proceeding, and failed to acknowledge the wrongful nature of his conduct. BCGD Proc.Reg. 10(B)(1)(e), (g). In mitigation, respondent lacked a prior disciplinary record did not exhibit a dishonest or selfish motive. BCGD Proc.Reg. 10(B)(2)(a), (b). The board recommended a six-month suspension, stayed, citing *Jaffe* (2009), and *Jones* (2010). The Court agreed with the board’s recommended sanction.

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**Rules Violated:** Prof.Cond.R. [8.1\(b\)](#)

<b>Aggravation:</b> (e), (g)		<b>Mitigation:</b> (a), (b)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Six-month suspension, stayed</a>		

**Crosby, Disciplinary Counsel v.**

124 Ohio St.3d 226, 2009-Ohio-6763. Decided 12/29/2009.

Respondent engaged in long-standing fraudulent trust account practices and deliberate deceptions. Board adopted the panel's findings and conclusions, but rejected the panel's recommendation of a two-year suspension with one year stayed on conditions. Respondent practiced law as Crosby Law Offices, L.L.C. during 2005 and 2006, practicing primarily in the area of workers' compensation, personal injury, and tort. In December 2006 he accepted a position as of counsel for his wife's firm, Elizabeth A. Crosby and Associates. While in his solo practice, he maintained two bank accounts an IOLTA in the name of Crosby Law Offices, L.L.C., and a general operating account in the name of Crosby-Dodge Law Group, L.L.C. He amended the signature card for the IOLTA to designate Carol Mazanec as an authorized signer on the account. Mazanec provided clerical, administrative, and paralegal services during 2005-2006 and wrote and signed a number of IOLTA checks on behalf of and as authorized or ratified by respondent. As to Count I, board found violations of DR 1-102(A)(6) and its counterpart, Prof.Cond.R. 8.4(h); DR 9-102(A); and Prof.Cond.R. 1.15(a) for his misconduct in using his IOLTA as a personal bank account and operating account from January 2006-May 2007. Approximately 20 checks were payable to Mazanec in an amount of \$57,713 for wages or bonuses. On 18 occasions there were electronic withdrawals for payment of phone bills. Approximately 16 checks were written by respondent or Mazanec for office or personal bills owed to a variety of businesses. Eight checks totaling \$142,823.48 were written to respondent's wife for respondent's household expenses. 68 checks totaling more than \$88,000 were made payable to cash and went to respondent's personal use. As to Count II, board found violations of DR 1-102(A)(5); Prof.Cond.R. 8.4(d); DR 1-102(A)(6) and its counterpart, Prof.Cond.R. 8.4(h); DR 9-102(B)(3); Prof.Cond.R. 1.15(a); Prof.Cond.R. 1.15(a)(3); and Prof.Cond.R. 5.3(b) for his misconduct in not properly training or supervising Mazanec. Respondent stated he was not aware, but a simple review of IOLTA statements would have revealed inappropriate withdrawals for telephone bills. Respondent admitted he did not personally reconcile the banking statements. During the time period, his IOLTA had overdraft fees of \$118.50. He claimed he sometimes asked Mazanec for checks to pay his bills, and that she gave him IOLTA checks that he mistakenly used. As to Count III, board found violations of DR 1-102(A)(5) and its counterpart, Prof.Cond.R. 8.4(d); DR 1-102(A)(6) and its counterpart, Prof.Cond.R. 8.4(h); DR 9-102(A); DR 9-102(B)(3); Prof.Cond.R. 1.15(a); Prof.Cond.R. 1.15(a)(2); and Prof.Cond.R. 1.15(a)(3) for his misconduct between 2005-2006 when he settled five cases and promptly paid each client, but failed to promptly withdraw his fee from the IOLTA. Instead he withdrew his fee in multiple checks over several weeks or months. Through his actions he commingled clients' funds with his personal funds. He claimed he did not immediately remove all of his earned fees from the IOLTA because he wanted to maintain a buffer in the event that unexpected expenses related to a case arose, but Mazanec testified she did not recall any unexpected expenses arising after settlement. Respondent also acknowledged he kept the fund in his IOLTA because it was easier and that once he withdrew the funds, it would be considered income. By keeping his fees in his IOLTA, respondent shielded the funds from judgment creditors and taxing authorities. The court, citing several cases, noted that mishandling client funds is an area of gravest concern for the court in reviewing attorney misconduct and that it is of utmost importance for attorneys to maintain personal and operating accounts separate from client trust accounts. In aggravation, respondent displayed a dishonest and selfish motive by using his trust account to keep funds safe from collection procedures by taxing authorities and judgment creditors; the misuse of his trust account over several years was a pattern of misconduct; and he did not fully cooperate and lied about his reasons for using his trust account in the manner he did. BCGD Proc.Reg. 10(B)(1)(b), (c), (e), (f). Board recommended a suspension for 24 months. Cases were cited showing a range of sanctions (from a stayed six-month suspension to an indefinite suspension) for commingling funds or failing to properly maintain IOLTAs. Respondent's conduct was found most similar to *Wise* (2006) who received an indefinite suspension, but unlike *Wise*, respondent did not have prior discipline. The court ordered a suspension for 24 months with reinstatement conditioned upon completion of 6 hours additional CLE in law-office management and accounting; and fully paying or providing evidence of a compromise of the obligations set forth in the order. One justice concurs in the 24 month suspension but would stay 12 months of the suspension.

**Rules Violated:** Prof.Cond.R. 1.15(a), 1.15(a)(2), 1.15(a)(3), 5.3(b), 8.4(d), 8.4(h); DR 1-102(A)(5), 1-102(A)(6), 9-102(A), 9-102(B)(3)

<b>Aggravation:</b> (b), (c), (e), (f).		<b>Mitigation:</b> (a)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Two-year suspension		

**Cunningham, Butler Cty. Bar Assn. v.**  
118 Ohio St.3d 188, 2008-Ohio-1979. Decided 5/1/2008.

Respondent agreed to represent a client in a postdecree domestic-relations proceeding arising from a 2001 divorce. Allegations arose suggesting that the client's ex-husband might not have reported to the court assets subject to division as marital property, including funds that might have been obtained illegally. Respondent cited the allegations in a January 2005 letter to the ex-husband, hoping to induce payment of child support, spousal support, health insurance, education expenses. The letter presented a list of demands and promised the client would "forgo further proceedings if the ex-husband agreed to the demands. The letter promised the respondent's client would "proceed no further with her investigation" if the ex-husband took "advantage of this offer." The letter created legal problems for the ex-husband but the harm resulted more from the ex-husband's wrongdoing than from the promise to pursue legal proceedings. The domestic-relations court granted respondent's motion to vacate the divorce decree and found that ex-husband defrauded the court. The ex-husband filed a grievance alleging that respondent attempted to exert improper influence to gain an advantage. Respondent denied explicitly or implicitly threatening criminal prosecution, explaining he intended to quickly and quietly resolve the couple's financial differences without jeopardizing the ex-husband's employment. The board adopted the panel's findings, conclusions, and recommendation. The Supreme Court of Ohio agreed with the board's findings that the letter violated DR 7-105. In mitigation, respondent has no prior disciplinary record, did not act out of dishonesty or selfishness, and cooperated in the proceeding. BCGD ProcReg. 10(B)(2)(a), (b), and (d). He had a reputation for candor, truthfulness, fairness, and professionalism and is credited with being an "effective, diligent, and prepared advocate. No aggravating factors were found. The court accepted the Board's recommended sanction of a public reprimand for a violation of DR 7-105(A). Citations to *Wise* (2006) and *Cohen* (1999).

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**Rules Violated:** DR 7-105(A)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (b), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Public Reprimand</a>		

*Davis, Cleveland Bar Assn. v.*

121 Ohio St.3d 337, 2009-Ohio-764. Decided 3/18/2009.

Respondent neglected cases, failed to seek his clients' objectives, failed to carryout employment contracts for four clients, and failed to return the clients' unearned fees and files. Respondent did not answer the 18-count complaint. So relator moved for default under Gov.Bar R. V(6)(F). The board appointed a master commissioner, who made findings of fact, conclusions of law, and recommended an indefinite suspension. In the Jones and Serra Grievance, Jones and Serra paid respondent \$1,000 to file a quiet title action to a piece of land, which he explained should take about six months. Six months later, they were unable to contact respondent. After two months of trying, they retained new counsel, who informed them that no one had made an attempt to quiet title to the property. Their new counsel requested respondent refund their \$1,000 retainer, which respondent never returned. In the Scales Grievances, Scales paid respondent \$500 to represent his daughter-in-law in a juvenile court matter. Prior to the court date, Scales learned that respondent had suffered a stroke and would be unable to represent his daughter-in-law. Respondent agreed to return \$400 of the retainer, keeping \$100 for his initial meeting, but never returned any money. In the Seymour Grievance, Seymour paid respondent \$2,500 to represent her in two matters: one against her insurance company, which he assured her she had a good case, and the other for replevin of her impounded car that he supposedly filed. Seymour does not know if respondent did any work on her behalf. She attempted to contact respondent after his stroke, but to no avail. Seymour requested respondent return her fees and files. Respondent has yet to comply. In the Johnson Grievance, respondent received Johnson's personal injury case file in 2002, after her original attorney's resignation from the practice of law. He told her that she needed to complete physical therapy in order for her case to proceed. Upon completing the physical therapy in June 2005, Johnson made several unsuccessful attempts to reach respondent. She tried to recover possession of her file from respondent's office, but was unable to do so. After she filed her grievance, Johnson learned that a lawsuit had been filed on her behalf in 2002, but had been voluntarily dismissed by respondent on July 5, 2003. Respondent did not inform Johnson that the case had been filed or dismissed. Further, for more than a year relator sent a series of letters to respondent. The letters sent by regular mail were never returned. Others sent by certified mail were either delivered or returned as undeliverable. Respondent did not respond to these letters. In July 2007, respondent appeared in relator's office and informed the general counsel that he had suffered a stroke that paralyzed the right side of his body in June 2006. He explained that he intended to refund the money to Jones and Scales and that he would work with the other clients to resolve their grievances. But, respondent failed to provide a written response, produce his clients' files, or make any kind of restitution. In agreement with the master commissioner, the board found violations of DR 1-102(A)(6), 6-101(A)(3), 7-101(A)(1), 7-101(A)(2), 9-102(B)(4), Prof.Cond.R. 1.4(a)(4), 1.15(d),8.1(b), 8.4(h), and Gov.Bar R. V(4)(G). Mitigating evidence includes a prior disciplinary record of attorney-registration non-compliance (suspension from December 2007 to February 2008 for failing to timely register for the 2007-2009 attorney registration biennium) and respondent's stroke. While respondent did inform relator of his stroke, his failure to cooperate with the investigation prevented the board from determining the extent to which the stroke affected his ability to practice law. Additionally, the conduct resulting in the grievances took place before June 2006, prior to respondent's stroke. Aggravating factors include a pattern of misconduct, multiple offenses, lack of cooperation in the disciplinary process, refusal to acknowledge the wrongful nature of his conduct, the vulnerability and resulting harm to his victims, and his failure to make restitution. BCGD Proc.Reg 10(B)(1)(c), (d), (e), (g), (h), and (i). In agreement with the master commissioner's recommendation, the board recommended an indefinite suspension. The Supreme Court agreed with the Board's findings and recommended sanctions and so ordered an indefinite suspension. The court cited *Verbiski* (1999) and noted "[a] lawyer's neglect of legal matters and failure to cooperate in the ensuing disciplinary investigation generally warrants an indefinite suspension."

**Rules Violated:** Prof.Cond.R. 1.4(a)(4), 1.15(d), 8.1(b), 8.4(h); DR 1-102(A)(6), 6-101(A)(3), 7-101(A)(1), 7-101(A)(2), 9-102(B)(4); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> (c), (d), (e), (g), (h), (i)		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Davis, Disciplinary Counsel v.*

121 Ohio St.3d 84, 2009-Ohio-500. Decided 2/12/2009.

Respondent failed to provide her client's insurer with notice of a settlement with a tortfeasor's insurer, which caused the client's insurer to deny the client's claim for underinsured-motorist coverage, and then strung her client along for years without telling him about the denial. In Count I, Ryan Gillette retained respondent after he was seriously injured in an October 1998 traffic accident. Respondent submitted Gillette's claim for losses caused by the accident under his underinsured-motorist coverage to his insurer, Grange, in late July 1999. Respondent then settled with the tortfeasor's insurance company, Progressive, for the \$25,000 policy limit in early August 1999. Grange denied Gillette's claim for underinsured-motorist coverage because respondent had failed to provide notice of the settlement with Progressive, which was a requirement under Gillette's policy. Respondent never told Gillette that his claim had been denied. Instead, respondent evaded his inquiries, canceled appointments with Gillette, fabricated reasons for not keeping those appointments, lied about working with a Cincinnati law firm that specialized in cases like his, and in September 2004, falsely represented that she had filed a claim on Gillette's behalf in federal court. Gillette wrote to the managing partner at respondent's law firm about her in March 2005. She wrote back, enclosing a letter that she had purportedly sent in May 2000 that advised him of her opinion that his claim was only worth the \$25,000 she had already obtained from Progressive. Gillette had never seen the letter, and respondent later admitted fabricating it. Gillette did not actually learn that he would not receive any underinsured-motorist coverage until he retained another attorney and that attorney made the discovery in January 2006. Gillette's new counsel filed a civil action against respondent in September 2006, which was settled several months later and paid by respondent's former malpractice insurer. Respondent stipulated to her misconduct. As to Count I, the board adopted the panel's findings of violations of DR 1-102(A)(4), 1-102(A)(6), 7-101(A)(1), 7-101(A)(2), and 7-101(A)(3). In Count II, respondent failed to reply to relator's January 2007 letter of inquiry, despite two extensions. Respondent scheduled a meeting with relator in May 2007, only to cancel on the appointed day. She promised to reschedule, but never did so. Respondent also failed to appear without notice or explanation at her deposition in mid-July 2007, despite having received the subpoena weeks before the deposition. Respondent stipulated to her misconduct. As to Count II, the board found adopted the panel's findings of violations of Prof.Cond.R. 8.1(b), 8.4(d), and Gov.Bar R. V(4)(G). The Supreme Court agreed. Aggravating factors include respondent's dishonest motive, her pattern of misconduct and multiple offenses, and the serious harm she caused. BCGD Proc.Reg. 10(B)(1)(b), (c), (d), and (h). In mitigation, respondent conceded the gravity of her misconduct, was a recent admittee to the bar, eventually cooperated with the disciplinary process, and the parties stipulated to her good character and reputation. BCGD Proc.Reg. 10(B)(2)(d). The board recommended a two-year suspension with the last 18 months stayed on conditions including monitored probation. The Supreme Court disagreed and ordered a two year suspension with the second year stayed on the conditions that she completes one year of monitored probation, complete six hours of Continued Legal Education in ethics and professionalism, and in applying for reinstatement, explain her plan to comply with the professional-liability-insurance requirements in Prof.Cond.R. 1.4(c). Citing *Manning* (2006) the court noted that it typically imposed a suspension of at least two year for lawyers who have engaged in a sustained course of conduct to conceal from their clients a failure to competently pursue claims on their behalf.

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**Rules Violated:** Prof.Cond.R. 8.1(b), 8.4(d); DR 1-102(A)(4), 1-102(A)(6), 7-101(A)(1), 7-101(A)(2), 7-101(A)(3); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> (b), (c), (d), (h)		<b>Mitigation:</b> (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Two-year suspension, 12 months stayed		

*Davis, Disciplinary Counsel. v.*

130 Ohio St.3d 440, 2011-Ohio-6016. Decided 11/29/2011.

Respondent failed to act with diligence and promptness, kept unearned client funds, failed to respond during a disciplinary investigation, and engaged in conduct that was prejudicial to the administration of justice. Respondent was previously suspended for two years, with one year stayed in 2009. The stay was lifted in 2010. Respondent has yet to comply with the reinstatement conditions from that suspension. The parties stipulated to some of the facts alleged and some of the rule violations. In Count One, respondent was hired to do legal work, but did no work prior to her suspension and failed to return the client file and unused fees. Respondent also failed to reply to relator's inquiries. Although it was alleged that respondent converted funds, relator failed to provide adequate proof of that. This conduct violated Prof.Cond.R. 1.3 (reasonable diligence and promptness), 1.16(d) (delivery of client funds and property), 1.16(e) (requiring refund of unused fees), 8.1(b) (requiring response to a disciplinary inquiry), 8.4(d) (conduct prejudicial to the administration of justice), and Gov.Bar R. V(4)(G) (failure to cooperate). The board dismissed violations of Prof.Cond.R. 1.5(a), 8.4(b), 8.4(h). In Count Two, respondent filed a divorce appeal for a client, but then failed to do any work. She notified her client of her suspension and promised to refund his fee, but failed to do so. Respondent also did not claim mail sent by relator to her registered address. The client was unable to see his children for over a year because of respondent's neglect. This conduct violated Prof.Cond.R. 1.3, 1.16(d), 1.16(e), 8.1(b), 8.4(d), 8.4(h) (conduct adversely reflecting on fitness to practice law), and Gov.Bar R. V(4)(G). The board dismissed a violation of Prof.Cond.R. 1.5(a). In Count Three, respondent failed to turn over draft wills and other estate planning materials to her clients and ignored multiple attempts at communication. Respondent subsequently failed to respond to relator's letters of inquiry on this matter. This conduct violated Prof.Cond.R. 1.16(d), 8.1(b), 8.4(d), 8.4(h), and Gov.Bar R. V(4)(G). The Court agreed with the above findings. In aggravation, respondent has a prior disciplinary history, acted with a dishonest or selfish motive, engaged in a pattern of misconduct involving multiple offenses, failed to cooperate in the disciplinary process, refused to acknowledge the wrongful nature of her conduct, and harmed vulnerable clients. BCGD Proc.Reg. 10(B)(1)(a), (b), (c), (d), (e), (g), (h). There were no mitigating factors. Relator requested an indefinite suspension at the hearing, and cited *Gottelhrer* (2010), *Clovis* (2010), and *Van Sickle* (2011). The board also recommended an indefinite suspension. Relying on respondent's past disciplinary violations, the number of aggravating factors, the Court agreed with the board's recommendation, but ordered it to run consecutively with her current term suspension. The Court also add the requirement that respondent pay restitution to the clients she harmed.

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**Rules Violated:** Prof.Cond.R. 1.3, 1.16(d), 1.16(e), 8.1(b), 8.4(d), 8.4(h); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> (a), (b), (c), (d), (e), (g), (h)		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Dawson, Cleveland Metropolitan Bar Assn. v.*  
124 Ohio St.3d 22, 2009-Ohio-5959. Decided 11/19/2009.

Respondent failed to comply with discovery requests, to oppose a motion for summary judgment, to respond to a motion to deem admitted the statements propounded in requests for admission, and to timely file a notice of appeal. Board adopted the panel's findings and recommended sanction. As to Count I, respondent graduated from law school in 2000 and accepted employment with a large law firm in its litigation department. He entered solo practice in 2002 and agreed to take over a number of cases from an attorney facing disciplinary proceedings. In one case, he agreed to defend two clients in a pending age-discrimination law suit, but did not provide the required notice that he lacked insurance. He entered an appearance as defense counsel in August 2002. The next month, at a final pretrial conference, he requested a continuance of the trial date and an extension of time to complete discovery and the court continued the trial date until January 2003. He then neglected the case. He failed to respond to plaintiff's November 2002 motion for partial summary judgment, which unopposed motion the court granted. He failed to reply to the plaintiff's motion to deem as admitted the statements in plaintiff's requests for admission, which unopposed motion the court granted. The court overruled respondent's motion to reconsider the order granting partial summary judgment, noting respondent's failure to timely respond to the requests for admission and to the motion to deem as admitted the statement in the requests for admission. The court cancelled the scheduled trial date because respondent failed to respond to the plaintiff's discovery requests. The court held a hearing on a pending motion for default which motion the court granted in March 2003 and awarded the plaintiff's \$184, 675 (\$130,900 in compensatory damages, \$50,000 in punitive damages, and \$3,775 in attorney fees). Respondent failed to timely appeal that default judgment, but the parties later settled for \$27,000. Board found violations of DR 1-104(A) and 6-101(A)(3). As to Count II, in January 2004, respondent was sued for malpractice by the Count I couple. In early November 2004, they agree to a settlement which was reduced to judgment, requiring respondent to pay the former clients \$17,000 if he paid on time or \$22,000 if he defaulted. He agreed to pay in installments, but he defaulted after paying only one installment. He then agreed to make month payments, but made only one payment under that agreement. The total of the payments he made before defaulting on his agreements was \$5,500. Respondent's financial situation worsened by mid-September 2005 and he was facing foreclosure on three rental properties and had a reduced income due to a decrease in public defender appointments. He filed for Chapter 7 voluntary bankruptcy and discharged his former clients' judgment. Board found that he entered the settlement agreements with good faith and without intent to avoid the obligation through bankruptcy, but that respondent's failure to satisfy the judgment violated DR 1-102(A)(6). As an aggravating factor, the board noted respondent's suspension in December 2005 for failure to comply with attorney-registration requirements. In a footnote, the court stated that the Board had noted respondent's monetary sanctions for failing to comply with CLE requirements, but that Gov.Bar R. X(5)(C) prohibits consideration of CLE sanctions in disciplinary proceedings. In mitigation, there was no prior discipline, no selfish or dishonest motive, free and full disclosure to relator, and cooperation. BCGD Proc.Reg. 10(B)(2)(a), (b), and (d). Board recommended a six-month suspension, all stayed on conditions of no further violations, completion of six hours of CLE in time management or law office management approved by relator, and completion of a one-year monitored probation under a monitor appointed by relator. The court agreed with the board's findings and conclusion, but not the recommended sanction. The court ordered a six-month suspension. Citations to *Hales* (2008) and *Schoonover* (2005).

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**Rules Violated:** DR 1-102(A)(6), 1-104(A), 6-101(A)(3)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (b), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Six-month suspension		

**Dearfield, Cincinnati Bar Assn. v.**

130 Ohio St.3d 363, 2011-Ohio-5295. Decided 10/19/2011.

Respondent charged a nonrefundable fee and misused his IOLTA account. Respondent was paid to initiate a bankruptcy matter, and signed an agreement that respondent's fee was nonrefundable except in unusual circumstances. Client later decided not to pursue a bankruptcy and requested a refund of the filing fees he had given to respondent; respondent initially wanted to keep them to offset the fees owed. After speaking to relator, respondent refunded the fee with a letter that said the fee was refunded in satisfaction of all claims, including ethical claims. This conduct violated Prof.Cond.R. 1.15(c) (legal fees must deposited in a trust account), 1.5(d)(3) (a lawyer may not charge a non-refundable fee), 8.4(d) (conduct that is prejudicial to the administration of justice. The board did not find a charged violation of Gov.Bar R. V(4)(G). The Court agreed with the above findings. In mitigation, respondent lacked a prior disciplinary record. BCGD Proc.Reg. 10(B)(2)(a). In aggravation, respondent failed to cooperate in the disciplinary process and used deceptive practices during the disciplinary process (by having the client release his ethical claims- *See Holder* (2004)). BCGD Proc.Reg. 10(b)(1)(e), (f). Although the board also found respondent had a dishonest or selfish motive and that he failed to acknowledge the wrongful nature of his conduct, the Court disagreed, finding that respondent legitimately thought he could use the filing fee to offset costs and that respondent had changed his fee agreements to comply with the ethical rules. The board recommended a one-year suspension with six months stayed. The Court, in light of the above discussion, disagreed. The Court admitted there was no precedent on point with these facts, but highlighted the purpose of the disciplinary system is to protect the public. The Court thus ordered a one-year stayed suspension.

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**Rules Violated:** Prof.Cond.R. [1.5\(d\)\(3\)](#), [1.15\(c\)](#), [8.4\(d\)](#)

<b>Aggravation:</b> (e), (f)		<b>Mitigation:</b> (a)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">One-year suspension, stayed</a>		

**DeLoach, Akron Bar Assn. v.**

130 Ohio St.3d 153, 2011-Ohio-4201. Decided 8/31/2011.

Respondent engaged in dishonest conduct during a disciplinary investigation. Respondent was originally charged in a two-count complaint, but the panel, based on the parties' stipulations, dismissed Count 1. In Count 2, respondent failed to file the proper indigency information for her client's criminal appeal, and thus the appeal was dismissed. It was later taken up by another lawyer and reopened. During an investigation into this misconduct, the investigator requested letters sent to her client about the indigency information. Respondent send MS Word files, purportedly of the letters she sent to her client, to the investigator that had been created at a public library the same day they were sent. Respondent first stated she could only find papers copies of the letters, and so she retyped them, but later admitted that she had lost the originals and simply retyped the letters from memory. She later found the original letters and sent them to relator. The panel and board found a violation of Prof.Cond.R. 8.4(c) (dishonesty, fraud, deceit, or misrepresentation). The Court adopted these findings. In aggravation, respondent had engaged in deceptive practices during a disciplinary investigation. BCGD Proc.Reg. 10(B)(1)(f). In mitigation, there was no prior disciplinary record. BCGD Proc.Reg. 10(B)(2)(a). The panel and board recommended a six-month suspension, stayed with 2 years of monitored probation. Citing *Potter* (2010), *Rohrer* (2009), *Carroll* (2005), and *Ricketts* (2010), the Court noted that a violation of Prof.Cond.R. 8.4(c) usually requires actual time off. However, the Court found that respondent had no prior discipline, showed remorse for her actions, engaged in a single incident of misconduct with no intent for financial gain, and did not actually harm anyone. The Court thus adopted the recommended sanction.

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**Rules Violated:** Prof.Cond.R. 8.4(c)

<b>Aggravation:</b> (f)		<b>Mitigation:</b> (a)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Six-month suspension, stayed		

***Dettinger, Disciplinary Counsel v.***

121 Ohio St.3d 400, 2009-Ohio-1429. Decided 4/2/2009.

Respondent, a transactional attorney with many years in practice, accepted a loan from a client without disclosing the risks of their conflicting interests. Board adopted the panel's findings and recommendation. In 2002, respondent borrowed \$25,000 from a long-time client and personal friend (Zander) without advising the client to consult independent counsel and without fully disclosing respondent's financial distress. Respondent gave Zander a promissory note for the full amount with interest at the rate of 5% per annum and payment before July 22, 2004 in lump sum. Zander died approximately one year before the note came due. Respondent represented Zander's son as executor of the estate and included the promissory note in the schedule of assets as a receivable, but did not advise the executor of any potential conflict of interest when he opened the estate. Respondent eventually advised the executor to consult independent counsel. Respondent paid the \$25,000 loan principal to the executor in early September 2008, more than four years after it was due. The executor waived interest and accepted the principal as payment in full. Board found violations of DR 5-101(A)(1) and 5-104(A) for continuing to represent and Zander and his estate without first obtaining the clients' and the executor's consent after explaining the attendant risks of their conflicting interests. In aggravation, he committed more than one offense. BCGD Proc.Reg. 10(B)(1)(d). In mitigation, he had no prior discipline and displayed a cooperative attitude throughout the proceedings. BCGD Proc.Reg. 10(B)(2)(a) and (d). He established his excellent character and reputation apart from the underlying misconduct with the testimony of two attorneys and the probate judge, who testified pursuant to subpoena. Board recommended a six-month suspension, all stayed. The Supreme Court of Ohio agreed with the Board's findings and recommendation and so ordered a six-month suspension, all stayed.

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**Rules Violated:** DR 5-101(A)(1), 5-104(A)

<b>Aggravation:</b> (d)		<b>Mitigation:</b> (a), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Six-month suspension, stayed		

*Detweiler, Disciplinary Counsel v.*

127 Ohio St.3d 73, 2010-Ohio-5033. Decided 10/21/2010.

Respondent improperly engaged in sexual relations with a client. Parties entered into a consent-to-discipline agreement. In April 2008, a female client retained respondent to represent her in a divorce action. In the next month, respondent and his client started expressing romantic and sexual feelings towards one another in person and by telephone and e-mail. Then, a month later they had a sexual encounter in the client's car. They exchange sexual e-mails in July and August. In September 2008, the sexual relationship ended, but he continued to represent her until she terminated his services in July 2009. The panel and the board accepted the consent-to-discipline agreement as to violations of Prof.Cond.R. 1.8(j), 1.7(a)(2), and 8.4(h) and a sanction of a public reprimand. No aggravating factors are present. In mitigation, there is no prior discipline and a cooperative attitude towards the disciplinary process. BCGD Proc.Reg. 10(B)(2)(a) and (d). The court noted that this case involved consensual, legal sexual encounters, and that they did not compromise the client's interests. The court cited *Schmalz* (2009) and *Engler* (2006), cases in which attorneys received a public reprimand for sexual relationship with clients when the relationships are legal and consensual and no client's interests are compromised. The court adopted the consent-to-discipline agreement and so ordered a public reprimand.

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**Rules Violated:** Prof.Cond.R. 1.7(a)(2), 1.8(j), 8.4(h)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Public Reprimand</a>		

*DiAlbert, Columbus Bar Assn. v.*

120 Ohio St.3d 37, 2008-Ohio-5218. Decided 10/14/2008.

In 1985, respondent was suspended from the practice of law for six-months, stayed on conditions for misleading a client about filing a motion for the client's judicial release from prison in *Columbus Bar Assn. v. DiAlbert*, 98 Ohio St.3d 386, 2003-Ohio-1091. Since May 24, 2007, respondent's license has been suspended for failure to comply with continuing legal education requirements. Now, respondent has failed to file a client's personal injury claims as promised, then avoided her, and lost her case to the statute of limitations. Prior to the CLE suspension, respondent was a sole practitioner for 17 years doing personal injury and some domestic relations, traffic, and criminal cases. After accepting a client's case, respondent ignored the client's repeated attempts to contact him, did not file the case, and allowed the statute of limitations to expire. He did not advise the client that he did not carry liability insurance and he did not return her case file. Supreme Court of Ohio adopted the Board's findings of violations of DR 1-102(A)(6), 1-104(A) and (C), 6-101(A)(1), 6-101(A)(2), 6-101(A)(3), 7-101(A)(1), and 7-101(A)(2). In aggravation, there were prior disciplinary offenses, vulnerability and resulting harm to an unsophisticated client, and failure to make restitution. BCGD Proc.Reg. 10(B)(1)(a), (h), and (i). In mitigation, there was no dishonest or selfish motive, a cooperative attitude and free disclosure to the board, and a diagnosed mental disability that contributed to his misconduct. BCGD Proc.Reg. 10(B)(2)(b), (d), and (g). Respondent attributed his inattention to the client's interests to depression from his wife's request for a divorce. A report of his treating psychologist confirmed dysthymic disorder. The court adopted the Board's recommended sanction and so ordered. Respondent was suspended for two years with the last 18 months stayed on conditions of 1) compliance with the three-year OLAP contract entered into on August 10, 2007; 2) restitution to the client of \$350 within 30 days of the suspension order; and (3) upon application of reinstatement serve a two-year monitored probation in accordance with Gov.Bar R. V(9).

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**Rules Violated:** DR 1-102(A)(6), 1-104(A), 1-104 (C), 6-101(A)(1), 6-101(A)(2), 6-101(A)(3), 7-101(A)(1), 7-101(A)(2)

<b>Aggravation:</b> (a), (h), (i)		<b>Mitigation:</b> (b), (d), (g)	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Two-year suspension, 18 months stayed		

*DiCato, Akron Bar Assn. v.*

130 Ohio St.3d 394, 2011-Ohio-5796. Decided 11/17/2011.

Respondent made disparaging remarks about a judge over the telephone. Respondent failed to respond to the complaint. A master commissioner was appointed and made findings of fact, conclusions of law, and recommended a six-month suspension, stayed. Respondent made several disparaging remarks about a judge to the judge's bailiff during a telephone conversation about fee applications that were awaiting the judge's approval. Respondent called the judge a "lying, cheating bitch." When he was order to appear and explain his actions, he sent a letter explaining himself and noting that he and judge were of the same political party. He later appeared before the judge, apologized and was ordered to pay a \$500 fine and received a 48-hour suspended sentence. This conduct violated Prof.Cond.R. 3.5(a)(6) (discourteous conduct toward a tribunal), 8.2(a) (knowingly or recklessly false statements about a judge), and 8.4(h) (conduct adversely reflecting on fitness to practice law). The board dismissed an alleged violation of Prof.Cond.R. 3.5(a)(1) (attempting to influence a judge) as not proven by clear and convincing evidence. The Court agreed with these findings. In mitigation, respondent cooperated in the disciplinary process and did not have a prior disciplinary record. BCGD Proc.Reg. 10(B)(2)(a), (d). The Court found that respondent eventually stopped cooperating, and thus did not cooperate in the disciplinary process. BCGD Proc.Reg. 10(B)(1)(e). Although the board found that respondent did not acknowledge the wrongful nature of his conduct, the Court rejected this aggravating factor, finding the opposite. Relator requested a two-year suspension. The board found that this conduct was more akin to cases imposing a public reprimand, but felt the gravity of the statements warranted a six-month suspension, stayed. The Court reviewed the spectrum of cases from *Grimes* (1993) to *Milano* (1984). The Court found respondent's conduct to be damaging to the judiciary and not explained by medical circumstances, but noted that it was done in one single, private telephone outburst. Thus, the Court adopted the board's recommendation of a six-month suspension, stayed on the condition of no further misconduct.

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**Rules Violated:** Prof.Cond.R. [3.5\(a\)\(6\)](#), [8.4\(h\)](#)

<b>Aggravation:</b> (e)		<b>Mitigation:</b> (a), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Six-month suspension, stayed</a>		

*Dice, Columbus Bar Assn. v.*

120 Ohio St.3d 455, 2008-Ohio-6787. Decided 12/30/2008.

Respondent delayed filing an appellate brief for an incarcerated client, failed to appear for an oral argument on behalf of another client, and did not cooperate with the investigation of his disciplinary misconduct. In Count I, respondent was appointed to represent Larry Craft in a federal appeal of Craft's felony conviction in November 2004. The Sixth Circuit Court of Appeals ordered respondent to file a brief in the appeal on February 22, 2005. Respondent did not meet this deadline. Instead he obtained seven extensions, finally filing the brief on August 22, 2005. He then missed the deadline for filing an appendix to this brief, never filing it at all. Respondent also failed to properly provide status reports about the case to his client, who frequently requested such information. In February 2006, the appellate court was forced to appoint new counsel for Craft because of respondent's dilatory practices. Respondent also failed to appear in another client's criminal case that had been scheduled for oral argument before the Sixth Circuit. The board found violations of DR 1-102(A)(5) and (6), DR 6-101(A)(2) and (3), and DR 7-101(A)(1) and (3). In Count II, Craft filed a grievance against respondent in January 2006. Between February and June 2006, relator sent three letters and left a voice mail asking respondent to respond to the grievance. Despite respondent's promises to respond, he did not provide any reply to the grievance during the investigation process. After relator moved for default, respondent stipulated to the charged misconduct and proposed a sanction jointly with relator. The panel accepted the stipulations and the proposed sanction, which the board adopted. The board found violations of Gov.Bar R. V(4)(G) and DR 1-102(A)(6). The Supreme Court agreed. The parties jointly proposed a one-year suspension with six months stayed, consistent with *Disciplinary Counsel v. Shramek*, 98 Ohio St.3d 441, 2003-Ohio-1636 in which the attorney committed neglect and failed to cooperate, as did respondent here. Also similar to *Shramek*, the board found no prior disciplinary record, no dishonest motive, and eventual cooperation in the disciplinary process as mitigating factors. BCGD Proc.Reg. 10(B)(2)(a), (b), and (d). Also in mitigation, the parties agreed that respondent suffers from a mental disability that contributed to his ethical lapses and for which he has been successfully treated. BCGD Proc.Reg. 10(B)(2)(g). Respondent has been on inactive status under Gov.Bar R. VI(2) since July 13, 2006. The board agreed with the parties' proposal and recommended a one-year suspension, with six months stayed on the condition that he engages in no further misconduct. The Supreme Court agreed and so ordered.

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**Rules Violated:** DR 1-102(A)(5) , 1-102(A)(6), 6-101(A)(2), 6-101(A)(3), 7-101(A)(1), 7-101(A)(3); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (b), (d), (g)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> One-year suspension, 6 months stayed		

*DiMartino, Mahoning Cty. Bar Assn. v.*  
124 Ohio St.3d 360, 2010-Ohio-247. Decided 2/3/2010.

In 1994, respondent received a six-month suspension stayed on conditions, for failing to timely respond to a client's inquiries, to provide a settlement statement; and to promptly forward the client her portion of settlement proceeds in *Mahoning Cty. Bar Assn. v. DiMartino* (1994), 71 Ohio St.3d 95. In 2007, respondent received a one-year suspension, stayed on condition of monitored probation and for further misconduct for failing to diligently representing a client in seeking postconviction relief in *Mahoning Cty. Bar Assn. v. DiMartino*, 114 Ohio St.3d 174, 2007-Ohio-3605. In the present disciplinary case, respondent is charged with misconduct for committed bigamy in North Carolina, a felony in that state. In August 2001, respondent married his longtime girl friend; the couple later separated in September 2005 and sought dissolution of the marriage. This attempt at dissolution was dismissed in January 2006, when the wife failed to appear at a hearing. In April 2007, respondent filed for divorce. In the time since he separated from his wife, he was involved with a new woman in North Carolina and had arranged to marry her on July 7, 2007. Respondent expected his divorce to be final by his marriage date, but it was not. Respondent proceeded with the second marriage. Beforehand, he signed the marriage application, falsely representing he was it was his first marriage. He did not disclose to the new wife that he was not divorced. Respondent's first wife notified the authorities, who investigated respondent for bigamy, a felony in North Carolina; prosecutors ultimately decided not to file charges. Respondent's divorce became final in August 2007, and he then legally married his second wife. His first wife caused a grievance to be filed. Respondent admitted that his conduct violated Prof.Cond.R. 8.4(c); the panel and board accepted the admission. The board adopted the panel's recommendation of six months suspension with the last three months stayed on conditions. Respondent's past disciplinary record is an aggravating factor, but mitigating factors include testimony of character witnesses and many reference letters as to professional competence and commitment to clients, cooperation with the disciplinary process, a commitment to community service, and great remorse and embarrassment for his actions. BCGD Proc.Reg. 10(B)(1)(a), 10(B)(2)(d), (e). In light of the mitigating factors, the court distinguished this case from *Muttalib* (2001) in which a lawyer received an indefinite suspension for misconduct that included a marriage without first terminating a prior marriage. The Court accepted respondent's admission that he violated Prof.Cond.R. 8.4(c) and further accepted the Board's recommendation in so far as it recommends a six-month suspension; however, the Court noted that respondent had violated a condition of his previous 2007 disciplinary sanction by committing further misconduct, so the Court lifted the stay and reinstated the one-year suspension and ordered that it run concurrently with the six-month suspension ordered in this case.

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**Rules Violated:** Prof.Cond.R. 8.4(c)

<b>Aggravation:</b> (a)		<b>Mitigation:</b> (d), (e)	
<b>Prior Discipline:</b> YES (x2)	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> NO	<b>Sanction:</b> Six-month suspension; Previous stay lifted		

*Dismuke, Akron Bar Assn. v.*

128 Ohio St.3d 408, 2011-Ohio-1444. Decided 3/31/2011.

Respondent neglected two client matters, failed to keep a current address on file with the Court, and failed to cooperate in the ensuing disciplinary investigation. Respondent was suspended from the practice of law for failure to register for the 2009-2011 biennium. The parties submitted stipulations of fact and misconduct. With respect to Count 1, respondent received a \$1000 retainer to file a motion for judicial release, but never filed the motion. The client later terminated respondent's representation and requested a refund. Respondent did not provide the refund or return the file. At deposition, respondent testified he withdrew the money from the trust account with the intent to withdraw and refund the money. He kept the money in the client's file, but relator assisted him in returning the money to the client. In Count 2, respondent was appointed to represent a client in a criminal matter and obtained a waiver of his client's appearance at pretrial. The client failed to appear at a subsequent hearing. The court issued a *capias* for the client's arrest. Respondent failed to return many of the client's phone calls, but in one phone conversation said he would take care of the matter. Respondent admitted that he failed to cooperate with relator's investigation and respond to the charges against him. He did not respond to two letters sent by regular mail, and of the six letters that were sent to him via certified mail, three were returned unclaimed, two were returned as undeliverable to respondent's address, and one was returned and indicated that respondent had moved and left no forwarding address. Respondent abandoned client files at that location and failed to timely register his new address with Attorney Services. The board adopted the panel's findings that the conduct in both counts violates Prof.Cond.R. 1.3, and 1.4, and Gov.Bar R. V(4)(G), and VI(1)(D); the conduct in Count 1 also violates Prof.Cond.R. 1.15. The Court adopted the findings of fact and conclusions of law. In aggravation, respondent committed multiple offenses, initially failed to cooperate in the disciplinary process, and abandoned client files. BCGD Proc.Reg. 10(B)(1)(d) and (e). In mitigation, respondent had no prior disciplinary record, no selfish motive, eventually cooperated in the disciplinary process, and made restitution to the client in Count 1. BCGD Proc.Reg. 10(B)(2)(a), (b), (c), and (d). Respondent testified that he suffered from depression and other medical conditions that left him tired and unable to work, but he failed to meet the requirements to qualify for mitigation under BCGD Proc.Reg. 10(B)(2)(g)(i-iv). Relator recommended a one-year suspension with six months stayed on the conditions that respondent receive monitored probation, bring his CLE credits current, complete 6 hours of CLE in law-office management, and enter into an OLAP contract and comply with its terms. The panel and board recommended a two-year suspension with one year stayed on the same conditions proposed by relator, and that the suspension not commence until he is properly registered with the court and his registration suspension has been terminated. The court considered the sanctions imposed in *Gresley* (2010) (two years with six months stayed on conditions and *McNerney* (2009) (two years with second year stayed on conditions). The Court adopted the board's recommended sanction, but because respondent testified that he has underlying mental-health issues, the court added that not only must he comply with reinstatement procedures of Gov.Bar R. V(10), he must prove to a reasonable degree of medical certainty that he is mentally fit to return to the competent, professional, and ethical practice of law.

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**Rules Violated:** Prof.Cond.R. 1.3, 1.4, 1.15; Gov.Bar R. V(4)(G)

<b>Aggravation:</b> (d), (e)		<b>Mitigation:</b> (a), (b), (c), (d)	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Two-year suspension, 12 months stayed		

*Doellman, Disciplinary Counsel v.*

127 Ohio St.3d 411, 2010-Ohio-5990. Decided 12/15/2010.

Respondent, a sole practitioner with an emphasis on debt collection, was hired by bank in 1981 as a collection attorney with the agreement that respondent would receive a one-third contingency on debts collected by him. At this time, separate client trust accounts were not required, but the bank requested him to establish a separate trust account exclusively to deposit the bank's collection funds. When IOLTA became mandatory in 1985, respondent established an IOLTA at the bank to deposit other clients' fund, but he did not convert the existing trust account into an IOLTA and he continued to deposit the bank's collection proceeds into the non-IOLTA account until March 2001. In this non-IOLTA account, he regularly left his portion of the collection work fees and he used the account for personal and business transactions unrelated to the practice of law. He testified that he was not aware that he could have more than one IOLTA. When the bank terminated his services in March 2001 respondent had over 150 files. Despite repeated requests by the bank, respondent did not return the collection files, provide an accounting, or turn over the bank's funds he held. Simultaneously, respondent had financial difficulties and was unable to pay the bank for personal loans. To prevent the bank from applying the funds in his business accounts to the amounts owed on the personal loans, he closed his non-IOLTA account and opened a new non-IOLTA account at another bank into which he deposited from June 2001 through April 2002 the checks he continued to receive from debtors and clerks of court pursuant to garnishment and collection actions he had undertaken for the bank. He deposited 38 checks totaling \$2,764.46 of which he was entitled to one third and the bank two thirds (\$1,842.97). He expended funds from this new account for personal and business use and the account fell below the \$1,842.97 he owed the bank. During this time he also received a large number of checks that he put unopened into envelopes. He eventually gave these checks to his attorney who turned them over to the bank, but respondent did not turn over to the bank the funds from the 38 cashed checks. In June 2001, the bank sued him for breach of contract, unjust enrichment, conversion, and replevin. Respondent filed an answer and counterclaim alleging that the bank owed him more than \$100,000 and admitting he possess funds from the collections that he was holding as a lien. Respondent failed to respond adequately to written discovery request; did not attend scheduled court hearings, did not comply with the trial court's order compelling him to produce documents and files to First Financial; and did not appear at his scheduled deposition. After an appeal and a remand, the trial court issued a judgment against respondent on the issue of liability, dismissed his counterclaims, and issued a final judgment against respondent for \$272,292. In March 2008, respondent filed a Chapter 7 bankruptcy petition seeking to discharge debts including the \$272,292 judgment. Although the bank filed an adversary action contesting dischargeability of the judgment based upon respondent's fraud while acting in a fiduciary capacity, the bankruptcy court discharged the debt because it concluded that the judgment was based on respondent's negligence not fraudulent or deceitful acts. Respondent also engaged in collection efforts for other clients during 2001 and 2002. He deposited those funds into the non-IOLTA account he established at the second bank, rather than in the IOLTA at the first bank. He used the non-IOLTA regularly to conduct personal and business transactions unrelated to the practice of law. As to Count I, the board adopted the panel's findings of violations of DR 1-102(A)(6) and 9-102(A) and agree with the panel's dismissal of the alleged violation of DR 1-102(A)(5) for his conduct between 1981 and March 2001 of failing to maintain an IOLTTA account to hold proceeds from his collection efforts for the bank and by depositing funds collected into his Non-IOLTA trust account and for regularly using the non-IOLTA account for personal and business transactions unrelated to the practice of law. As to Count II, the board adopted the panel's findings of violations of DR 1-102(A)(6), 9-102(A), 9-102(B)(3), and 9-102(B)(4) and the panel's dismissal of an alleged violation of DR 2-102(A)(4), but the board found a violation of DR 1-102(A)(5) for his conduct, after being discharged by the bank, of continuing to receive checks from debtor of the bank; not forwarding the uncashed checks to the bank; not providing notice to the bank that he had received the checks; not providing the bank with an account; not depositing the check into an IOLTA until dispute over the checks was resolved; depositing the checks into a non-IOLTA account at another bank; and utilizing the account for personal and business expense, allowing the account to fall below the

amount owed to the bank on multiple occasions. As to Count III, board adopted the panel's findings of violations of DR 1-102(A)(6) and 9-102(A) and with the panel's dismissal of the alleged violation of DR 1-102(A)(5) for his failure to maintain an IOLTA account in 2201, 2002, 2003; and for depositing funds collected for multiple clients into a non-IOLTA bank account, and for regularly using the account for personal and business transactions unrelated to the practice of law. The court adopted the board's findings of fact and misconduct that respondent's conduct in Counts I and III violated DR 1-102(A)(6) and 9-102(A) and the conduct in Counts II violated DR 1-102(A)(5), 1-102(A)(6), 9-102(A), 9-102(B)(1), 9-102(B)(3) and 9-102(B)(4). The court addressed the distinction between a panel's dismissal of a count and a panel's recommendation to dismiss, and the notice procedure of Gov.BarR.V(6)(K) for the board to follow if the board agrees with the panel's recommendation to dismiss a count. When the board does not follow the notice procedure it does not effectuate a dismissal and the court is not precluded from addressing relator's objection to a dismissal. The court discussed precedent in which the court has declined to find violations of DR 1-102(A)(5) when attorneys comingled funds. In aggravation, respondent committed multiple violations. In mitigation, respondent has no prior disciplinary record, made full and free disclose and had a cooperative attitude, has a good reputation among friends and clients, has previous sanction for his conduct relating to the litigation and has promised to make restitution to the bank. The court also addressed distinctions between independent acts of misconduct and patterns of misconduct. The court found a pattern of misconduct as to Count II, but not as to Counts I and III. Respondent testified to the panel that he had clinical depression, began psychiatric treatment in April 2002 and was hospitalized for severe depression in March 2003. He currently practices on a limited basis. He has been diagnosed with major depression recurrent and generalized anxiety disorder and is under the care of a psychiatrist. He signed a four-year OLAP contract on November 2, 2009,. On January 28, 2010 he promised to pay the bank \$1,842.97 in 12 monthly payments and he has made the first payment. The court adopted the board's recommended sanction and so ordered a one-year suspension, all stayed on conditions: no further misconduct during the stayed suspension period; full restitution to the bank; a monitor appointed by relator to oversee the legal practice and the IOLTA account during the stayed suspension; and complying with the OLAP contract and the recommendations of the mental health professionals.

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**Rules Violated:** DR 1-102(A)(5), 1-102(A)(6), 9-102(A), 9-102(B)(1), 9-102(B)(3), 9-102(B)(4)

<b>Aggravation:</b> (d)		<b>Mitigation:</b> (a), (c), (d), (e), (f)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> One-year suspension, stayed		

*Drain, Cuyahoga Cty. Bar Assn. v.*  
120 Ohio St.3d 288, 2008-Ohio-6141. Decided 12/3/2008.

Respondent lost his client's malpractice claim through neglect and inadequate preparation by missing the statute of limitations and he failed to inform her of when he canceled his malpractice insurance. Respondent represented a Robin Keifer in a dental-malpractice case from mid-January 2002 until mid-February 2006, advising her early of a one-year statute of limitation for filing her claim. On November 1, 2002, one day before the filing deadline, respondent had an associate hand deliver a "180-day letter" to the dentist, thereby extending the time for filing Keifer's complaint by six months. However, even with this extension respondent did not file the complaint until June 23, 2003, over a month after the 180-day extension deadline. Respondent consulted his client about the missed deadline, telling her he would try to salvage the claim. For the rest of 2003 the case remained active on the court's docket. On January 12, 2004, respondent missed another deadline, the court-ordered date for filing the report of the plaintiff's expert. Respondent moved for an extension to file the expert's report; the dentist moved for summary judgment. In March 2004, the trial court denied the motion for the extension as untimely and denied the summary judgment motion because factual disputes existed. Respondent, doubting that his client could prevail without an expert witness, voluntarily dismissed Keifer's case without prejudice under Civ.R. 41(A). Respondent refiled the Keifer complaint in early May 2004, obtaining her expert's report long before the court-ordered deadline. Respondent did not inform Keifer of his dismissal or refiling of her complaint. On January 31, 2005 the dentist moved for summary judgment asserting the complaint was time-barred. Respondent missed another deadline, failing to timely oppose this motion. He did untimely file a motion for an extension to respond to the motion for summary judgment in early March 2005. The trial court denied the extension and granted summary judgment for the defense and denied his motion to file instant his brief in opposition to the motion for summary judgment and for reconsideration. On April 15, 2005, respondent unsuccessfully appealed, trying to salvage Keifer's claim. Further, respondent entered into Chapter 13 bankruptcy on July 15, 2004, and canceled his malpractice insurance on March 8, 2005 without notifying Keifer. As a result, Keifer lost her claim for damages, not for lack of merit but for an avoidable failure to file the claim on time, and now has no recourse against respondent because he has no assets and no insurance. Respondent acknowledged his mistakes and took responsibility for missing deadlines, but also blamed the overwhelming task of managing his two law offices. The panel found respondent violated DR 1-104(A), DR 6-101(A)(2), and DR 6-101(A)(3) and recommended a public reprimand. The board found a violation of only DR 1-104(A) and adopted the panel's recommendation. The Supreme Court disagreed. The Court found respondent had violated DR 1-104(A), DR 6-101(A)(2) and (3), and DR 7-101(A)(3). The Court followed its precedent in *Norton* (2007) after finding this case similar because of the intentional element of the misconduct and comparable wrongdoing, mitigation, and aggravation. In mitigation, respondent had no prior disciplinary record, expressed remorse and acknowledged his wrongdoing, and established his good character and reputation, in part by showing he has been a dedicated OLAP volunteer for many years. BCGD Proc.Reg. 10(B)(2)(a), (d), and (e). In aggravation, respondent has made no efforts to compensate Keifer for her loss. BCGD Proc.Reg. 10(B)(1)(i). The Supreme Court ordered a six-month suspension, all stayed on the conditions that respondent complete six hours of CLE in law-office and case-file management and commit no further misconduct during the suspension period.

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**Rules Violated:** DR 1-104(A), 6-101(A)(2), 6-101(A)(3), 7-101(A)(3)

<b>Aggravation:</b> (i)		<b>Mitigation:</b> (a), (d), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Six-month suspension, stayed		

*Dundon, Disciplinary Counsel v.*

129 Ohio St.3d 571, 2011-Ohio-4199. Decided 8/30/2011.

Respondent failed to regularly communicate with his client, failed to follow up on the status of the client's trust documents, and failed to promptly respond to the client's new attorney's requests for a refund of fees. Respondent was hired to do some estate planning for his client and to create a series of LLCs to protect his client's rental properties. Respondent sent the appropriate documents to the trustee and the secretary of state, but did not follow up with these agencies, which caused delay in his clients receiving their LLC registration papers and their trust book. Respondent closed his law practice and reassigned all his cases to another attorney, but failed to promptly and properly deliver all of the trust documents. This caused the new attorney to have to redo the work; respondent as a result refunded the fee he took from the client. This conduct violated DR 6-101(A)(3) (neglect of a legal matter), 9-102(B)(4) (promptly deliver all client's property); Prof.Cond.R. 1.3 (reasonable diligence and promptness), 1.4(a)(2) (reasonably consult with client), 1.4(a)(3) (keep client informed), 1.4(a)(4) (comply with reasonable requests for information). The Court agreed with these findings. There were no aggravating factors; in mitigation, respondent had no prior disciplinary record, lacked a dishonest or selfish motive, acknowledged the wrongful nature of his conduct, cooperated in the disciplinary process, and made full restitution. BCGD Proc.Reg. 10(B)(2)(a), (b), (c), and (d). The parties recommended a six-month, stayed suspension. Relator cited *Sebree* (2004), *Harp* (2001), and *Wilson* (2000). The panel and board believed that the misconduct in these cited cases was more egregious than here, and instead recommended a public reprimand. The Court agreed with the board's assessment and ordered respondent be publicly reprimanded.

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**Rules Violated:** Prof.Cond.R. 1.3, 1.4(a)(2), 1.4(a)(3), 1.4(a)(4); DR 6-101(A)(3), 9-102(B)(4)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (b), (c), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Public Reprimand</a>		

*Ellis, Columbus Bar Assn. v.*

120 Ohio St.3d 89, 2008-Ohio-5278. Decided 10/16/2008.

Respondent engaged in misconduct involving similar patterns of deceit, neglect, and non-communication with regard to 18 criminal defendants, including incarcerated clients. Between 2003-2006, he accepted funds from these individuals ranging from \$750 (Count 10) to \$10,000 (Count 16). In nine instances, he either did not initiate or complete the tasks (Counts 1-3, 6, 8, 11-13, 16). In two of those occasions he misrepresented that he had filed the paperwork. In all counts there was deceit followed by lack of satisfactory communication with the client or the client's family. In five counts he accepted an initial fee and had no further contact with the client and/or the client's family. (Counts 1, 2, 4, 8, 13). His communication with eight other clients was so infrequent or so untimely he was forced to concede its inadequacy. (Counts 3, 5, 6, 7, 9, 11, 12, 17). Compounding this, his repeated refusals to answer verbal and written requests for information and case status from the client and/or families. Respondent operated his office as a "one-man enterprise" and became overwhelmed and "shut down." Supreme Court of Ohio adopted the board's findings of violations in 14 counts of DR 1-102(A)(6); at least a dozen violations of DR 6-101(A)(3). DR 7-101(A)(1), DR 9-102(B)(4), and Gov.Bar R. V(4)(G); 13 violations of DR 1-104(A); two of DR 1-102(A)(4), and three of DR 1-102(A)(5). Aggravating factors were multiple offenses, pattern of misconduct, selfish motive, vulnerability of and resulting harm to clients, failure to make restitution to all but two clients as of the hearing date. BCGD Proc.Reg. 10(B)(1)(b), (c), (d), (h), (i). In mitigation, respondent suffered and continues to suffer from depression. He being treated now and has signed an OLAP contract. There is no prior discipline. BCGD Proc.Reg.10(B)(2)(a), (g). Supreme Court of Ohio adopted the Board's recommended sanction of for two years with reinstatement conditioned upon provision of medical evidence that respondent can ethically and competently practice law; continued maintenance of respondent's contract with OLAP; and a two-year probation period under supervision of a monitor appointed by relator and restitution as specified to be paid within one year from the date of the suspension with interest at the statutory date from the date of suspension.

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**Rules Violated:** DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 1-104(A), 6-101(A)(3). 7-101(A)(1), 9-102(B)(4); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> (b), (c), (d), (h), (i)		<b>Mitigation:</b> (a), (g)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Two-year suspension		

*Ellison, Dayton Bar Assn. v.*

118 Ohio St.3d 128, 2008-Ohio-1808. Decided 4/23/2008.

Respondent stipulated to the facts, misconduct, and sanction imposed on two counts charged by the relator. As to Count I, respondent was hired in July 1997 by a client (Parker) to represent him in a divorce. The divorce was obtained in December of 1997, but a Qualified Domestic Relations Order (QDRO) was never finalized. The QDRO was to give Parker a one-half interest in his ex-wife's 401K plan. Respondent had to obtain the 401(k) administrator's approval before filing the QDRO in court. The administrator rejected a proposed QDRO and respondent had to revise it, but the administrator still resisted and advised respondent in September 2000 that a restraining order precluded further negotiation. Respondent persuaded the administrator to resume negotiations but in November 2001 the client's ex-wife filed for bankruptcy which complicated things further. At some point, respondent and opposing counsel notified the court that the 401(k) had been rolled into an IRA and that they would file a QDRO soon. Respondent never followed through. Parker only got his interest in the 401K plan after hiring another lawyer. As to Count II, respondent was hired in July 2001 by a woman (Grismer) to sue her employer for employment discrimination. Respondent failed to oppose a motion for summary judgment in federal court. The court granted the summary judgment motion of the employer as unopposed. Respondent then misled her client as to this decision and failed to save her client's claim. When the client called to check on the status of her claim, respondent replied she "didn't know anything." Even though the client checked back periodically, respondent did not tell her of the adverse judgment until some six months after the decision when the client came to her office and confronted her. Respondent explained to the hearing panel that she had personal problems at the time, including the end of her marriage and did not want to deal with having lost the client's case. She also testified that she did not open the electronic notification of the court's ruling immediately and did not realize for some time the court granted the summary judgment as unopposed. The board found violations of DR 6-101(A)(3) for Count I and violations of DR 1-102(A)(4), 1-102(A)(6), and 6-101(A)(3) for Count II. Normally a violation of DR 1-102(A)(4) requires and actual suspension from the practice of law, but here there were enough mitigating factors to warrant a stayed suspension. The mitigating factors include respondent's long standing positive reputation in her community, representation of clients who can ill afford an attorney, and her complete cooperation in the disciplinary process. Respondent does have a public reprimand for neglect on her record, but that was from over 20 years ago. The board recommended a six month stayed suspension. The Supreme Court suspended respondent for one year, stayed on the condition that the respondent serve one year probation pursuant to Gov.Bar R. V(9), during which she will cooperate with an attorney assigned to monitor the responsible management of her office and attend a continuing legal education course on law office management, which is the suspension the parties stipulated. One justice dissented in favor of a six-month stayed suspension.

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**Rules Violated:** DR 1-102(A)(4), 1-102(A)(6), 6-101(A)(3)

<b>Aggravation:</b> (a)		<b>Mitigation:</b> (d), (e)	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> One-year suspension, stayed		

**Emerson, Cincinnati Bar Assn. v.**

122 Ohio St.3d 176, 2006-Ohio-2883. Decided 6/25/2009.

On March 19, 2009, respondent received two reciprocal disciplines based on discipline in Kentucky. He was suspended for 61 days in *Disciplinary Counsel v. Emerson*, 121 Ohio St.3d 1226, 2009-Ohio-1541 and for 181 days in *Disciplinary Counsel v. Emerson*, 121 Ohio St.3d 1226, 2009-Ohio-1541. Respondent neglected clients' cases and otherwise failed to carry out professional responsibilities including failing to cooperate. Board accepted panel's findings of violations. As to Count I, in August 2005, respondent agreed to pursue a civil rights action for a client who advanced \$1,200 for costs. Respondent filed an amended complaint in federal court, but failed to respond to discovery requests and did not appear at two depositions. In October 2006, the court ordered respondent to file a notice of withdrawal or continue as counsel, but respondent did not withdraw and continued to fail to assist the client. Respondent conceded abandoning his client, leaving her to file motions to preserve her claim, and failing to honor requests for the file and an itemized billing. Respondent failed to respond to relator's letters of inquiry even after promising during a deposition to respond in writing. Board found a violation of DR 6-101(A)(3), 7-101(A)(1), (2), (3), 7-106(A), 9-102(B)(3), 9-102(B)(4), and Gov.Bar R. V(4)(G). As to Count II, in December 2005, a client paid \$2,500 for respondent's representation, along with another attorney, in a property dispute with the client's ex-husband. During litigation, the court ordered the client to convey certain property rights to the ex-husband as part of the divorce decree. The client refused to sign the necessary papers. The client discharged respondent and reclaimed file and demanded a refund. Respondent believed he had earned the entire fee. He did not provide as the client requested an itemized billing. He explained that he had not documented the hours and he had given the client everything from which he might have reconstructed time. He failed to respond to relator's investigation. Board found a violation of DR 9-102(B)(3) and Gov.Bar R.V(4)(G). As to Count III, in March 2006, respondent was hired by a client who sustained injuries in a traffic accident. Respondent failed to obtain the client's file from a previous lawyer, did not review court records of past proceedings, and failed to appear in court. The court dismissed the case for want of prosecution. Respondent did not inform the lawyer, did not return the file upon request, and failed to reply to relator's investigative letters. Board found violations of DR 6-101(A)(3), 7-101(A)(1), (2), (3), 9-102(B)(4), and Gov.Bar R. V(4)(G). As to Count IV, respondent received reciprocal discipline of a public reprimand based upon discipline by the Supreme Court of Kentucky for misconduct committed when he represented an Ohio resident in Kentucky during July 2006 when he accepted a \$2,500 fee from the client and his family, later withdrew as counsel without returning any portion of the fee, and then failed to respond to the disciplinary charges. See *Disciplinary Counsel v. Emerson*, 120 Ohio St.3d 1206, 2008-Ohio-6352. During inquires regarding the Kentucky case, he failed to respond to letters from relator, forcing relation to subpoena him for deposition, and then he failed to present a written response that he promised in his deposition to provide. Board found a violation of Gov.Bar R. V(4)(G). Board did not accept panel's recommended sanction of an indefinite suspension, but recommended a two-year suspension, one-year stayed. The Supreme Court of Ohio agreed with the Board's findings of violation, but ordered an indefinite suspension. The court noted that it consistently imposed an indefinite suspension for lawyers who repeatedly neglect their client's interests and fail to cooperate. The court noted that in view of respondent's past discipline and the lack of mitigating factors, an indefinite suspension is appropriate.

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**Rules Violated:** DR 6-101(A)(3), 7-101(A)(1), 7-101(2), 7-101(3), 7-106(A), 9-102(B)(3), 9-102(B)(4); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Evans, Erie-Huron County Bar Assn. v.*  
123 Ohio St.3d 103, 2009-Ohio-4146. Decided 8/25/2009.

Respondent neglected multiple legal matters, failed to maintain professional liability insurance or obtain waivers signed by his client, and committed a felony involving bank fraud. Respondent received an interim felony suspension on April 24, 2009 for bank fraud, a violation of Section 1344, Title 18, U.S. Code in *In re Evans*, 121 Ohio St.3d 1458, 2009-Ohio-1891. Respondent answered relator's complaint, but failed to answer the first amended complaint. At the panel hearing in January 2009, respondent admitted he recently pleaded guilty to a felony bank-fraud charge and was awaiting sentencing. The parties agreed and relator filed a second amended complaint adding a count based on the plea of guilty to bank fraud. In Count I, Elissa Gaydish paid respondent \$750 for representation in a domestic relations matter. After filing the complaint, respondent took no further action. He left the law firm where he was employed and gave no notice to the client or the court. Gaydish lost the \$750 she paid respondent and incurred additional expense to hire new counsel to finish the case. Board adopted panel's finding of a violation of DR 6-101(A)(3) as to Count I. In Count III, Linda Stietz retained respondent in late 2002 or early 2003 to pursue a medical malpractice claim on her behalf, but after filing the case, respondent did not provide a forwarding address or telephone number to Stietz or the court and the case was dismissed. Board adopted panel's finding of a violation of DR 6-101(A)(3) as to Count III. In Count IV, respondent filed a personal injury case for Stacey Apling, but took no further action. He left his law firm and did not notify the client, the court, or opposing counsel and the case was dismissed with prejudice for failure to comply with discovery. Board adopted the panel's findings of a violation of DR 6-101(A)(3) as to Count IV. In Count VI, in June 2004 Eric Kaiser and his wife retained respondent to defend a breach of contract action in a real estate purchase agreement. Respondent filed the answer, but took no further action. The Kaisers lost the \$250 fee they paid respondent and paid \$1400 in costs to file bankruptcy. In April 2006 a motion for summary judgment was granted against the Kaisers. Board adopted panel's finding of a violation of DR 6-101(A)(3) as to Count VI. In Count VII, board adopted panel's findings of a violation of DR 1-104(A) and 1-104(B) for failing to inform the clients he did not maintain professional liability insurance and failing to obtain and retain a copy of the required notice. In Count VIII, board adopted panel's findings of a violation of Prof.Cond.R. 8.4(b) and (c) for respondent's guilty plea on October 3, 2008 to felony bank fraud under Section 1344, Title 18 U.S. Code for attempting to negotiate and \$8,000 money order written on a closed account. On February 23, 2009, he was sentenced to one day in jail with credit for time served while in the custody of United States Marshals. He was fined \$100 and placed on a five-year supervised release. In aggravation, there was a pattern of misconduct, multiple offenses, refusal to acknowledge wrongful nature of conduct, the vulnerability of and resulting harm to victims and failure to make restitution. He accepted little responsibility for his neglect or the harm to the clients. He attempted to place responsibility for his neglect on other parties, former associates, secretaries, courts and judges. He was going through a second divorce and suffered from mental and physical problems during this time. He testified he had a drinking problem but no longer drinks and does not receive professional help or counseling. In mitigation, there was no prior disciplinary record and other sanctions had been imposed. Board adopted panel's recommendation of an indefinite suspension with no credit for the interim suspension. The Supreme Court of Ohio accepted the findings, conclusions, and recommended sanction and so ordered an indefinite suspension with no credit for time served under the interim suspension with reinstatement subject to the conditions that he shall (1) consult with OLAP and enter into an OLAP contract to obtain whatever assistance he needs and comply with all terms during the contract' (2) pay \$1,650 restitution to the Kaisers, (3) pay \$750 to Gaydish, and (4) agree to submit to monitored probation for two years to ensure compliance with ethical and professional practice standards.

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**Rules Violated:** Prof.Cond.R. 8.4(b), 8.4(c); DR 1-104(A), 1-104(B), DR 6-101(A)(3),

<b>Aggravation:</b> (c), (d), (g), (h), (i)		<b>Mitigation:</b> (a), (f)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Farah, Toledo Bar Assn. v.*

125 Ohio St.3d 455, 2010-Ohio-2116. Decided 5/20/2010.

Respondent neglected a legal matter and failed to cooperate in the early stages of the disciplinary process. Respondent represented a client in two personal injury cases. Respondent never resolved the cases and eventually dismissed the cases without the client's knowledge or consent and led the client to believe the cases were still ongoing. The client testified that respondent often did not return her calls and that the cases "drug out for a long time." The client was able to eventually retain new counsel, re-file the claims, and get a favorable settlement. Respondent testified that he told client that he was dismissing the cases because he did not have all the medical records and documentation necessary to proceed to trial. He claimed to have sent copies of everything he had filed, including the motion to dismiss. He produced copies of two letters that he had sent to her regarding the dismissal. He conceded that he "could have done more" to both pursue the case and keep his client informed. Respondent acknowledged that he failed to cooperate in relator's investigation. He left letters unopened and failed to provide documents requested by relator. The board found that respondent violated DR 6-101(A)(3) and Prof.Cond.R. 8.1(b). The Court adopted the board's findings of fact and conclusions of law. The Board found an initial lack of cooperation in the early stages of the disciplinary process from respondent as an aggravating factor. BCGD Proc.Reg. 10(B)(1)(e). In mitigation, the Board found that respondent: had a lack of prior disciplinary record, had no dishonest or selfish motive, and eventually cooperated in the disciplinary process. BCGD Proc.Reg. 10(B)(2)(a), (b), and (d). Additionally, the board noted that respondent was going through some difficult personal issues at the time of the misconduct. He had filed a lawsuit against a former partner for forging his name on half a million dollars of bank notes, and the criminal defense of a family friend which left him "dysfunctional for a period of time." This combined to cause marital and financial problems that culminating in his filing bankruptcy and considering taking his own life. He sought counsel from clergy, but did not seek other professional counseling because he had no health insurance and could not afford treatment. The board recommended a one-year suspension, stayed, on the condition that respondent submit to a mental-health evaluation with OLAP, comply with OLAP's treatment recommendations, and submit to monitoring of his practice for one year. For similar conduct, the court has imposed term suspensions ranging from six to 18 months, stayed upon conditions: *Norton* (2007), *DiAlbert* (2003), *Boulger* (2000), and *Boykin* (1994). The court adopted the board's recommended sanction, and so ordered.

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**Rules Violated:** Prof.Cond.R. 8.1(b); DR 6-101(A)(3)

<b>Aggravation:</b> (e)		<b>Mitigation:</b> (a), (b), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> One-year suspension, stayed		

*Farrell, Cincinnati Bar Assn. v.*

119 Ohio St.3d 529, 2008-Ohio-4540. Decided 9/16/2008.

Respondent fabricated documents, forged a signature to obtain a loan, and misled another attorney and his wife. Respondent and his wife, both lawyers, maintained an affluent lifestyle. In 2004, she wanted to cut back her hours to spend more time with their daughter and suggested they move to smaller quarters. As an alternative, respondent promised to find more lucrative employment, but instead pretended to do so by fabricating two detailed letters from two separate companies purportedly offering respondent positions with high salaries, incentive-pay packages, and health insurance. As a result, his wife resigned from her job. Respondent planned to increase the income from his practice enough to support the family, but by March 2006, he needed money. He forged his wife's signature on a power of attorney, lied about the authentication of the signature to another attorney, who notarized the signature, and then obtained an additional \$50,000 on their Fifth Third Bank line of credit, secured by his family's home. The attorney who notarized the signature was publicly reprimanded. *See Gottesman, (2007)*. When his wife found a bank statement and questioned him about the extension of credit, respondent created three letters purportedly written on Fifth Third Letterhead by bank executives, all dated May 5, 2006. These three letters were each addressed to respondent and his wife, each supposedly addressing some issue with the couple's accounts, were at least a page long, and specified in detail how the \$75,000 credit limit resulted from a "counterfeit." Then to keep his wife in the dark, respondent stopped mail delivery to their home. When his wife questioned him about the mail, respondent fabricated a letter from the United States Postal Service dated May 19, 2006, claiming to be from the assistant director of investigations assuring that their mail had not been held or diverted in the last year. Eventually respondent revealed his duplicity to his wife; they were divorced in December 2006. The divorce decree required respondent to repay the line of credit from his funds or from the sale of the marital home. At the urgings of his wife's counsel, respondent self reported his actions to relator. Respondent stipulated that he acted illegally in procuring a loan based upon false information [see R.C. 2921.13(A)(8)] violating DR 1-102(A)(3) and acted deceitfully in violation of DR 1-102(A)(4). The board adopted the panel's findings of violations of DR 1-102(A)(3) and (4). The Supreme Court agreed. In aggravation, respondent acted with self-interest, engaged in a pattern of misconduct, committed multiple offenses, and has not, as of oral arguments, made restitution by paying off the unauthorized extension of credit. BCGD Proc.Reg. 10(B)(1)(b), (c), (d), and (i). In mitigation, respondent has no prior disciplinary record and cooperated with the disciplinary process. BCGD Proc.Reg. 10(B)(2)(a) and (e). While he showed remorse for his actions, respondent did not present mitigating evidence of his good character and reputation or prove that his depression, a mental disability, contributed to his misconduct. The Court found the mitigating factors respondent showed were not enough to warrant leniency. The parties submitted a joint proposal for a one-year suspension, stayed on the condition of respondent's continued mental-health treatment. The board recommended a two-year suspension, with one year stayed on the condition of respondent's continued mental-health treatment. Respondent objected to the board's recommendation arguing his ethical breaches do not warrant such a severe sanction and that any sanction should be completely stayed. The Court discussed case law that requires an actual suspension from the practice of law when violations of DR 1-102(A)(3) and (4) are found. The Supreme Court overruled respondent's objection, agreed with the board's recommendations, and so ordered. One justice concurred in judgment only.

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**Rules Violated:** DR 1-102(A)(3), 1-102(A)(4)

<b>Aggravation:</b> (b), (c), (d), (i)		<b>Mitigation:</b> (a), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Two-year suspension, 12 months stayed		

*Farrell, Cincinnati Bar Assn. v.*

129 Ohio St.3d 223, 2011-Ohio-2879. Decided 6/21/2011.

Respondent failed to file tax returns and pay tax liability to the IRS and filed a false affidavit with a domestic relations court. Respondent was previously suspended for two years with one year stayed in 2008. In 2002, respondent stopped filing income tax returns and making regular payments toward his income tax liability. When respondent's wife stated that she wanted to move into a more modest home, respondent felt threatened that his marriage was failing. Respondent falsely told his wife that he had resigned his private practice to take a more lucrative job; respondent fabricated letters from two companies stating that he was being paid more, receiving better bonuses and better benefits. Unable to keep up the charade, respondent forged his wife's signature and used it to apply for a \$50,000 extension of credit. When the wife found out about this forgery, respondent then forged letters from the bank explaining that this \$50,000 credit extension was a mistake on the bank's part. Respondent further stopped delivery of mail to the couple's home and fabricated a letter from the USPS stating that no mail had been withheld from delivery. Respondent eventually told his wife about all the forgeries and the couple divorced in 2006. Respondent lied to the hearing panel in his previous disciplinary case by stating that he was unaware of any unpaid taxes, even though he failed to pay them from 2001 to 2006. One month after providing the above false testimony, respondent knowingly filed a false affidavit stating that he had prepared, filed, and paid all tax liability from 1985 to 2005. Respondent admitted to violation Prof.Cond.R. 8.4(b), 8.4(c), 8.4(d), and 8.4(h). The Court adopted the findings of fact and conclusions of law. In aggravation, respondent had a prior disciplinary record, engaged in a pattern of misconduct involving multiple offenses, submitted false evidence and made false statements to a tribunal, acted with a dishonest or selfish motive, and failed to acknowledge the wrongful nature of his misconduct. BCGD Proc.Reg. 10(B)(1)(a), (b), (c), (d), (f), and (g). In mitigation, the panel found that respondent had cooperated in the disciplinary proceedings and eventually admitted the alleged rule violations. BCGD Proc.Reg. 10(B)(2)(c) and (d). The panel discounted the testimony of three law school friends of respondent from providing good character evidence. Furthermore, the panel did not find any mental health mitigation, finding that respondent had been in remission from his depression since before these violations occurred. Finally, the panel found that respondent's conduct did harm the legal profession, as he lied to the previous panel and submitted a false affidavit to a court. Two members of the panel recommended an indefinite suspension, the third dissented and recommended disbarment; the board agreed with the dissenting member and also recommended disbarment. Respondent objected, requesting at most an indefinite suspension and citing cases that called for a much lesser sanction. However, the Court noted that these cases were easily distinguishable on the facts from respondent's case, due to the number of aggravating factors, the lack of mitigating factors, and respondent's pattern for misrepresentations. Relying on *Deaton* (2004) and *Manogg* (1996), the Court adopted the board's recommended sanction and permanently disbarred the respondent.

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**Rules Violated:** Prof.Cond.R. 8.4(b), 8.4(c), 8.4(d), 8.4(h)

<b>Aggravation:</b> (a), (b), (c), (d), (f), (g)		<b>Mitigation:</b> (c), (d)	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Disbarment		

*Finan, Akron Bar Assn. v.*

118 Ohio St.3d 106, 2008-Ohio-1807. Decided 4/23/2008.

A consent-to-discipline agreement was entered by the parties, accepted by the panel, and adopted by the Board. Respondent represented a woman in a post decree domestic relations matter. Respondent filed a motion for contempt alleging the former husband failed to comply with the parenting plan. In support of the motion, respondent prepared an affidavit for the client's signature. She presented the affidavit to the court as an affidavit of fact purportedly containing the client's signature and notarized by respondent. At the hearing on the motion when the former husband challenged the signature and some of the facts in the affidavit, she acknowledged to the court two factual errors and admitted signing the client's name to the affidavit and notarizing her own signature. The client confirmed to the court that she had provided the information in the affidavit and she had authorized respondent to sign her name. As a result of respondent's misconduct, the court dismissed the contempt motion. Pursuant to the consent-to-discipline agreement, respondent violated DR 1-102(A)(5) and DR 1-102(A)(6) and the agreed upon sanction is was a public reprimand . The mitigating factors were no prior discipline, good character and reputation, absence of dishonest or selfish motive, timely, good-faith effort to rectify the consequences of the misconduct, cooperation with the disciplinary proceeding and disclosure of information fully and freely to the board. BCGD Proc.Reg. 10(B)(2)(a), (b), (c), (d), (e). The court accepted the consent-to-discipline agreement and ordered a public reprimand for violation of DR 1-102(A)(5) and 1-102(A)(6).

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**Rules Violated:** DR 1-102(A)(5), 1-102(A)(6)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (b), (c), (d), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Public Reprimand</a>		

*Fink, Akron Bar Assn. v.*

131 Ohio St.3d 34, 2011-Ohio-6342. Decided 12/14/2011.

Respondent failed to cooperate in the disciplinary process and thus engaged in conduct prejudicial to the administration of justice. The parties stipulated to the facts and misconduct. In 2009, respondent's former clients filed a grievance against him. He did not respond to relator's letters of inquiry, subpoenas, or depositions requests. Based on information from outside sources, relator dismissed the underlying misconduct. Respondent admitted to receiving the inquiries, but did not appreciate the gravity of the situation until a fellow attorney explained the consequences. Respondent immediately took action to correct this, and now realizes the importance of the investigation process. This conduct violated Prof.Cond.R. 8.4(d) (conduct prejudicial to the administration of justice) and Gov.Bar R. V(4)(G) (failure to cooperate). The Court adopted these findings. There were no aggravating factors; in mitigation, respondent lacked a prior disciplinary record, lacked a dishonest or selfish motive, eventually cooperated in the disciplinary process, and presented evidence of good character. BCGD Proc.Reg 10(B)(2)(a), (b), (d), (e). The board also found that respondent's conduct did not harm any clients, and that he is not dependant on any substances, realizes the severity of his actions, and has taken steps to ensure similar issues do not arise again. The panel and board recommended a public reprimand. The Court noted that failing to respond to a disciplinary investigation is a serious offense. However, relying on *Deffet* (2003), *Allanson* (1995), the mitigating circumstances, and respondent's remedial measures, the Court adopted the recommended sanction and ordered respondent be publicly reprimanded.

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**Rules Violated:** Prof.Cond.R. [8.4\(d\)](#); Gov.Bar R. [V\(4\)\(G\)](#)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (b), (d), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Public Reprimand</a>		

**Fletcher, Disciplinary Counsel v.**

122 Ohio St.3d 390, 2009-Ohio-3480. Decided 7/22/2009.

Respondent used his IOLTA to pay business and personal expenses; failed to maintain records; and loaned money to client for personal expenses. Following the Supreme Court's rejection of the Board's recommendation of acceptance of a consent-to-discipline agreement proposing a six-month suspension, stayed on conditions of a one-year probation and no further misconduct, a panel of the board held a disciplinary hearing upon the court's order for "further proceedings and consideration of a more severe sanction." See *Disciplinary Counsel v. Fletcher*, 119 Ohio State.3d 1467, 2008-Ohio-4989. As to Count I, from at least 2002 until early August 2007, respondent did not maintain an operating account for his practice, but instead used his IOLTA account, in which he had commingled his own funds with clients' funds, to pay business expenses. He also used the IOLTA account to pay personal expenses. Respondent wrote at least 150 checks to pay personal and business expenses between January 2005 and January 2007. From January 2007 through February 2007, he wrote 101 checks to himself from his IOLTA without verifying the amount in the account that belonged to him. On several occasions he received cash from deposits made to his IOLTA that he applied to pay personal expenses. Twice during 2006, the account was overdrawn, once because of his small error in addition and once because of a bank mistake. The mistakes triggered the bank's notification to disciplinary authorities pursuant to R.C. 4705.10(A)(4). Board adopted panel's findings and conclusions that respondent's conduct prior to February 1, 2007 violated DR 9-102(A) and 9-102(B)(3) and his conduct on or after February 1, 2007 violated Prof.Cond.R. 1.15(a) and 1.15(a)(2). As to Count II, in 2006 respondent represented a client in both bankruptcy and divorce proceedings. He loaned the client approximately \$900 for personal expenses unrelated to either case. He also cashed checks for the clients' small cleaning company, by first depositing the checks into his IOLTA account. In addition to repaying the loan, the client occasionally paid respondent a \$25 or \$50 fee for the check cashing and loan service. Board adopted panel's findings and conclusions that respondent violated DR 5-103(B) and DR 9-102(B)(3). The Supreme Court of Ohio agreed with the findings of violations as to both Counts. In mitigation, respondent had no prior disciplinary record, there was no selfish or dishonest motive, and he cooperated. BCGD Proc.Reg. 10(B)(2)(a), (b), and (d). In addition, no clients were harmed and there was no evidence that respondent was trying to hide or disguise income or assets. The board adopted the panel's recommended sanction of a suspension for six months, stayed on conditions that (1) he complete a one-year probation with monitoring of the IOLTA by an attorney appointed by relator and (2) he commit no further misconduct. Supreme Court of Ohio agreed and so ordered.

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**Rules Violated:** Prof.Cond.R. [1.15\(a\)](#), [1.15\(a\)\(2\)](#); DR 5-103(B), 9-102(A), 9-102(B)(3)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (b), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Six-month suspension, stayed		

***Folwell, Disciplinary Counsel v.***

129 Ohio St.3d 297, 2011-Ohio-3181. Decided 7/6/2011.

Respondent neglected legal matters entrusted to him, failed to provide diligent and competent representation, and made misrepresentations to clients. The parties stipulated to all of the findings of fact and conclusions of law, and jointly recommended a two-year suspension with the second year stayed on the conditions of no further misconduct. In Count 1, respondent settled a claim on behalf of a minor without approval of the probate court and delayed eventually getting the probate court's approval of the settlement. Respondent also allowed his trust account balance to dip below the amount of funds he was holding for the minor, and thus improperly used some of the minor's money. This violated Prof.Cond.R. 1.1 (competent representation), 1.3 (reasonable diligence and promptness), 1.15(a)(2) (maintaining separate ledgers for client funds), 1.15(a)(5) (monthly reconciliation of the funds in trust account), 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(h) (conduct that adversely reflects on fitness to practice law). In Count 2, respondent was to file a lawsuit against an individual's estate, but failed to do so before the property was transferred. Respondent did not refund the client's money until 2 years later. This conduct violated Prof.Cond.R. 1.3, 1.16(e) (refund any unearned fee upon withdrawal of representation), and 8.4(h). In Count 3, respondent was paid to file an action against a client's daughter, but the client later told respondent not to file the action and requested a refund. Respondent promised to refund a portion of the fee, but failed to do so until almost 4 years later. This conduct violated Prof.Cond.R. 1.16(e) and 8.4(h). In Count 4, respondent took over 1 year to file a client's husband's estate, even though it could have been done sooner, which violated Prof.Cond.R. 1.3. In Count 5, respondent accepted money to do legal work, but then told the client he could not help her. He said he would refund the money, but failed to timely do so. After the disciplinary investigation began, respondent refunded the client's money. This conduct violated Prof.Cond.R. 1.16(e) and 8.4(h). In Count 6, respondent was supposed to file a probate case and failed to correct the client's belief that respondent had, in fact, filed it. The client eventually obtained new counsel to file the estate. Respondent then refunded the client's money. This conduct violated Prof.Cond.R. 1.3, 8.4(c), and 8.4(h). In Count 7, respondent paid 10% of a legal fee to his secretary, in violation of Prof.Cond.R. 5.4(a) (sharing fees with a nonlawyer). In mitigation, respondent had no prior disciplinary record and cooperated with the disciplinary proceedings. BCGD Proc.Reg.10(B)(2)(a) and (d). In aggravation, respondent had engaged in a pattern of misconduct involving multiple offenses and displayed a dishonest or selfish motive. BCGD Proc.Reg. 10(B)(1)(b), (c), and (d). The panel adopted the jointly-recommended sanction, but added as a condition one year of monitored probation. The board and panel found the sanction consistent with *Clafin* (2005), and *Mishler* (2008). The Court adopted the findings of fact, conclusions of law and recommended sanction, and suspended the respondent for two years with one year stayed on the conditions of no further misconduct and one year of monitored probation.

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**Rules Violated:** Prof.Cond.R. 1.1, 1.3, 1.15(a)(2), 1.15(a)(5), 1.16(e), 5.4(a), 8.4(c), 8.4(h).

<b>Aggravation:</b> (b), (c), (d)		<b>Mitigation:</b> (a), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Two-year suspension, one year stayed		

**Forbes, Disciplinary Counsel v.**

122 Ohio St.3d 171, 2009-Ohio-2623. Decided 6/11/2009.

In July 2007, respondent pleaded guilty and was convicted of four misdemeanor charges for filing a false financial disclosure statement in violation of R.C. 102.02(D) and pleaded no contest and was convicted of two misdemeanor charges of accepting gifts of such a character as to influence the performance of his duties in violation of R.C. 102.03(E). He was sentenced to 30 days in jail, with the sentence suspended. He was also placed on probation for one year, ordered to pay \$6,000 in restitution to the BWC, fined \$6,000, and ordered to perform 60 hours of community service. He complied with the terms of his sentence, prompting the court to terminate his probation eight months early. In 1995, respondent was appointed to the Bureau of Workers' Compensation (BWC) Oversight Commission and served until 2005. He also served on the oversight commission's investment committee, which regularly met to review BWC staff recommendations for potential investment consultants and money managers in accordance with BWC investment policy. As a commission member, respondent was required under R.C. 102.02(A) to file with the Ohio Ethics Commission annual financial-disclosure statements. The parties stipulated that in filing financial-disclosure statements for these years, respondent knowingly failed to disclose sources of meal and travel expenses and to disclose creditors to whom he owed more than \$1,000. The expenses included gifts, meals, and travel in excess of \$6,000 from Clarke Blizzard or his affiliated companies, such as American Express and Northwinds Marketing; travel expenses from Patrick White of Great Lakes Capital Partners; and travel expense reimbursements from BWC. The financial creditors included JP Morgan Chase, Citibank, and American Express. At the time respondent received these gifts and loans, the Blizzard, Blizzard's affiliated companies, and White were performing investment related services for or soliciting investment-related business from the BWC. The board adopted the panel's findings that respondent's acts and omissions in violation of R.C. 102.03(D) and 102.03(E) constituted conduct adversely reflecting on fitness to practice law in contravention of DR 1-102(A)(6). The Supreme Court agreed with this finding. In mitigation, the board found the absence of a prior disciplinary record, full and free disclosure and cooperation with the disciplinary process, restitution to the BWC, positive character and reputation including a long history as a prominent attorney and defender of civil rights in Cleveland, serving as the NAACP president, 26 years on Cleveland City Council, and a general commitment to service and the community, and the imposition of other penalties. BCGD Proc.Reg. 10(B)(2)(a), (c), (d), (e), and (f). While the board found no aggravating factors, a dissenting panel member found that respondent's attempts to explain away his convictions during the hearing constitutes a refusal to acknowledge the wrongful nature of his conduct. BCGD Proc.Reg. 10(B)(1)(g). The dissenting panel member recommended a six-month actual suspension, but the board, agreeing with the panel majority, recommended a public reprimand. The Supreme Court agreed with the dissenting panel member that respondent by attempting to minimize his culpability failed to acknowledge his wrongful conduct which is an aggravating factor. Citing *Stein* (1972), the court noted that personal and professional integrity that meets the highest standard is a fundamental tenet of professional responsibility. Citing *Chvosta* (1980) and *McAuliffe* (2009), the court noted that a disciplinary proceeding is not the forum to collaterally attack a criminal conviction. The court rejected the Board's recommended sanction noting that respondent's convictions warranted a six-month suspension, stayed on condition of no further misconduct. The court noted respondent's long history as a prominent attorney and defender of civil rights, including as NAACP president; his service on the Cleveland City Council for 26 years, with the last 18 as council president; his contribution to the area through his lifetime; and his numerous awards for his commitment to the community. The court ordered a six-month suspension, stayed. Two justices dissenting in favor of a public reprimand.

**Rules Violated:** DR 1-102(A)(6)

<b>Aggravation:</b> (g)		<b>Mitigation:</b> (a), (c), (d), (e), (f)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> YES	<b>Sanction:</b> Six-month suspension, stayed		

**Freedman, Akron Bar Assn. v.**

128 Ohio St.3d 497, 2011-Ohio-1959. Decided 4/27/2011.

Respondent failed to reasonably communicate with his clients, failed to inform the clients that he lacked professional liability insurance, and charged a flat fee without noting that some of the fee may be refundable. The board referred this case to the Court based solely on the stipulations of the parties, without a hearing. Clients paid respondent a \$3500 flat fee to examine their personal and business finances, handle matters with their creditors, and determine the appropriateness of filing for bankruptcy. There was no written fee agreement and respondent did not advise the clients that some of the money may be refundable. Respondent also did not advise the clients that he lacked professional liability insurance. Respondent did not return the clients' phone calls and admits that he should have called them more frequently than he did. The clients eventually terminated respondent and requested a complete refund. Respondent believed that he had rendered services in excess of what he charged and has not refunded any of the \$3500. The couple has since filed bankruptcy; they did not list the fee or any pending malpractice action in their assets. This conduct was found to have violated Prof.Cond.R. 1.4, 1.4(c), and 1.5(d)(3). The Court adopted the stipulated findings of fact and conclusions of law. The parties stipulated to no factors in aggravation. In mitigation, the parties stipulated that respondent lacks a prior disciplinary record in almost 30 years, did not have a dishonest or selfish motive, acknowledged the wrongful nature of his conduct and his willingness to apologize, made full and free disclosure to the board, and has evidence of good character and reputation. BCGD Proc.Reg. 10(B)(2)(a), (b), (d), and (e). The board declined to characterize respondent's acknowledgement of the wrongful nature of his conduct and his willingness to apologize as a mitigating factor, as no evidence was presented that he actually did apologize. The board recommended a public reprimand; relying on *Godles* (2010), and *Holda* (2010), the Court accepted the board's recommended sanction and publicly reprimanded respondent.

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**Rules Violated:** Prof.Cond.R. [1.4](#), [1.4\(c\)](#), [1.5\(d\)\(3\)](#)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (b), (d), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Public Reprimand</a>		

**Freedman, Cuyahoga Cty. Bar Assn. v.**  
119 Ohio St.3d 571, 2008-Ohio-5220. Decided 10/14/2008.

Respondent failed to return unearned fees and a case file to a client after he was already suspended from the practice of law for one year on November 16, 2005, for his failure to file federal, state, and local income tax returns for ten years, his dishonest conduct toward a client, and his neglect of two clients' cases. *Cuyahoga Cty. Bar Ass'n. v. Freedman*, 107 Ohio St.3d 25, 2005-Ohio-5831, 836 N.E.2d 559. On May 22, 2006 for contempt of the original order when he did not surrender his attorney registration card or file his affidavit of compliance. He was suspended for a second time for non-compliance with attorney registration requirements. *In re Attorney Registration Suspension [Freedman]*, 116 Ohio St.3d 1420, 2007-Ohio-6463, 877 N.E.2d 305. He remains under this second suspension, although he has purged himself of contempt on the original order. Respondent and relator stipulated to the facts, misconduct, and a joint proposal for a six-month suspension, stayed on the conditions that he complies with the Court's suspension and contempt orders. In October 2005, Margarita Santana paid respondent \$1,600 in legal fees. He notified Santana in December 2005 that he had been suspended from the practice of law, but did not refund any unearned fees or return her case file. By letter in January 2006, Santana requested a partial refund and her case file. Respondent had moved and did not receive or comply with this request. Santana filed a grievance with relator. Because respondent failed to update his attorney registration record, the board served notice of the complaint to an outdated address. Respondent failed to answer timely. Upon relator's service of a motion for default at a newly discovered address, respondent sought and was granted leave to file an answer. After answering, respondent sent Santana the requested refund and her file. The board found respondent violated DR 9-102(B)(4) requiring a lawyer to promptly pay or deliver funds and property to which a client is entitled and the court's order pursuant to Gov.Bar R. V(8)(E)(1)(c) that he refund unearned fees and return client files. The Supreme Court agreed. The parties also stipulated to aggravating and mitigating factors. In aggravation, respondent has a prior disciplinary record, did not promptly comply with that suspension order, and his failure to comply with attorney-registration requirements impeded the disciplinary process. BCGD Proc.Reg. 10(B)(1)(a) and (e). In mitigation, respondent did appropriately participate in the proceedings upon receiving the complaint, has made restitution and rectified the consequences of his misconduct, submitted evidence of his good character and reputation, and his misconduct resulted from the mental disability, depression, from which he has suffered since his first disciplinary infractions and for which he continues to receive treatment. BCGD Proc.Reg. 10(B)(2)(c), (d), (e), and (g). In disagreeing with the panel, the board recommended an actual six-month suspension of respondent's license. The Supreme Court agreed and so ordered with the beginning of the suspension starting on the date of the order.

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**Rules Violated:** DR 9-102(B)(4)

<b>Aggravation:</b> (a), (e)		<b>Mitigation:</b> (c), (d), (e), (g)	
<b>Prior Discipline:</b> YES (x2)	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Six-month suspension		

*Freeman, Disciplinary Counsel v.*

126 Ohio St.3d 389, 2010-Ohio-3824. Decided 8/24/2010.

Respondent continued to practice law after he was suspended and failed to notify opposing counsel, the court, and client of his suspension. Respondent was previously suspended for one year, with six months stayed on August 13, 2008 in *Disciplinary Counsel v. Freeman*, 119 Ohio St.3d 330, 2008-Ohio-3836, for failing to maintain a proper accounting of client funds and improperly using trust accounts as personal checking accounts. In the suspension order, respondent was told to immediately cease practicing in any form and file a notice of disqualification in each court. Respondent admits that he received notice of the suspension from the court, and received certified mailings but “probably didn’t open them.” He read the court’s opinion but denies having ever read the suspension order. As to Count I, on September 11, 2008, respondent represented a client at a custody hearing without informing his client, opposing counsel or the court of his suspension. He went to inform the court on September 19, 2008 that he would be late for the continued hearing, but the court had learned of his suspension and told him he could not appear on behalf of the client. Also on September 19, respondent represented a second client at a final pretrial hearing and discussed possible settlement without informing court staff or opposing counsel of his suspension. Respondent withdrew as counsel at the end of the pretrial hearing, but instead of citing his suspension as the reason, he said it was because of a disagreement with his client. The board agreed with the panel that his claims that he was not representing the client were “simply not credible.” The board adopted the panel’s findings that his conduct violated Prof.Cond.R. 8.4(c), 8.4(d), 8.4(h), 5.5(a) and Gov.Bar R. V(8)(E). The board adopted the panel’s recommended sanction of an indefinite suspension. There were no mitigating factors. Although respondent testified that he remained involved in OLAP and was dealing with depression, he provided no independent evidence. In aggravation, respondent had a prior disciplinary record, engaged in a pattern of misconduct involving multiple offenses, failed to acknowledge the wrongfulness of the conduct, and failed to comply the suspension order requiring him to file an affidavit of compliance and pay costs. BCGD Proc.Reg. 10(B)(1)(a), (c), (d), and (g). The court noted that the normal penalty for practice of law while suspended is disbarment, however, this penalty was not sought by relator because of evidence from respondent’s prior disciplinary case that he was diagnosed with anxiety and depression. As noted by the board, when attorneys have continued to practice law after suspension for CLE and registration violations, the court has imposed indefinite suspension. *Higgins* (2008), *Crandall* (2003), *Barron* (1999). And, the court has imposed indefinite suspension for continued practice of law during license suspension for other forms of misconduct. *Winkfield* (2006), and *Jackson* (1999). The court adopted the board’s findings of fact, conclusions of law, and recommended sanction of indefinite suspension. The court conditioned respondent’s reinstatement from his indefinite suspension on respondent extending his OLAP contract for at least two years, abiding by the conditions of the contract, continuing treatment for his anxiety and depression and providing proof as may be requested by the OLAP contract manager, and refraining from any further discipline.

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**Rules Violated:** Prof.Cond.R. 5.5(a), 8.4(c), 8.4(d), 8.4(h)

<b>Aggravation:</b> (a), (c), (d), (g)		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Freeman, Cleveland Metro. Bar Assn. v.*  
128 Ohio St.3d 416, 2011-Ohio-1447. Decided 3/31/2011.

In 2002, respondent previously received a public reprimand for neglecting a client's case, handling another case without adequate preparation, and initially failing to cooperate in the disciplinary investigation. Here, respondent neglected two foreclosure matters and failed to keep his clients reasonably informed of the status of their matters. The matter was deemed to have been submitted in writing without a hearing pursuant to BCGD Proc.Reg. 3(C). In Count One, respondent was retained by a husband and wife to help resolve an issue with a mortgage lender. When the lender filed a foreclosure action, respondent failed to file a timely answer or move for an extension until the bank filed a motion for default judgment—then respondent filed an objection to the motion and filed an answer. The motion was denied by the court, but the court permitted the late answer. The lender filed an amended complaint, which went unanswered. When the lender filed another motion for default judgment, respondent asserted that he had not been properly served and obtained leave to file an answer to the amended complaint. The court again permitted respondent to answer. Respondent failed to timely respond to lender's discovery requests. The court granted lender's motion for those requests for admission deemed admitted. Respondent failed to appear at the final pretrial hearing, told his clients they did not need to attend, and ignored the court's order to file trial brief and exhibits. The court ordered that the home in dispute be sold at a sheriff's sale. The homeowners obtained new counsel and, although respondent failed to return the client file, the clients were able to work out a payment plan and avoid the sale of their home. The panel and board found violations of Prof.Cond.R. 1.3, 1.4(a)(2), 1.4(a)(3), and 1.4(a)(4), which the court accepted. In Count Two, a couple retained respondent to help finance their home and assist in a pending foreclosure action. Respondent filed timely answers to the complaint and amended complaint and engaged in discovery. The couple tried to contact respondent in April 2007 regarding the status of their case, but he did not return their calls until May 2007. Respondent also failed to respond to a motion for summary judgment as he decided, without discussing with the clients, that they had no defense. The panel and board found violations of Prof.Cond.R. 1.3, 1.4(a)(4), and 7.3(c)(3). The Court adopted the findings of Prof.Cond.R. 1.3 and 1.4(a)(4), but dismissed the finding of Prof.Cond.R. 7.3(c)(3) which requires "ADVERTISING MATERIAL" or "ADVERTISEMENT ONLY" on solicitation letters. The Court noted that respondent had a prior relationship with the clients in this case, and thus, even though he stipulated to violating Prof.Cond.R. 7.3(c)(3), he fit within an exception to the rule and thus did not violate it. See Gov.Bar R. V(6)(J), *Reid* (1999), and *Donlin* (1996) (respondent not bound by a stipulation when stipulated facts and evidence at hearing demonstrate that conduct did not constitute a violation.) In aggravation, respondent had a prior disciplinary record and engaged in multiple offenses. BCGD Proc.Reg. 10(B)(1)(a) and (d). In mitigation, respondent did not act with a dishonest or selfish motive, and cooperated in the disciplinary investigation and disciplinary proceeding. BCGD Proc.Reg. 10(B)(2)(b) and (d). Relying on *Holda* (2010), the parties stipulated to a one year suspension, all stayed on the conditions of no further misconduct and the completion of an additional 12 hours of CLE in law-office management. The panel and board adopted this sanction with an additional condition that 6 hours of the CLE be completed within the first 6 months of the stayed suspension; this was not opposed by either party. The Court considered *Holda* (2010) and *Pfundstein* (2010). The court agreed with the board's recommended sanction and so ordered a one-year suspension, all stayed on conditions of completing at least 12 hours law-office management in addition to at least six hours of CLE within the first six months of the stayed suspension and commit no further misconduct.

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**Rules Violated:** Prof.Cond.R. 1.3, 1.4(a)(2), 1.4(a)(3), 1.4(a)(4)

<b>Aggravation:</b> (a), (d)		<b>Mitigation:</b> (b), (d)	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> One-year suspension, stayed		

**Freeman, Disciplinary Counsel v.**

119 Ohio St.3d. 330, 2008-Ohio-3836. Decided 8/13/2008.

Since admission to the practice of law in 1981, respondent has practiced as a solo practitioner. Count 1, involved trust account violations. From January 1, 2004 through March 24, 2006, he had a trust account at Fifth Third bank. In June or July 2006, he maintained a trust account at First Merit Bank. From 2004 through 2006, he deposited client funds and unearned retainers into those client trust accounts. Respondent admitted that from 2004 through 2006, he used his client trust accounts as personal checking accounts, paying personal bills and as a law office operating account to pay office bills. During this time, he commingled client and lawyer funds in the accounts, overdraw the trust accounts 14 times, and failed to maintain appropriate accounting of the client funds. Board adopted panel's findings of violations in Count 1 of DR 1-102(A)(5) and Prof.Cond.R. 8.4(d); DR 1-102(A)(6) and Prof.Cond.R. 8.4(h); DR 9-102(A) and Prof.Cond.R. 1.15(a); and DR 9-102(B)(3) and Prof.Cond.R. 1.15(a)(2) and (3). [The Supreme Court of Ohio noted in Footnote 1 that the conduct in Count 1, occurred prior and after the adoption of the Rules of Professional Conduct and that relator charged respondent under the applicable rules of both, but that the court agreed with the Board that the listing of the former and current rule constitutes only one rule violation.] As to Count II, accepted two letters of inquiry from relator sent by certified mail, but failed to respond. He was personally served with a subpoena to appear at a deposition, but after the deposition he failed to respond to a follow-up letter sent on October 18, 2006 requesting additional information. He contacted relator in February 2007 about his lack of response to the letter and relator re-sent the letter, but he failed to respond. Board adopted the panel's findings of violations of DR 1-102(A)(5), 1-102(A)(6), and Gov.Bar R. V(4)(G). As to Count III, respondent failed to respond to relator's letter requesting a response to a grievance. A letter of inquiry sent by certified mail to his office was returned as undeliverable and indicated he had moved his office. He signed for a letter of inquiry sent by certified mail to his home address, but he did not respond to the letter. A second letter of inquiry was sent to his home and was returned unclaimed. That letter was re-sent and respondent signed the return receipt but did not respond to the letter. Relator hand delivered a letter. Respondent requested and was granted two extensions of time to respond but he did not respond. He was served with a subpoena to appear for a deposition and he attended the deposition and answered fully the questions Board adopted the panel's findings of violations of DR 1-102(A)(5) and 1-102(A)(6) and Gov.Bar R. V(4)(G). Aggravating factors were: a pattern of misconduct; multiple offenses; failure to cooperate. BCGD Proc.Reg. 10(B)(1)(c), (d), and (e). Mitigating factors were: no prior discipline; no dishonesty or selfish motive; and entering a contract with OLAP and complying with its terms. He was also diagnosed with "adjustment disorder with mixed anxiety and depressed mood" which the board found contributed to his initial failure to cooperate. BCGD Proc.Reg. 10(B)(2)(a), (b), (h). Board adopted panel's recommended sanction of suspension for one year with entire suspension stayed with monitored probation on conditions of 1) extending the OLAP contract for at least two years from court's order; 2) abiding by OLAP obligations; 3) continuing treatment for anxiety and depression and prove of treatment and other medical information requested by OLAP contract monitor; 4) cooperating with relator and law-practice monitor during stayed suspension; 5) refraining from disciplinary violations. Supreme Court of Ohio adopted the Board's findings of violations of DR 1-102(A)(5), 1-102(A)(6), 9-102(A), 9-102(B)(3), Prof.Cond.R. 8.4(d), 8.4(h), 1.15(a), 1.15(a)(2), 1.15(a)(3), and Gov.Bar R. V(4)(G) but disagreed with the recommended sanction. The court found that an actual suspension was appropriate to adequately protect the public. The court ordered a one-year suspension with six-months stayed and probation on the conditions set forth by board. Citations to *Miles* (1996), *Morgan* (2007), *Grdina* (2004). Two dissents in favor of Board's recommended sanction.

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**Rules Violated:** Prof.Cond.R. 1.15(a), 1.15(a)(2), 1.15(a)(3), 8.4(d), 8.4(h); DR 1-102(A)(5), 1-102(A)(6), 9-102(A), 9-102(B)(3); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> (c), (d), (e)		<b>Mitigation:</b> (a), (b), (d), (e), (g)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Two-year suspension, 18 months stayed		

*Freeman, Cleveland Metro. Bar Assn. v.*

128 Ohio St.3d 421, 2011-Ohio-1483. Decided 4/5/2011.

Respondent misappropriated client funds, neglected cases, failed to communicate with clients, lied to clients and relator, and failed to cooperate with the disciplinary investigation. Respondent failed to file an answer, so a master commissioner was appointed; the master commissioner made findings of fact, conclusions of law, and recommended an indefinite suspension. As to four grievants, respondent settle cases for them, but failed to distribute settlement proceeds, or failed to do so in a timely manner. He failed to submit medical bills for payment and failed to return clients' phone calls. He also lied to relator during the investigation. This conduct violated DR 6-101(A)(3) (neglect of a legal matter), 3 counts of Prof.Cond.R. 1.3 (reasonable diligence), 2 counts of 1.4(a)(2) (reasonably consult with client), 4 counts of 1.4(a)(3) (keep client reasonably informed), 1.15(d) (full accounting of funds), and 8.4(c) (dishonesty, fraud, deceit, or misrepresentation). Respondent dismissed a case without the client's permission, failed to return telephone calls, and failed to provide the client's file upon request. This conduct violated DR 6-101(A)(3), 2 counts of Prof.Cond.R. 1.3, 1.4(a)(1) (failure to inform a client of a decision), 2 counts of 1.4(a)(2)- 1.4(a)(4), and 1.15(d). Respondent told another client that he attended a pretrial and participated in discovery for a case, when in fact he had not. In another case, respondent asked for several continuances but did not file the motion he promised he would, failed to appear for court, and failed to inform his client of the court dates, causing the client to have a warrant sworn out for her arrest. This conduct violated 2 counts of Prof.Cond.R. 1.3, 2 counts of 1.4(a)(2)- 1.4(a)(4), 2 counts of 8.4(c), and 2 counts of 8.4(d). Finally, respondent failed to cooperate in the disciplinary investigation and did not respond to inquiries from relator. This conduct violated Prof.Cond.R. 8.1 (failing to respond to investigation) and Gov.Bar R. V(4)(G) (requiring cooperation in a disciplinary investigation). The Board did not find the following charged counts by clear and convincing evidence, and thus dismissed them: 7 counts of Prof.Cond.R. 1.4(a)(1), 2 counts of 1.4(a)(2), 1.16(d), and 1.3. The Court agreed with the above findings. In aggravation, respondent acted with dishonest or selfish motive, engaged in a pattern of misconduct involving multiple offenses, failed to cooperate during the disciplinary proceeding, failed to acknowledge the wrongful nature of his conduct or make restitution, and harmed vulnerable clients. BCGD Proc.Reg. 10(B)(1)(b), (c), (d), (e), (g), (h), (i). In mitigation, respondent lacked a prior disciplinary record. BCGD Proc.Reg. 10(B)(2)(a). The board recommended an indefinite suspension. Relator objected and requested permanent disbarment. The Court noted that the presumptive sanction for misappropriation is disbarment. Citing *Jones* (2006), *Fernandez* (2003), *Smith* (2003), *Weaver* (2004), and respondent's over 50 ethical violations, the Court sustained relator's objection and ordered respondent be permanently disbarred.

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**Rules Violated:** Prof.Cond.R. 1.3, 1.4(a)(1), 1.4(a)(2), 1.4(a)(3), 1.4(a)(4), 1.15(d), 8.1(b), 8.4(c), 8.4(d); DR 6-101(A)(3); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> (b), (c), (d), (e), (g), (h), (i)		<b>Mitigation:</b> (a)
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Disbarment</a>	

***Frost, Disciplinary Counsel v.***

122 Ohio St.3d 219, 2009-Ohio-2870. Decided 6/24/2009.

As to Count One, respondent filed in court false accusations of bias and corruption against judges and a county prosecutor; as to Count II, respondent repeatedly leveled unfounded accusations of racial bias and other impropriety against a federal judge; and as to Count III respondent persisted in pursuing a baseless defamation suit against two lawyers who were opposing counsel in a sexual harassment suit. As to Count I, the board found violations of DR 1-102(A)(4), (5), and (6), DR 7-102(A)(1), DR 7-106(C)(1), DR 8-102(B), and Gov.Bar R. IV(2). As to Count II, the board found violations of DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 7-102(A)(1), 7-106(C)(1), 8-102(B), and Gov.Bar IV(2). As to Count II, the board found violations of DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 7-102(A)(1), 7-102(A)(2), 7-106(C)(1). The Supreme Court of Ohio agreed with the findings of violations. The board and the court rejected respondent's arguments that her statements about the judges and the prosecutors are constitutionally protected speech. The court stated that *Gardner* (2003) settled the question and that the court summarized *Gardner* in *Shimko v. Lobe*, 103 Ohio St. 3d 416, 2003-Ohio-4048 stating that "the court adopted an objective standard to determine whether a lawyer's statement about a judicial officer was made with knowledge or reckless disregard of its falsity, rather than the subjective 'actual malice standard applicable in defamation cases. In the instant case, the court noted that "*Gardner* stands for the proposition that when an attorney levels accusations of judicial impropriety that a reasonable attorney would consider to be untrue, disciplinary sanctions are permissible." The court also noted its disbarment of *Baumgartner* (2003). The board recommended an indefinite suspension. The supreme court agreed and so ordered an indefinite suspension and because of concerns that the misconduct may be a by-product of unaddressed mental health issues, imposed as a condition of reinstatement in addition to the requirements of Gov.Bar R. V(10)(B) through (E) that any petition for reinstatement by respondent must also include proof that to a reasonable degree of medical certainty that she is mentally fit to return to the competent, professional, and ethical practice of law.

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**Rules Violated:** DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 7-102(A)(1), 7-102(A)(2), 7-106(C)(1), 8-102(B)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Gaul, Disciplinary Counsel v.*

127 Ohio St.3d 16, 2010-Ohio-4831. Decided 10/7/2010.

Respondent, a common pleas court judge since 1991, made prejudicial and unnecessary comments toward a defendant both before and after the judge decided to recuse himself from the case, and he misused an Amber Alert and the media's responsiveness to the alert. All of respondent's misconduct occurred during a single criminal trial in which the defendant was accused of burglary and assault of an elderly woman and her caregiver. On the third day of trial, the judge was informed that the detective who was to transfer the women to trial could not locate them. Respondent was concerned for the elderly woman's safety based upon his suspicions that the defendant was trying to prevent the woman from testifying and his review of the dockets from the defendant's past criminal cases. He knew that the caregiver had admitted that she had a personal relationship with the defendant and had been smoking crack with him on the day of the crimes. He placed his concerns on the record. He granted the states' motion for a one-day continuance to locate the witnesses and he issued a bench warrant for the caregiver. The next morning at a meeting with attorneys in chambers, respondent learned that a detective was unable to find the women and that the prosecutor wanted to dismiss the case. According to the defense counsel respondent was irate that the prosecutor wanted to dismiss and the judge stated to the prosecutor: "[W]e are all on the same team." Respondent informed them he intended to recuse himself when he took the bench. Respondent told his bailiff he was issuing an amber alert to locate the elderly witness and he asked the bailiff to notify the media. Before respondent went on the record, he was notified that the elderly woman had been located. When he went on the record, in the presence of the local media who had come to the courtroom, he said he asked the media to be here because he thought they were going to need their help and he still thought that needed their help to find witnesses in the case. He stated he wanted to make a record. He said that the elderly woman allegedly had her hip broken by the defendant and he outlined the basic facts of the case and that the caregiver had been smoking crack and drinking with the defendant when the fight broke out over money and the defendant assaulted the women. Among other things he stated that he bet his life on the fact that the defendant was involve in obstruction of justice and a technical kidnapping. He stated that he thought it important for him to step out of his role as judge and become an advocate to protect the elderly woman. He asked if the state would like to move to continue the case until the caretaker was incarcerated. The judge explained he would recuse himself and the defendant would stay in jail he challenged law enforcement to find the caregiver and have her incarcerated and to determine whether the defendant was involved in the disappearance of the elderly woman. He said he suspected that they would find that out because he had the defendant's rap sheet right here. The judge denied defense counsel's motion to dismiss the case with prejudice. He declared a mistrial with respect to jury members who had been selected. He repeated his intention to recuse and then returned to his chambers with members of the media and made further comments. The board adopted the panel's findings of violations of former Canons 2, 3(B)(5) and 3(B)(9) and Prof.Cond.R. 8.4(d). Respondent presented several objections to the court, all of which were overruled. Respondent objected because the panel did not admit expert evidence about how to interpret the Code of Judicial Conduct; but the court found that the panel was capable of interpreting and applying the rules without an expert's opinion. The court cited *Karto* (2002). Respondent objected because the panel refused to admit jailhouse telephone conversations between the caregiver and defendant and he was unable to introduce all relevant evidence of the context in which he made his decisions, but the court found that the respondent was not even award the recordings existed at the time of the trial. Respondent objected to the violation of Canon 2, claiming he had a legally sufficient basis for making the conclusion that the defendant tampered with the witness and the elderly woman was in danger, thus justifying his actions. The court stated that although he may have appropriately recused himself due to his suspicions about the defendant, the recusal did not excuse the highly prejudicial and unnecessary comments directed toward the defendant before and after recusal. Further, he did not have evidence before him or hold a hearing before announcing his judicial findings on the record. *Medley* (2004). "A finding of fact must be based on evidence; to find that contemptuous conduct has occurred outside the present of the court, the court must hold a hearing and analyze record evidence." Respondent used the Amber Alert system to achieve

his goal of gaining media attention, despite knowing he probably did not have the authority to issue the alert. *Hoague* (2000). Respondent objected to the violation of Canon 3(B)(5), because he believed that his comments did not manifest bias, but simply provided the rationale for his ruling and further, that the elements of bias are limited to those listed in the Canon, such as race, gender, and religion. In overruling this objection the court noted that the rule is clear that bias is not limited to the terms listed and that respondent's actions showed a "hostile feeling or spirit of ill-will." Respondent objected to the violation of Canon 3(B)(9), stating that his comments were part of his official duties on the bench and were meant to explain procedure. The court noted that the comments were not descriptive of procedure and were adversarial in nature and could reasonably be expected to affect the outcome or impair the fairness of the continuing case. The standard in Canon 3(B)(9) is an objective standard. *Harper* (1996). Finally, respondent objected to the violation of Prof.Cond.R. 8.4(d), claiming that his actions furthered, not prejudiced, the administration of justice, that he had provide ample support in the record for his recusal, and that he was trying to protect the witness. In rejecting these arguments, the court noted that respondent's comments did not enhance the administration of justice. The blurring of the judicial role and the lack of neutrality were prejudicial to the administration of justice. When disciplining a judge conduct prejudicial to the administration of justice is "conduct that would appear to an objective observer to be unjudicial and prejudicial to the public esteem of the judicial office." *Cleary*(2001) and *Parker* (2007). The court adopted the board's findings of misconduct. In mitigation, respondent lacked a prior disciplinary record, had not dishonest or selfish motive, made full and free disclosure to the board, and had good character and reputation. BCGD Proc.Reg. 10(B)(2)(a), (b), (d), and (e). In aggravation, the board found that respondent: failed to acknowledge the wrongfulness of his conduct and attempted to portray himself as a victim of persecution by relator for previously criticizing that office. The panel recommended a public reprimand; the board recommended a one-year, stayed suspension. The court noted that this was an isolated incidence and ordered a six month suspension with six months stayed. Two justices dissented and would have suspended the respondent for one year, all stayed.

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**Rules Violated:** Prof.Cond.R. 8.4(d); Code of Judicial Conduct (former) Canons 2, 3(B)(5), 3(B)(9)

<b>Aggravation:</b> (g)		<b>Mitigation:</b> (a), (b), (d), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> YES	<b>Sanction:</b> Six-month suspension, stayed		

**Gerchak, Disciplinary Counsel v.**

130 Ohio St.3d 143, 2011-Ohio-5075. Decided 10/5/2011.

Respondent made false statements to a bankruptcy court and used another attorney's electronic filing privileges when his had been suspended. Respondent had his ECF privileges suspended by a court for failing to respond to two show-cause orders. Respondent used another attorney's ECF login to file a new bankruptcy. Although the client paid the filing fee to respondent, respondent did not pay the filing fee when he filed the case due to his ECF suspension. Instead, he applied to pay in installments, stating that his client was unable to pay (which was clearly untrue). The court discovered this misconduct and forced respondent to disgorge his fee and further suspended his ECF privileges. This conduct violated Prof.Cond.R. 8.4(c) (dishonesty, fraud, deceit, or misrepresentation), and 8.4(d) (conduct prejudicial to the administration of justice); the board dismissed a violation of 8.4(h) (conduct adverse to fitness to practice law) as not proven by clear and convincing evidence. The Court agreed with the above findings. In aggravation, respondent committed multiple offenses. BCGD Proc.Reg. 10(B)(1)(d). In mitigation, respondent lacked a prior disciplinary record, cooperated with the disciplinary process, lacked a dishonest or selfish motive, presented evidence of good character, and had other penalties levied against him. BCGD Proc.Reg. 10(B)(2)(a), (b), (d), (e), (f). The board, citing these mitigating factors, recommended a one-year suspension, stayed on the condition that respondent complete a three-year OLAP contract. The Court noted that a violation of Prof.Cond.R. 8.4(c) usually requires an actual suspension, but citing *Potter* (2010), and *Ricketts* (2010), agreed that the mitigating circumstances present here indicate that respondent is "unlikely to commit future misconduct," and adopted the board's recommended sanction.

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**Rules Violated:** Prof.Cond.R. 8.4(c), 8.4(d)

<b>Aggravation:</b> (d)		<b>Mitigation:</b> (a), (b), (d), (e), (f)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">One-year suspension, stayed</a>		

**Gibson, Akron Bar Assn. v.**

128 Ohio St.3d 347, 2011-Ohio-628. Decided 2/16/2011.

Respondent's misconduct arose from performing painting and maintenance services for a client while representing him in a divorce, her efforts to collect for those services, and her conduct after another client terminated her services. The parties stipulated to findings of fact and conclusions of law. In Count I, respondent, while representing a client in a divorce action, agreed to perform nonlegal services to prepare for the sale of a piece of property that was jointly owned by the client and his spouse. Respondent sought a court order for payment for these services from escrow funds that were provided by the client and his spouse. Respondent did not disclose to the court or opposing counsel that she performed the work and that she and her husband would receive the payment. Opposing counsel moved to disqualify respondent as she was a potential witness as to the value of the nonlegal services performed. Respondent, on the day of the hearing on these motions, induced the escrow agent to distribute to her the funds for the maintenance work done. Thereafter, respondent attempted to avoid being deposed as a witness by filing a notice of withdrawal of counsel and withdrawing her request for payment for nonlegal services; but, she failed to disclose that she had been paid for them. There is no evidence that respondent's charges were unreasonable, however, she failed to fully disclose the terms to the client in writing, failed to advise that he seek independent counsel, and failed to obtain the client's informed consent in a writing signed by the client. The board adopted the panel's findings of the stipulated violations of Prof.Cond.R. 1.8(a)(1), (2), and (3), 4.1(a), 8.4(a), 8.4(c), and 8.4(h). Relator formally withdrew an alleged violation of Prof.Cond.R. 8.4(d) and the panel and board recommended that the court dismiss the alleged violation of Prof.Cond.R. 3.7(a) because of insufficient evidence to establish when or if the respondent had sufficient information to determine that she was likely to be a necessary witness in the divorce proceedings. As to Count I, the court accepted these findings of fact and misconduct and dismissed the alleged violation of Prof.Cond.R. 3.7(a). In Counts II and III, respondent was terminated by a client whom she was representing in two matters. The client wanted to terminate her in a domestic-relations case, but respondent interpreted the termination to apply to both cases. Respondent did not seek a motion to withdraw in the domestic relations case and waited several months to do so in the other case. Respondent ceased attending court hearings, failed to forward letters and documents, and ignored requests to return the client's files. The board adopted the panel's findings of the stipulated violations of Prof.Cond.R. 1.3, 1.16(c), and 1.16(d). As to Counts II and III, the court agreed. The Board recommended a suspension for one year, with the entire year stayed on conditions that she submit to one year of monitored probation, complete 12 hours of continuing legal education in law-office management and commit no further misconduct. In aggravation, respondent committed multiple offenses. BCGD Proc.Reg. 10(B)(1)(d). In mitigation, respondent has no prior disciplinary record, demonstrated a cooperative attitude, and demonstrated her reputation for competence, honesty, and trustworthiness. BCGD Proc.Reg. 10(B)(2)(a), (d), and (e). Further, she has performed substantial pro bono work as a volunteer lawyer and court-appointed guardian ad litem and special advocate for juveniles, had been involved in professional and bar association work and committees, and she had serious respiratory illnesses beginning in December 2008 that were a contributing factor to some of the misconduct. While violations of Prof.Cond.R. 8.4(c) usually require an actual suspension [*Fowerbaugh* (1995)], an abundance of mitigating evidence can justify imposition of a lesser sanction [*Fumich* (2007) and *Ellison* (2008)]. The court, finding no evidence of harm to the client as a result of respondent's misconduct and the substantial mitigating factors, agreed with the board's recommended sanction. Respondent was suspended for one year, all stayed, on conditions that she submit to one year of probation supervised by a monitor chosen by relator, complete 12 hours of CLEs in law-office management, and commit no further misconduct.

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**Rules Violated:** Prof.Cond.R. 1.3, 1.8(a)(1), 1.8(a)(2), 1.8(a)(3), 1.16(c), 1.16(d), 4.1(a), 8.4(a), 8.4(c), 8.4(h)

<b>Aggravation:</b> (d)		<b>Mitigation:</b> (a), (d), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> One-year suspension, stayed		

***Gittinger, Disciplinary Counsel v.***

125 Ohio St.3d 467, 2010-Ohio-1830. Decided 5/4/2010.

Respondent received an interim felony suspension in *In re Gittinger*, 119 Ohio St.3d 1491, 2008-Ohio-5339. On May 1, 2008, respondent plead guilty to one count of conspiracy to commit bank fraud and one count of money laundering. On August 5, 2008, he was sentenced to an aggregate twelve-month and one-day sentence followed by an aggregate five year period of supervised release and ordered to pay an aggregate fine of \$6,000 plus a \$200 special assessment fee. Respondent was a principal of a business licensed as a title insurance agency. Respondent prepared real estate closings for Toby Groves; Groves was running a scheme to defraud federally insured financial institutions. Groves was in the business of loaning money to individuals who used the money to purchase residences. Groves got money to make the loans from a line of credit with a bank, then made the loan to buyers of real estate, and then sold the loans to other federally insured financial institutions. Both the bank that funded the loans and the financial institutions that bought the loans relied on the information in the real estate closing packages to make decisions regarding the loans. Respondent assisted Groves by making misrepresentations in the closing documents for the properties, which were forwarded to the financial institutions in conjunction with loan approval. Board adopted to the panel's finding of the stipulated violations of DR 1-102(A)(3), (A)(4), and (A)(6). In mitigation, the parties stipulated that respondent lacked a prior disciplinary record, cooperated with the proceedings, and showed remorse for his actions and accepted responsibility. BCGD Proc.Reg. 10(B)(2)(a) and (d). Additionally, the respondent produced positive character evidence. BCGD Proc.Reg. 10(B)(2)(e). And, he fulfilled his promise to the panel to become compliant with all CLE requirements. The court found respondent's denial that any loss resulted from his conduct to be an aggravating factor not mitigation. The court noted that respondent's denial of harm was contrary to the stipulation and suggests he does not accept responsibility for or acknowledge the wrongful nature of his conduct. BCGD Proc.Reg. 10(B)(1)(g). His attempt to defraud others also evidenced a dishonest or selfish motive. BCGD Proc.Reg. 10(B)(1)(b). The parties stipulated to an 18-month suspension. The Board adopted the panel's recommendation of an indefinite suspension with credit for time served during respondent's interim felony suspension. As a further condition, the Board added that respondent could not apply for reinstatement until after he had satisfied his five-year period of supervised release. The court, citing *Lash* (1993) and *Garfield* (2006) as similar misconduct, agreed that credit for time served was appropriate in this case. The court adopted the board's finding of violations and recommended sanction. "Imposing an indefinite suspension will avoid inconsistency between this court's disciplinary sanction and the federal court's criminal sentence and will allow for proper resolution of the underlying criminal case prior to any application for reinstatement to the practice of law."

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**Rules Violated:** DR 1-102(A)(3), 1-102(A)(4), 1-102(A)(6).

<b>Aggravation:</b> (b), (g)		<b>Mitigation:</b> (a), (d), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Glaeser, Cuyahoga Cty. Bar Assn. v.*  
120 Ohio St.3d 350, 2008-Ohio-6199. Decided 12/4/2008.

Respondent was hired to file a lawsuit on behalf of his client, but failed to do so and lied to the client (Bacon) about filing the suit and receiving a settlement. Bacon hired respondent in April 2004 to sue his former building contractor. Respondent advised Bacon to sue the contractor's bonding company instead. Respondent falsely told Bacon he had filed suit against the bonding company. In May 2006, respondent advised Bacon that the bonding company had agreed to pay \$300,000 to settle the claim, with \$150,000 installments in June and November of that year. In June 2006, respondent told Bacon the owner of the bonding company had been incarcerated and had not paid the first installment, but had been ordered by the judge to pay \$500 in sanctions for each day the owner failed to comply with the settlement agreement. Respondent assured Bacon the bonding company's assets were frozen. Bacon later learned that all of respondent's representations were untrue. Bacon discharged respondent in November 2006 and requested the return of his case file. Respondent did not return the case file until the investigation of Bacon's grievance. In late November 2007, respondent registered as an attorney on inactive status. A master commissioner granted relator's motion for default. The board adopted the master commissioner's findings and recommendations. The board found violations of DR 1-102(A)(4), (5), and (6), DR 6-101(A)(3), DR 7-101(A)(1), (2), and (3), and DR 9-102(B)(4). The Supreme Court agreed. The court noted in a footnote that the master commissioner and the board parenthetically misquoted the substance of DR 9-102(B)(4) as (a lawyer shall maintain complete records of all funds coming into the possession of the lawyer and render appropriate account to clients regarding them) rather than correctly as (a lawyer shall promptly pay or deliver to a client as requested property that the client is entitled to receive).] In aggravation, respondent was repeatedly dishonest and had not made restitution at the time of the hearing. BCGD Proc.Reg. 10(B)(1)(b) and (i). In mitigation, respondent had no prior disciplinary record. BCGD Proc.Reg. 10(B)(2)(a). It was also noted that respondent met with relator's investigator despite experiencing serious health problems, including recent quadruple bypass surgery. Respondent candidly admitted failing to file Bacon's complaint in 2004 and his misrepresentations. Respondent also revealed that during his dealings with Bacon, he was recovering from his son's 2003 murder. Respondent also noted that although he was in his 50s, he was admitted to the bar in 2003. The board recommended an indefinite suspension from the practice of law. The Supreme Court disagreed. After comparing cases of similar misconduct, *Hickman* (2005), *Keller* (2006), *Novak* (2006), the Supreme Court ordered a two year suspension with the second year stayed on the conditions of restitution and no further misconduct. One justice dissented in favor of indefinite suspension.

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**Rules Violated:** DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 6-101(A)(3), 7-101(A)(1), 7-101(A)(2), 7-101(A)(3), 9-102(B)(4)

<b>Aggravation:</b> (b), (i)		<b>Mitigation:</b> (a)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Two-year suspension, 12 months stayed		

*Godles, Lorain Cty. Bar Assn. v.*  
128 Ohio St.3d 279, 2010-Ohio-6274. Decided 12/27/2010.

Respondent did little work and failed to communicate with a client in a personal-injury case and failed to inform the client he lacked malpractice insurance. In August 2006, a client hired respondent for a personal injury claim that occurred in 2004. Only five days remained on the statute of limitations. Respondent communicated with opposing counsel about settlement, but the two sides were too far apart on a settlement value. Respondent quickly filed a lawsuit. Respondent did not file a response to the opposing party's discovery requests filed in September 2006. Respondent knew that his client was still receiving medical treatment and would eventually be seeking a voluntary dismissal without prejudice. In February 2007, the opposing party filed a motion to compel discovery and the court ordered respondent to respond by May 2007. At the end of April 2007, respondent voluntarily dismissed the case, which gave the client one year to refile the case. According to his testimony, respondent called the client in January 2008 and told him he was discontinuing representation on this matter and explained how long the client had to refile the case. He testified he sent a confirmation letter in February; but the client denied either of these things occurring. Neither respondent nor his client refiled the case. Starting in July 2008, the client repeatedly attempted to contact respondent, but he did not respond until October. During the October discussion, the client stated he was unaware of what was happening and had not known the case had been dismissed. Respondent said he explained everything in previous discussions. A week after the October discussion, the client hired another lawyer. Respondent met the client in person only once at the initial meeting. All conversations were by telephone. The only written correspondence was the termination letter. He did not send copies of the answer, the discovery request, the motion to compel or the dismissal order. He did not request or obtain the medical records. The parties stipulated that respondent did not maintain professional liability insurance and that respondent did not alert his client of that fact. The board adopted the panel's findings that respondent violated Prof.Cond.R. 1.4(a)(1) through (5) and 1.4(b), DR 1-104(A) and Prof.Cond.R. 1.4(c). The board adopted the panel's recommendation to dismiss Prof.Cond.R. 1.2(a), 1.3, and 1.16(d) because not proven by clear and convincing evidence. The court noted that although the panel found neither the respondent nor the client completely credible, it is clear that respondent performed very little work for the client and failed to fully communicate about how the case was managed and the status. In mitigation, respondent lacked a prior disciplinary record and had no dishonest or selfish motive. BCGD Proc.Reg. 10(B)(2)(a), (b), and (f). The court disagreed with the board's finding as a mitigating factor that respondent had other penalties imposed because of a pending malpractice action. The court stated "[t]he mere fact that a malpractice suit was pending should not have been considered as a mitigating factor, as the suit itself is not a penalty." The court, citing *McCord* (2009), did not accept his notice of restitution as a mitigating factor either, because he settled the malpractice case with no admission of malpractice—he did not admit to the misconduct and is not technically penalized for it. In aggravation, the client was vulnerable due to his lack of sophistication about legal matters and lost the opportunity to pursue damages for his injuries. BCGD Proc.Reg. 10(B)(1)(h). The board recommended a public reprimand, rather than the panel's recommended sanction of a six-month suspension, all stayed. The court, considering respondent's long career with no prior discipline and considering the public reprimand in *Johnson* (2009), agreed with the board and so ordered a public reprimand.

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**Rules Violated:** Prof.Cond.R. 1.4(a)(1), 1.4(a)(2), 1.4(a)(3), 1.4(a)(4), 1.4(a)(5), 1.4(b), 1.4(c); DR 1-104(A)

<b>Aggravation:</b> (h)		<b>Mitigation:</b> (a), (b), (f)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Public Reprimand		

**Goldblatt, Disciplinary Counsel v.**

118 Ohio St.3d 310, 2008-Ohio-2458. Decided 5/29/2008.

Respondent was convicted of two felonies involving his attempt to arrange a sexual encounter with an underage girl. After learning of his conviction, the Supreme Court ordered an interim suspension of his license to practice law pursuant to Gov.Bar R. V(5)(A)(4) in January 2006. *In re Goldblatt*, 108 Ohio St,3d 1422, 2006-Ohio-289, 841 N.E.2d 785. Through a series of phone calls in June and July 2004, Respondent tried to arrange a sexual encounter with a young girl by unwittingly making arrangements with an undercover FBI agent. Respondent haggled with the agent over the price and eventually settled on \$200 to sexually do as much as that would buy him with a girl of nine to 11 years of age, “the younger the better.” After making these arrangements, respondent withdrew \$200 from his bank account and drove to meet the pimp and the girl in a park where he was arrested. In the fall of 2005, the Cuyahoga County Common Pleas Court found respondent guilty of compelling prostitution in violation of R.C. 2907.21, a third degree felony, and possessing criminal tools in violation of R.C. 2923.24, a fifth degree felony. Respondent appealed his conviction delaying all disciplinary proceedings until the appeals were concluded pursuant to Gov.Bar R. V(5)(C). Respondent was sentenced to five years community control, which included drug and alcohol screenings, continued psychotherapy, attending 12-step meetings with therapist reports to the court, and applying for inactive status with the Supreme Court’s Attorney Registration Section. The court also prohibited respondent from possessing any pictures of naked children, ordered periodic inspections of his personal computer to help ensure that he did not violate this order, and registered him as a sex offender. The board found respondent’s conduct violated DR 1-102(A)(3) prohibiting a lawyer from engaging in illegal conduct involving moral turpitude and 1-102(A)(6) prohibiting a lawyer from engaging in conduct that adversely reflects on his fitness to practice law. The Supreme Court agreed. In aggravation, respondent acted in his own self-interest and tried to minimize his culpability rather than acknowledge the extent of his wrongdoing. BCGD Proc.Reg. 10(B)(1)(b) and (g). Further, respondent violated his community control when an inspection of his computer in February 2006 turned up 11 pictures of nude children. Respondent denied knowledge of these pictures, but the common pleas court ordered him to serve 42 days in jail for the violation. In mitigation, respondent had no prior disciplinary record, cooperated in the disciplinary process, showed evidence of his good character and reputation, and is currently serving the sentence that the criminal-justice system imposed. BCGD Proc.Reg 10(B)(2)(a), (d), (e), and (f). Further, a psychiatrist testified that respondent has a mental illness and has shown “dramatic improvement” by way of his treatment. Also an OLAP representative testified that respondent has a five-year “Mental Health Contract” with OLAP and is in complete compliance with it. BCGD Proc.Reg. 10(B)(2)(g)(i) through (iv). The board recommended an indefinite suspension from the practice of law. At oral argument, respondent requested he receive credit for his interim suspension as he had already been barred from the practice of law for two years. The court noted the request was not properly before the court because, respondent did not raise the issue of interim suspension credit in his written objections. The Supreme Court discussed precedent in these kinds of cases and that convicted felons should only get credit for time served when they are no longer a threat to the public. The Court agreed with the reasoning of the Supreme Court of Maryland in its order of an indefinite suspension of an attorney who stocked a young boy. In that case the attorney was making progress in therapy for his mental illness, but the court found “that not determinative” and that “it is inconceivable. . . how we presently may authorize and entrust respondent with the enumerable confidential, fiduciary, and trust-based relationships that attorneys . . . are required to maintain.” *Atty. Grievance Comm. Of Maryland v. Thompson*, 367 Md. 315, 327, 768 A.2d 763. The court also cited *Pansiera* (1977), and *Margolis* (2007). Therefore, the Supreme Court agreed with the board’s recommendation of an indefinite suspension and so ordered with no credit for the interim suspension.

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**Rules Violated:** DR 1-102(A)(3), 1-102(A)(6)

<b>Aggravation:</b> (b), (g)		<b>Mitigation:</b> (a), (d), (e), (f), (g)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

**Goldie, Ohio State Bar Assn. v.**

119 Ohio St.3d 428, 2008-Ohio-4606. Decided 9/18/2008.

Respondent, a Xenia Municipal Court judge at the time of the offenses, violated the due process rights of three people appearing before her. Respondent stepped down from the bench in December 2007, after already receiving a public reprimand in 2005 for attempting to preside in a case after she had been removed from the case by judicial order. *Ohio State Bar Ass'n. v. Goldie*, 107 Ohio St.3d 201, 2005-Ohio- 6186, 837 N.E. 2d 782. The parties entered into a consent-to-discipline agreement and stipulated to the misconduct, three separate violations of Canon 3(B)(2) of the Code of Judicial Conduct. In the Walker Case, after respondent properly sentenced Walker for his convictions for failing to properly confine or control dogs, respondent presided over a series of animal-control proceedings against Walker concerning bears and their escape from Walker's custody. On three separate occasions, respondent ordered Walker to remove the bears or pay restitution without giving him notice or the opportunity to present a defense: first in February 2004 she summarily ordered him to remove the bears from his property, then in March 2004, after the bears were taken into county custody, she ordered him to pay for the county's expenses of transporting and caring for the bears, and then in February 2005 she ordered him to pay \$32, 127 in restitution to the county for the bears' upkeep, failure to pay by the end of the month would result in the forfeiture and relocation of the bears. The Greene County Court of Appeals reversed respondent's order, in part because she had no authority to order restitution as Walker had not been convicted of any crimes relating to the bears and criticized her failure to afford Walker even the pretense of due process. In the Webb case, respondent held a contempt hearing for Howard Webb, who was arrested and charged with contempt of court for failing to pay fines and court costs related to nine criminal and traffic cases pursuant to previous court agreements. Respondent sentenced Webb to 30 days in jail per contempt to be served consecutively, totaling 270 days of jail time, but voluntarily dismissed the sentences without a hearing to determine Webb's ability to pay. The Second District Court of Appeals ruled that respondent failed to follow the law by not separating in the court order the amount of fines from the amount of court costs. Respondent admitted she "knowingly failed to follow the law" and that she did not follow the prescribed procedures to determine Webb's ability to pay assessed fines before sending him to jail. In the Brandon case, respondent sentenced Brandon to 90 days, suspended, jail time; five years probation; and 500 hours of community service to be performed at Yellow Spring high School, after he was convicted of vehicular manslaughter, a second degree misdemeanor with a statutory 200-hour community service maximum. When Brandon decided to go to college in Athens, Ohio, respondent denied his request to complete his community service there. The Greene County Court of Appeals found respondent abused her discretion because she offered no explanation for the denial and ordered her to reduce the community service hours to 200. At another hearing, respondent sentenced Brandon to an unconditional 30 days in jail because he had failed to pay his \$1,000 fine, was not attending college as he had claimed, and was living out of state with his mother. Respondent did not advise Brandon, who appeared without counsel, of his right to counsel. On appeal, the Greene County Court of Appeals again reversed, finding a denial of due process. In each case, the board found a violation of Canon 3(B)(2) of the Judicial Code of Conduct, a judge shall be faithful to the law and maintain professional competence in it. The Supreme Court agreed. In aggravation, respondent does already have one public reprimand for her previous judicial failings. BCGD Proc.Reg. 10(B)(1)(a). However, she did not act dishonestly or out of self-interest, readily conceded her wrongdoing, and submitted many letters recommending her character and reputation. BCGD Proc.Reg. 10(B)(2)(b) and (e). With these mitigating factors and her departure from the bench, the board recommended a public reprimand per the consent-to-discipline agreement. The Supreme Court agreed and so ordered. One justice dissented and would have rejected the consent to discipline agreement and remanded to board for new proceedings including a consideration of an increased sanction.

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**Rules Violated:** Code of Judicial Conduct (former) Canon 3(B)(2)

<b>Aggravation:</b> (a)		<b>Mitigation:</b> (b), (e)	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> YES	<b>Sanction:</b> Public Reprimand		

**Gottehrer, Cleveland Metro. Bar Assn. v.**  
124 Ohio St.3d 519, 2010-Ohio-929. Decided 3/17/2010.

Respondent failed to act with reasonable diligence in representing two clients, failed to comply as soon as practicable with reasonable requests of a client for information; failed to keep a client reasonably informed; entered agreements for illegal or clearly excessive fees; failed to promptly deliver funds or other property; and failed to cooperate in three disciplinary investigations. Relator served a copy of the complaint, alleging three counts of misconduct on respondent by certified mail to his office of record. Respondent never responded and relator moved for default judgment. A master commissioner was appointed and prepared the report adopted by the board. In the Wurst Grievance, in March 2007 Wurst paid respondent a \$1500 retainer to assist her in obtaining custody of her granddaughter who lived in Germany. Respondent totally neglected the case. He failed to perform the requested service, didn't respond to client's phone calls or emails, didn't appear at the May 2007 custody hearing, or respond to client's repeated requests for a refund of the retainer. His actions caused Wurst financial and emotional hardship, although she did finally obtain custody. As to the Wurst grievance, the board found violations Prof.Cond.R. 1.3, 1.4(a)(3), 1.5, and 1.15(d). In the Kaminski Grievance, in February 2007, Kaminski gave respondent a \$2000 retainer to appeal a ruling regarding child support. Respondent filed a timely notice of appeal, but failed to cause the trial court record, including the transcript, to be filed with the court of appeals. The appellate court dismissed the appeal sua sponte. Respondent did not notify Kaminski of this action. He ignored Kaminski's request for a refund of the retainer. As to the Kaminski grievance, the board found violations of Prof.Cond.R. 1.3, 1.4(a)(3), and 1.5. In the Fleming Grievance, Fleming had filed a grievance in December 2007, but failed to cooperate with relator by signing an affidavit to support her violations. The board concluded that the allegations in the unsworn grievance were insufficient to support the alleged misconduct under Gov.Bar R. V(6)(F)(1)(b). In each of the three grievances, respondent failed to respond to relator's inquiries and the board found violations of Gov.Bar R. V(4)(G) and Prof.Cond.R. 8.1(b). In aggravation, respondent had a dishonest and selfish motive; a pattern of misconduct; multiple offenses; lack of cooperation; resulting harm to victims of the misconduct; and failure to make restitution. BCGD Proc.Reg. 10(B)(1)(b), (c), (d), (e), (h), and (i). In mitigation was respondent's lack of a prior disciplinary record. BCGD Proc.Reg. 10(B)(2)(a). The board recommended an indefinite suspension. The Court, citing *Kaplan* (2010), *Goodlet* (2007), *Gosling* (2007), and *Wagner* (2007), noted that neglect and failure to cooperate generally warrants an indefinite suspension. The Court adopted the board's findings of fact, the conclusions of law, and the board's recommended sanction, and so ordered and indefinite suspension.

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**Rules Violated:** Prof.Cond.R. 1.3, 1.4(a)(3), 1.5, 1.15(d), 8.1(b); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> (b), (c), (d), (e), (h), (i)		<b>Mitigation:</b> (a)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Gresley, Cleveland Metro. Bar Assn. v.*  
127 Ohio St.3d 430, 2010-Ohio-6208. Decided 12/22/2010.

Respondent accepted fees from ten clients, failed to perform the legal work, and failed to cooperate in the disciplinary investigation.. The parties stipulated to the findings, conclusions, aggravating and mitigating factors and recommended sanction. The panel canceled the hearing and considered the matter on the stipulations—all of which were accepted by the panel. The board agreed, adding a recommendation of a monitor to ensure payment of restitution. In Count One, respondent was paid \$1500 for a divorce representation, but a month later respondent sent his client an invoice showing a \$1026.24 credit balance and a letter demanding a check. Respondent failed to appear at a spousal-support hearing and a client meeting, failed to return the client's telephone calls, and has not responded to client's requests for an accounting, a refund, or return of the client file. This conduct was found to violate Prof.Cond.R. 1.3, 1.4(a)(3), 1.4(a)(4), 1.15(d), 1.16(e) (though misprinted in the stipulations as 1.16(c) in several counts), 8.4(d), and 8.4(h). In Count Two, respondent was retained by a couple to file a Chapter 13 bankruptcy. Respondent filed the bankruptcy later than he had promised, failed to attend two bankruptcy court hearings, and failed to return numerous client phone calls. The clients requested a refund, but the receptionist said that she was unable to assist them. They eventually got a refund after retaining new counsel and obtaining an order from the bankruptcy court. This conduct violated Prof.Cond.R. 1.3, 1.4(a)(3) and (4), 8.4(d), and 8.4(h). In Count Three, respondent was hired to file a Chapter 13 bankruptcy for another couple. Respondent filed the bankruptcy petition, but months later after the husband's income was reduced by his employer, respondent failed to return the clients' phone calls about modifying the plan. Shortly after the clients found out that respondent's office telephone was disconnected and his voice mailbox full, respondent contacted the clients and told them their only option was to convert their bankruptcy to Chapter 7. He said he would file the necessary paperwork the next day, but failed to do so. Since then the clients have not heard from respondent and cannot afford to hire another attorney. This conduct violates Prof.Cond.R. 1.3, 1.4(a)(3) and (4), 1.15, 8.4(d) and 8.4(h). In Count Four, respondent was hired to help a couple obtain custody of the husband's children from a prior marriage. Respondent provided copies of several pleadings he had filed on their behalf, but stopped returning their telephone calls and failed to attend a custody hearing. He has not responded to telephone calls or written requests for a refund and the client file. This conduct violated Prof.Cond.R. 1.3, 1.4(a)(3) and (4), 1.15, 1.16(e), and 8.4(h). In Count Five, a woman hired respondent to resolve discrepancies in her existing Chapter 13 bankruptcy proceedings and to challenge her mortgage company's efforts to obtain relief from the bankruptcy stay and foreclose on her home. Respondent filed a new bankruptcy petition, but did not respond to calls or letters by the client advising him of inaccuracies in the filing. He did not respond when the client sent a letter terminating his representation and requesting return of the file. This conduct violated Prof.Cond.R. 1.3, 1.4(a)(3) and (4), 1.15, 1.16(d), 1.16(e), 8.4(d) and 8.4(h). In Count Six, respondent was paid \$900 to file a bankruptcy petition, but months later the client realized that respondent had not taken any action. The client tried to contact him but learned that respondent's cellphone had been disconnected and he had not been in his office in months. He performed no work and did not refund any of the \$900. This conduct violated Prof.Cond.R. 1.3, 1.4(a)(3) and (4), 1.16(e), and 8.4(h). In Count Seven, respondent was paid \$935 to file a Chapter 7 bankruptcy, but, despite making frequent calls and office visits the client never heard from him again. Respondent performed no work and did not issue any refund to the client. This conducted violated Prof.Cond.R. 1.3, 1.4(a)(3) and (4), 1.16(e), 8.4(c), and 8.4(h). As to Count Eight, respondent did not respond to letters or telephone messages from relator, except for one brief telephone conversation promising to prepare a response which he failed to do. He failed to appear for a deposition after receiving a subpoena duces tecum and then being granted two week continuance. This conduct violates Prof.Cond.R. 8.4(h) and 8.1(b), and Gov.Bar R. V(4)(G). In aggravation, respondent acted with a selfish motive, engaged in a pattern of misconduct, caused harm to vulnerable clients, and failed to cooperate in the disciplinary investigation. BCGD Proc.Reg. 10(B)(1)(b), (c), (e), and (h). In mitigation, the respondent has no prior disciplinary record, has relinquished his bankruptcy court electronic filing privileges for one year, has complied with other bankruptcy sanction orders, including

disgorgement of unearned fee to one grievant, and ultimately cooperated in the disciplinary process after the complaint was certified. BCGD Proc.Reg. 10(B)(2)(a), (d), and (f). The court noted that neglect and failure to cooperate generally warrants indefinite suspension, but giving consideration to *Baas* (1997) and *Marosan* (2005), as well as respondent's eventual cooperation with the disciplinary investigation, the court adopted the board's findings of fact, conclusions of law and recommended sanction. The court ordered that respondent be suspended for two years, six months stayed on the conditions that within 90 days of the date of this opinion respondent 1) make full accounting to the affected clients for fees paid to him, 2) make full restitution to the affected clients for unearned fees, and 3) return to his clients all files and other materials to which they are entitled; and within 30 days relator appoint a monitor to ensure that restitution is made. Respondent will not be reinstatement until he has made full accounting and restitution to the affected clients and returned all files and materials.

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**Rules Violated:** Prof.Cond.R. 1.3, 1.4(a)(3), 1.4(a)(4), 1.15, 1.15(d), 1.16(d), 1.16(e), 8.1(b), 8.4(c), 8.4(d), 8.4(h); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> (b), (c), (e), (h)		<b>Mitigation:</b> (a), (d), (f)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Two-year suspension, 6 months stayed		

**Grigsby, Disciplinary Counsel v.**

128 Ohio St.3d 413, 2011-Ohio-1446. Decided 3/31/2011.

Respondent self-reported her misdemeanor conviction for one count of misuse of a credit card arising from her use of her employer's credit card for personal expenses. The parties stipulated to the facts and misconduct. In August 2006, respondent began to misuse the corporate credit card issued to her by her employer. At first, she would pay the bill each month from her personal funds, but as her financial condition worsened, she was unable to make timely payments. In April 2009, respondent's employer became aware of her conduct and terminated the employment. She was indicted on two felony counts, but later pleaded guilty to a first-degree misdemeanor and was fined \$100 and ordered to pay \$2,906 in restitution to the employer, both of which were timely paid. The panel and board found violations of Prof.Cond.R. 8.4(b), 8.4(c), and 8.4(h). The Court adopted the findings of fact and conclusions of law. In aggravation, respondent acted with a dishonest or selfish motive and engaged in a pattern of misconduct spanning over two and a half years. BCGD Proc.Reg. 10(B)(1)(b) and (c). In mitigation, respondent had no prior disciplinary record, made prompt payment of restitution, self-reported her misconduct, and fully cooperated in the disciplinary process. BCGD Proc.Reg. 10(B)(2)(a), (c), and (d). Respondent also elected not to practice law for more than one year after her termination, her actions were out of character, and she was extremely remorseful. Due to significant mitigating factors, relator recommended a one-year suspension with 6 months stayed. However, the panel and board recommended an 18- month suspension, all stayed on the conditions that respondent be monitored by relator in accord with Gov.Bar R. V(9) and that she commit no further misconduct. The court, citing *Agopian* (2006), noted that the primary purpose of the disciplinary process is not to punish the offender, but to protect the public. The court found that the board's recommendation of an 18-month suspension provided greater protection to the public than did relator's recommended sanction. The court so ordered a suspension for 18 months, all stayed on conditions that respondent serve 18 months of supervised probation with a monitor and commit no further misconduct.

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**Rules Violated:** Prof.Cond.R. 8.4(b), 8.4(c), 8.4(h)

<b>Aggravation:</b> (b), (c)		<b>Mitigation:</b> (a), (c), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> NO	<b>Sanction:</b> 18-month suspension, stayed		

**Grote, Cincinnati Bar Assn. v.**  
127 Ohio St.3d 1, 2010-Ohio-4833. Decided 10/7/2010.

Respondent neglected legal matters entrusted to her and took fees for which she performed little to no work. Client hired respondent to handle a divorce in July 2007; client paid \$500 and was told the entire bill would not exceed \$1500, but there was no written fee contract and no discussion of court costs and filing fees. The client provided the personal and financial information necessary to initiate the divorce. Respondent prepared draft documents and sent them to the client for suggested revisions. In January 2008, the client returned the documents, but respondent did not respond to the client for the rest of 2008. In January 2009, client informed respondent by a certified mail letter that her husband was selling off assets and keeping the money for himself; respondent admits to receiving the letter, but still respondent did not respond. Client eventually contacted the Better Business Bureau about respondent's conduct, the BBB contacted relator. After relator's investigation began, respondent sent client a letter of apology and a \$500 refund. At the hearing, respondent admitted that the \$500 had not been deposited into her trust account and that she lacked professional liability insurance and failed to notify her client as such. She explained she continued this misconduct even after the investigation began, because she was not sure how much longer she would be allowed to practice law and she did not have many new clients. Respondent said that she accidentally placed the client's file in a pile of closed cases and when she realized the mistake, she was too busy with other work and personal matters. Respondent argued that she did not have to put the \$500 in her trust account because she earned the fee; however, she received the money before she did any work, and thus could not have earned the fee. She explained that she did not have insurance because "it was something [she] hadn't paid much attention to." The board adopted the panel's finding and conclusions. The court agreed with the board that Respondent violated Prof.Cond.R. 1.1, 1.3, 1.4(a)(2), 1.4(a)(3), 1.4(a)(4), 1.4(c), and 1.15(c). The board adopted the panel's recommendation of an indefinite suspension. In aggravation, respondent had been disciplined twice prior in 1987 and 1990 for conduct involving dishonesty, fraud, deceit, and misrepresentation, and neglect. An additional aggravating factor is the harm caused to the client. BCGD Proc. Reg 10(B)(1)(h). In mitigation, there is an absence of a dishonest or selfish motive and full cooperation with the disciplinary process and she admitted the misconduct and accepts responsibility. BCGD Proc.Reg. 10(B)(2)(b) and (d). Her restitution had little mitigating value, as the client's refund did not occur until after the disciplinary investigation was initiated. The Court, citing *Sigall* (1984), noted that taking fees without performing legal services is "tantamount to theft." The Court noted that taken alone, respondent's conduct was serious; when coupled with her prior disciplinary history, the Court concluded that her misconduct was "part of a pattern, bound to repeat" and the fact that she did not obtain professional liability insurance or obtain acknowledgements from her clients when she was aware she must, makes clear she is not motivated to stop this pattern. The Court adopted board's recommended sanction of an indefinite suspension and so ordered.

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**Rules Violated:** Prof.Cond.R. 1.1, 1.3, 1.4(a)(2), 1.4(a)(3), 1.4(a)(4), 1.4(c), 1.15(c)

<b>Aggravation:</b> (h)		<b>Mitigation:</b> (b), (d)	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Gueli, Columbus Bar Assn. v.*

119 Ohio St.3d 434, 2008-Ohio-4786. Decided 9/25/2008.

Respondent violated ethical duties to numerous clients. As to Count IX, respondent agreed to represent 13 separate clients in a variety of proceedings, mostly divorce and other domestic-relations disputes, but also a criminal matter and a charge of contempt of court. He failed to complete the work for which he had been paid, abandoned the clients without notice, skipped court dates, ignored client's attempts to contact him, and apparently has moved out of state. The court adopted the board's findings of violations of DR 1-102(A)(5), 1-102(A)(6), 2-106(A), 7-101(A)(3), 9-102(B)(3), and 9-102(B)(4). As to Count VI, respondent badly mishandled the estate of a decedent who died from an auto accident while a passenger in a car driven by respondent's half brother and despite the conflict of interest undertook the wrongful death claim, using his position to protect half-brother at the expense of the decedent's children. He also had no records justifying the charge to the estate of \$37,500 in attorney fees and he retained proceeds from a settlement with an insurer. The court adopted the board's findings of violations of DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 5-101(A)(1), 5-105(A), 6-101(A)(1), 6-101(A)(2), 6-101(A)(3), 7-102(A)(3), 9-102(B)(3), and 9-102(B)(4). As to Count I, he failed to return a divorce client's file upon his discharge, failed to appear in response to subpoenas, and at a deposition promised but then failed to produce trust account records upon relator's request for further documentation of his fee. The court adopted the board's findings of violations of DR 9-102(B)(4) and Gov.Bar R V(4)(G). As to Count II, respondent did not return a retainer a client paid for representation in a divorce after the client instructed respondent not to pursue the matter. He produced the file during relator's deposition and promised to produce additional records to document his work, but thereafter failed to appear in response to subpoena and never produced the document. The court adopted the board's finding of a violation of Gov.Bar R. V(4)(G). As to Count IV, the court adopted the board's finding of a violation of DR 6-101(A)(3) for failing to conscientiously complete or file the shared- parenting agreement for a client after accepting a retainer to do so. As to Count V, a couple hired and paid respondent to defend them in against a lawsuit by the victim of a dog attack, but respondent did nothing, even ignoring two letters offering to settle the dispute. He appeared with the clients at the courthouse and left them waiting outside, then told them the hearing was postponed. The court adopted the board's findings of a violation of DR 1-102(A)(4) 1-102(A)(5), and 1-102(A)(6) for false assurances and pretense of a postponed hearing; DR 2-106(A) and 7-101(A)(3) for accepting payment but not filing an answer, causing a default judgment to be entered against the client; and violations of DR 9-102(B)(3) by failing to account for his fees. As to Count VII, respondent represented a woman in a divorce and among other misconduct sent her a bill for more than she owed, and lied about and kept most of the money that the ex- husband had paid for the client's share of the equity in the home. The court adopted the board's findings of violations of DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 2-106(A), 7-101(A)(3), 9-102(B)(3), and 9-102(B)(4). As to Count VIII, respondent was hired to file a medical-malpractice claim, but did not file the action for more than two years and evaded the clients' inquiries, then after two more years passed he told them they had a court date, but when they learned from the court the case had been dismissed over a year before. Respondent left them a voice message saying the trial had been postponed because he was out of town. They asked for their case file and they hired a lawyer to sue respondent. The new lawyer found that documents and material evidence were missing from the file. The clients obtained a default judgment against respondent, but then learned he had transferred his property interests in his home and office to family members to stop the clients from collecting on the judgment. The court adopted the board's findings of violations of DR 1-102(A)(4), 1-102(A)(5), and 1-102(A)(6) for lying to his clients and violations of DR 6-101(A)(2), 6-101(A)(3), and 7-101(A)(3) for not conscientiously pursuing their medical-malpractice action, and a violation of DR 9-102(B)(4) by failing to return client property. As to Count I, respondent, after a deposition, did not respond to relator's inquiries and subpoenas. The court adopted the board's finding of a violation of Gov.Bar R. V(4)(G). The court adopted the board's recommended sanction of permanent disbarment and so ordered.

**Rules Violated:** DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 2-106(A), 5-101(A)(1), 5-105(A), 6-101(A)(1), 6-101(A)(2), 6-101(A)(3), 7-101(A)(3), 7-102(A)(3), 9-102(B)(3), 9-102(B)(4); Gov.Bar R V(4)(G)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Disbarment</a>		

*Hackett, Cincinnati Bar Assn. v.*

129 Ohio St.3d 186, 2011-Ohio-3096. Decided 6/30/2011.

Respondent offered an employment agreement that restricted the right of an attorney to practice after termination of the relationship and that provided for an excessive fee. This matter was brought before the board under a consent-to-discipline agreement. The stipulated facts show that respondent had associates enter into an employment contract whereby they could not represent clients assigned to them by the firm after they left the firm, and if they did, they must pay respondent's firm 95% of the fees collected. When a former associated collected a fee from a client he was originally assigned through the firm, respondent sued to enforce the agreement; the court held that the agreement violated Ohio public policy of clients choosing their attorneys. This conduct violated Prof.Cond.R. 1.5 (prohibiting clearly excessive fees) and 5.6 (prohibiting employment agreements that restrict a lawyer's right to practice). The Court discussed the client's absolute right to discharge an attorney, and the fiduciary relationship that an attorney has with a client. In aggravation, respondent used an unethical employment contract for multiple associates. BCGD Proc.Reg. 10(B)(1)(d). In mitigation, respondent lacked a prior disciplinary record, lacked a dishonest motive, cooperated with the disciplinary investigation, and provided evidence of good character, including military service. BCGD Proc.Reg. 10(B)(2)(a), (b), (d), and (e). The Court noted that respondent's agreement called for him to receive 95% of the fees collected, regardless of the work he performed. Thus, they did not accept a lack of dishonest motive as a mitigating factor, and found a selfish motive as an aggravating factor. BCGD Proc.Reg. 10(B)(1)(b). Nevertheless, the Court adopted the consent-to-discipline agreement and issued a public reprimand.

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**Rules Violated:** Prof.Cond.R. [1.5](#), [5.6](#)

<b>Aggravation:</b> (b)		<b>Mitigation:</b> (a), (b), (d), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> <a href="#">YES</a>	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Public Reprimand</a>		

*Hales, Toledo Bar Assn. v.*

120 Ohio St.3d 340, 2008-Ohio-6201. Decided 12/4/2008.

Respondent mishandled and consequently lost a client's medical malpractice case due to his inexperience. He then failed to notify his liability insurance carrier of the client's malpractice suit, prompting the insurer to deny coverage, and filed bankruptcy, thereby preventing the client from collecting on a \$280,000 malpractice judgment in her favor. Bonnie Oehlers was pursuing a medical malpractice claim against multiple defendants for the postoperative care that allegedly led to her mother's death. John B. Fisher, an experienced medical malpractice attorney, had worked extensively on the case: advancing \$10,000 in trial preparation, obtaining experts to testify against all defendants except the nursing home, and negotiating a high-low settlement agreement with the nursing home. Oehlers asked respondent to look over the high-low settlement agreement before she signed it. After discussing Oehlers' case and the agreement with an attorney respondent shared office space, he told Oehlers that the nursing home should be willing to pay more than the amounts specified in the agreement. Oehlers' did not sign the agreement, retrieved her files from Fisher's office, and hired respondent to handle her case. Respondent had never litigated a medical-malpractice claim before. He tried to find more experienced co-counsel, but was unsuccessful. Respondent entered an appearance in Oehlers' case in September 2003, but did no discovery in the following months. The case required at least three expert witnesses to prove defendants' negligence. Respondent failed to file notice of his expert witnesses by the trial court's deadline. All defendants moved for summary judgment by the end of March 2004, arguing respondent had failed to disclose expert witnesses necessary to sustain the plaintiff's burden of proof. Respondent filed three successive motions to extend the deadline for his response to these motions, all of which were granted, giving him until May 15, 2004 to file his response in opposition. In the meantime, respondent asked Fisher, who had claimed a lien for the value of his work and expenses in the case, to provide the names of the experts whom he anticipated using at trial. Fisher gave respondent two names. He warned that one of the doctors he planned to call no longer qualified as an expert because he retired. Respondent was unable to procure an expert to testify against the nursing home and he could not find a replacement expert for the retired doctor. Neither he nor his client could afford to pay doctors to review the medical evidence necessary to render an expert opinion. Respondent did advance somewhere between \$600 and \$1000 to obtain an affidavit from the pathologist regarding causation and standard of care. On May 25, 2004, ten days after the extended deadline, respondent filed one response, with the affidavit attached, to all the motions for summary judgment and filed the affidavit. In July 2004, the court granted the defendants' summary judgment motions. Respondent advised Oehlers of the court's ruling and tried to arrange a meeting between Oehlers and Fisher to discuss Oehlers options. He never scheduled the meeting, never discussed the case with Oehlers again, and believed Oehlers "had put [the] whole entire episode to bed." Respondent filed Chapter 7 bankruptcy in February 2005 for discharge of personal debt, but he did not list the possibility of a medical malpractice suit. Because the bankruptcy court treated the filing as a "no-asset" case, the failure to list did not prevent the discharge of the debt. The bankruptcy court discharged respondent's debt in May 2005. Oehlers sued respondent for malpractice in June 2005. Respondent did not answer. At some point respondent filed for Chapter 13 bankruptcy protection after defaulting on his mortgage and he accurately listed the malpractice claim in his petition as a pending action. After the bankruptcy court granted Oehlers relief from the automatic stay and the common pleas court granted her motion for default judgment, awarding her \$280,000 in damages. Respondent has malpractice insurance, but never gave his insurer notice of Oehlers' pending malpractice claim. His carrier denied coverage. Respondent's actions prevented any form of recovery by Oehlers. The parties stipulated that respondent's discharge in bankruptcy did not release his insurer from liability, but he did not realize this at the time, he thought the discharge wiped out the insurer's contractual obligation to indemnify others for losses caused by his negligence. The board found violations of DR 1-102(A)(6), 6-101(A)(1), (2) and (3), and 7-101(A)(3). The Supreme Court agreed. In aggravation, respondent acted out of self-interest, harmed a vulnerable client, and failed to make restitution. BCGD Proc.Reg. 10(B)(1)(b), (h), and (i). In mitigation, respondent has no prior disciplinary record, fully admitted his wrongdoing and cooperated with the disciplinary proceedings, and

presented evidence of his otherwise good character and reputation. BCGD Proc.Reg. 10(B)(2)(a), (d), and (e). The panel recommended a two- year suspension, with 18 months stayed under the condition of monitored probation. Finding a harsher sanction appropriate, the board recommended a two year suspension, with one year stayed, and expressed a desire to hold respondent accountable to Oehlers, despite the discharge of his indebtedness in bankruptcy. The Supreme Court disagreed with the board. The Court noted, as the panel and board acknowledged that Ohio has taken the position of not holding lawyers responsible for restitution that has been discharged through bankruptcy. See *Gay* (2002) and *Gerren* (2006). To safeguard the public and deter other unseasoned lawyers from unsupervised practice in areas in which they have insufficient legal expertise, the Supreme Court ordered a two-year suspension, with 18 months stayed under the condition of monitored probation during which time he accept only cases within his experience level or arrange for competent co-counsel. Justice Lundberg Stratton, concurring in part and dissenting in part, agreed with the majority's holding except that she would also require respondent to pay \$280,000 in restitution as a condition of reinstating his license. Chief Justice Moyer dissented finding respondent's actions were based on self-interest and warranted the stricter sanction recommended by the board. Justices O'Connor and Lanzinger concurred with the Chief Justice's dissent.

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**Rules Violated:** DR 1-102(A)(6), 6-101(A)(1), 6-101(A)(2), 6-101(A)(3), 7-101(A)(3)

<b>Aggravation:</b> (b), (h), (i)		<b>Mitigation:</b> (a), (d), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Two-year suspension, 18 months stayed		

**Hallquist, Disciplinary Counsel v.**

128 Ohio St.3d 480, 2011-Ohio-1819. Decided 4/20/2011.

Respondent failed to reasonably communicate with two clients, neglected their legal matters, and failed to cooperate in the ensuing disciplinary investigation. Respondent failed to answer the complaint filed against him; a master commissioner was appointed and granted relator's default motion, making the following findings of fact and conclusions of law. In Count 1, a husband and wife hired respondent to pursue an uninsured-motorist claim after the husband was injured. The matter was settled for \$2000, but respondent retained the couple's portion as a flat fee for representation he performed for them in an unrelated matter. Later, the couple began to receive medical bills that they believed had been paid as part of the settlement. Unable to reach respondent, the clients filed a grievance. In his deposition, respondent claimed that the insurer was to pay all of the medical bills plus \$2000. He said that he was unaware of any unpaid medical bills and had no documentation of the settlement. Although he claimed that he would contact the couple and their insurer to resolve the matter, and even provided relator with copies of correspondence between himself and the insurer, he never contacted the clients or resolved the matter. In Count 2, respondent accepted \$500 in May 2009 and \$100 in September 2009 to seek the expungement of a client's criminal conviction, but did not file the motion until October 2009. The court dismissed the motion, finding that the client had failed to appear at two hearings. The client states that respondent never informed him of those hearings. These facts support a finding that respondent violated Prof.Cond.R. 1.3, 1.4(a)(2), 1.4(a)(3), 8.1(b), and Gov.Bar R. V(4)(G). The Court adopted the findings of fact and conclusions of law. In aggravation, the board found a pattern of misconduct involving multiple offenses, failure to cooperate in the disciplinary investigation, refusal to acknowledge the wrongful nature of his conduct, harm caused to vulnerable clients, and failure to make restitution. BCGD Proc.Reg. 10(B)(1)(c), (d), (e), (g), (h), and (i). In mitigation, respondent did not have a prior disciplinary record in twenty years as a lawyer. BCGD Proc.Reg. 10(B)(2)(a). Relator recommended an indefinite suspension, which was recommended by the master commissioner. The board instead recommended a two-year suspension with six months stayed. Relying on *Paulson* (2006), *Noel* (2010), and *Marosan* (2005), and noting that while serious, respondent's misconduct did not irreparably harm any clients, the Court agreed with the board's recommended sanction. The six-month stay was conditioned on respondent engaging in no further misconduct and paying \$1,108 restitution to the clients in Count 1 and \$600 restitution to the client in Count 2.

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**Rules Violated:** Prof.Cond.R. 1.3, 1.4(a)(2), 1.4(a)(3), 8.1(b); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> (c), (d), (e), (g), (h), (i)		<b>Mitigation:</b> (a)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Two-year suspension, 6 months stayed		

*Hanni, Mahoning Cty. Bar Assn. v.*

127 Ohio St.3d 367, 2010-Ohio-5771. Decided 12/2/2010.

Respondent failed to file a motion for a criminal defendant and made inflammatory comments about a prosecutor on a radio talk show. In February 2007, a motorist-defendant pled guilty to vehicular homicide, in exchange for the prosecutor stipulating that a prison term was not mandatory or presumed necessary. The defendant knew that this was merely a recommendation on sentence; defendant was represented by counsel other than respondent. The judge accepted this plea and ordered a presentence investigation. In the interim, defendant changed counsel and hired respondent; respondent was to be paid a retainer of \$5000 prior to services rendered. The fee agreement stated that it did not include post judgment legal services, perfecting an appeal, or representing the defendant during an appeal. The defendant paid \$2500 toward the \$5000. After reviewing the procedural aspects of the matter, respondent told the client that it would be “next to impossible” to vacate his plea this late in the proceeding, so respondent agreed to only take \$2500, with the remainder due only if the court accepted withdrawal of the plea. Prior to sentencing, respondent orally told the judge that her client wished to withdraw his guilty plea, but the judge indicated that he would not grant the request. Respondent did not file a formal motion to withdraw the plea, nor did respondent request to withdraw the plea at the sentencing hearing. The judge sentenced the defendant to four years in prison. Respondent did not file any post-sentencing motions on behalf of the defendant. The defendant attempted to get the ruling overturned by filing several pro se motions, but was unsuccessful. In the disciplinary proceeding, the parties stipulated that a motion to withdraw a plea is to be freely and liberally granted by the trial court and that, if a motion is filed, the judge is required to conduct a hearing on the motion. Respondent’s failure to request a transcript of the change-of-plea hearing following the plea agreement may have hindered her ability to determine if the plea was entered knowingly and voluntarily. Relator determined that the respondent’s charge of \$2,500 did not violate the ethical rules; that respondent’s attorney was currently holding the money in escrow; and that respondent has agreed to distribute the money to defendant. As to this matter, the board adopted the panel’s findings of violations of Prof.Cond.R. 1.3 as stipulated. In January 2008, respondent appeared on a radio show as a declared candidate in a primary for Mahoning County Prosecutor. During the show, respondent accused the incumbent prosecutor of misconduct and alleged the prosecutor and a defense attorney were acting unethically in a pending vehicular-homicide case. Respondent implied that a grand jury’s decision not to charge aggravated vehicular homicide was caused by racism and case fixing. No evidence was found to support respondent’s claims. Respondent also claimed that the prosecutor’s suppression of exculpatory evidence in another common pleas court case caused a wrongful imprisonment. This matter was investigated and again, no evidence was found to support respondent’s claims. Respondent acknowledged that her remarks were made during a heated political campaign. As to this matter, the board adopted the panel’s findings of a violation of Prof.Cond.R. 8.4(d) as stipulated. The Court accepted the stipulations and found the violations. In aggravation, there were multiple offenses. BCGD Proc.Reg. 10(B)(1)(d). In mitigation, there was an absence of a prior disciplinary record, a good-faith effort to make restitution or rectify consequences, full and free disclosure during the disciplinary process, and good character and reputation. BCGD Proc.Reg. 10(B)(2)(a), (c), (d), and (e). The parties stipulated to the sanction of a public reprimand. The panel noted that as of the date of the disciplinary hearing, respondent had not yet made restitution to the client. The panel also noted with regard to the radio show misconduct that respondent could offer no evidence to support claims of improper conduct, racism, or suppressed exculpatory evidence. The board adopted the panel’s finding that the serious nature of the unfounded accusations warranted more than a public reprimand, and recommended a six-month stayed suspension. The court agreed and so ordered a suspension for six months, all stayed.

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**Rules Violated:** Prof.Cond.R. 1.3, 8.4(d)

<b>Aggravation:</b> (d)		<b>Mitigation:</b> (a), (c), (d), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Six-month suspension, stayed		

*Harwood, Cincinnati Bar Assn. v.*

125 Ohio St.3d 31, 2010-Ohio-1466. Decided 4/7/2010.

Respondent disregarded his duty to exercise independent professional judgment on behalf of clients who were facing foreclosure and failed to inform his clients that he did not maintain professional- liability insurance. Respondent and relator entered into a consent-to-discipline agreement. Respondent, a sole practitioner, worked from home, from the beginning of August 2008 through the end of January 2009 and failed to inform any of the clients he did not maintain professional liability insurance. In September 2008, respondent accepted a position with American Foreclosure Professionals, Inc., and Foreclosure Assistance USA, Inc. (“foreclosure companies.”) The foreclosure companies solicited persons facing foreclosure and representing they could save their homes by negotiating with a lender. The foreclosure companies referred clients from Ohio, West Virginia and California to respondent, who had signed a document agreeing to the procedures that the foreclosure companies expected him to follow in the representation of their customers. The companies charged between \$900 and \$1200 which included the legal representation arranged by and paid for, in part, by the companies. The companies asked the customers to execute a request for legal services and forwarded the request and contact information to respondent who received \$100 to file an answer in each case. Usually more than a month before filing an answer, respondent sent each client a letter asking them to contact him regarding whether they contested the alleged mortgage payment default and had any defenses. If no answer, respondent sent another status letter repeated the question and sending a copy of an answer denying the foreclosure allegations. If a motion of summary judgment were filed, he would send another letter with a copy of the motion, again asking if they had any defense and he warned them that if they did not he had no basis to defend and the court would enter a judgment against the client. If the client did not respond to the letter, he did not oppose the motion or appear. If he received a notice that summary judgment had been entered, he sent a letters to the clients notifying them of the judgment, the scheduling of a sheriff’s sale and the concluding steps of foreclosure. He explained they should contact the foreclosure company concerning negotiation with the lender. He did not participate in negotiations with the lender. Respondent voluntarily terminated his relationship with the foreclosure companies in January 2009; terminated his relationship with the referred client having a pending or open matter; and sought leave to withdraw from all pending cases. That same month the Ohio Attorney General filed a complaint against the foreclosure company, alleging inter alia, violations of the Ohio Consumer Sales Practice Act. None of the foreclosure employees are admitted to the practice of law. The panel and board accepted the consent-to-discipline agreement of violations of Prof.Cond.R. 1.1, 1.3, 1.4(c), 5.4(a), and 5.5(a) and a six-month, stayed suspension. In aggravation, there was a pattern of multiple offenses against vulnerable clients. BCGD Proc.Reg. 10(B)(1)(c), (d), and (h). In mitigation, there was no prior disciplinary record, a lack of a dishonest or selfish motive, a timely effort to rectify the situation, and full cooperation. BCGD Proc.Reg. 10(B)(2)(a), (b), (c), and (d). In addition, he reported his misconduct and he no longer engages in private practice. He works as a staff attorney for a court of appeals judge in Kentucky. The court has considered disciplinary cases where a lawyer enters a joint arrangement with an attorney company to represent clients in mortgage-foreclosure proceedings and sanctions have ranged from a public reprimand for an inexperienced attorney to a stayed suspension for more experienced attorneys to a partially stayed suspension for other attorneys: *Patterson* (2009), *Willard* (2009), *Palombaro* (2009), and *Mullaney* (2008). The Court noted that the failings of these associations like respondent’s alliances signal a surrender of the attorney’s ability to exercise independent personal judgment on a client’s behalf. Unlike *Patterson* who received a partially stayed suspension, respondent had no prior discipline, but unlike *Mullaney*, who received a public reprimand, respondent was not a new associate constrained by the practices at a law firm. The court accepted the consent-to discipline agreement and so ordered a six-month stayed suspension.

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**Rules Violated:** Prof.Cond.R. 1.1, 1.3, 1.4(c), 5.4(a), 5.5(a)

<b>Aggravation:</b> (c), (d), (h)		<b>Mitigation:</b> (a), (b), (c), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Six-month suspension, stayed		

*Hauck, Cincinnati Bar Assn. v.*

129 Ohio St.3d 209, 2011-Ohio-3281. Decided 7/7/2011.

Respondent comingled funds, failed to maintain adequate client financial records, failed to keep an IOLTA account, and failed to notify his clients that he lacked malpractice insurance. The parties stipulated to all facts and misconduct. Respondent stopped payment on a check to a guardian of a minor because respondent had comingled the client's funds with his own and now had insufficient funds to pay the check. Respondent also comingled all of his funds for roughly six years and failed to maintain adequate records of client funds. Respondent used an account belonging to a non-profit entity that he formed to avoid tax garnishments from the IRS. Respondent did not inform his clients that he lacked malpractice insurance. This conduct violated Prof.Cond.R. 1.15(a) (a lawyer must hold property of clients separate from his own), 1.15(b) (permitting a lawyer to deposit funds in an IOLTA to pay or waive bank charges), 1.4(c) (lack of professional- liability insurance), and 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation). Although Prof.Cond.R. 8.4(c) was not charged, it was stipulated to and thus it does not violate due process to find a violation of it. In aggravation, respondent acted with a dishonest or selfish motive. BCGD Proc.Reg. 10(B)(1)(b). In mitigation, respondent has a lack of prior disciplinary record, fully and freely cooperated with the disciplinary process, and did not harm any clients. BCGD Proc.Reg. 10(B)(2)(a) and (d). The panel recommended a 12-month suspension with 6 months stayed. The Board, relying heavily on the mitigating factors, recommended a 12-month suspension, all stayed. The Court noted that respondent's conduct included dishonesty, fraud, deceit, or misrepresentation, and that an actual suspension was warranted. Relying on *Rooney* (2006), *Beeler* (2005), and *Fowerbaugh* (1995), the Court adopted the findings of fact, conclusions of law, and the panel's recommended sanction. The Court suspended respondent for 12 months with 6 months stayed on the condition of 6 months of monitored probation.

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**Rules Violated:** Prof.Cond.R. 1.4(c), 1.15(a), 1.15(b), 8.4(c)

<b>Aggravation:</b> (b)		<b>Mitigation:</b> (a), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> One-year suspension, six months stayed		

*Hayes, Columbus Bar Assn. v.*

118 Ohio St.3d 336, 2008-Ohio-2466. Decided 5/29/2008.

Respondent voluntarily ceased practicing on 12/21/2006 and is not currently registered. As to Count I, respondent was appointed to represent a criminal defendant in an appeal of a conviction in a kidnapping case of great public interest, but he did not appear at the oral argument. The court took the case under advisement without any argument on the defendant's behalf. Later, respondent appeared in the court room during the argument of another scheduled case. He claimed he was unable to drive because of a recent car accident and that his driver had been late, but he could not explain why he had not attempted to contact the court to say he would be late. He filed a motion for rehearing, but the appeals court denied the motion and affirmed the conviction. Respondent failed to file an appeal with the Supreme Court of Ohio. As to Count I, the court adopted the Board's findings of violations of DR 1-102(A)(5), 1-102(A)(6), 6-101(A)(1), 6-101(A)(3), 7-107(A)(1) [sic 7-101(A)(1)], 7-101(A)(3). As to Count II, respondent was paid \$1,000 to represent a juvenile on a charge of driving with a suspended license. The court sent respondent a notice of the hearing but he did not see the notice and did not inform the client or the client's mother of the hearing. The court issued a warrant for arrest. The mother found respondent's home phone number and called him. He said he would move to have the warrant set aside, but it was withdrawn only when the mother persuaded the judge to withdraw it. Respondent did not return the retainer. As to Count II, the court adopted the Board's findings of violations of DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 6-101(A)(1), 6-101(A)(3), 7-101(A)(1), 7-101(A)(3), 9-102(B)(4). As to Count III, He accepted \$400 of a quoted \$750 attorney fees to restore a man's driving privileges after a probation violation. Respondent addresses a probation issue, but not the restoration of the driving privileges. The client was unable to contact him when he received a summons and a felony indictment. Respondent did not appear at the court, so the client became afraid and left, causing the court to issue a warrant for arrest. Respondent called the client that evening claiming he did not attend because he "had something else to do." Later respondent demanded a new retainer but missed several appointments to pick up the payment. He eventually went to the client's house and accepted \$500 in cash but gave no receipt. He failed to take care of the warrant. He demanded further payment and when the client and the client's mother would not pay, he was belligerent and directed obscenities at the mother." As to Count III, the court adopted the board's findings of violations of DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 7-101(A)(1), and 9-102(B)(4). As to Count IV, respondent was paid a \$10,000 retainer in a case involving felony criminal charges, but the family made the judge aware that they had difficulty communicating with him. The family learned from the prosecutor that respondent failed to inform them of a plea offer. He arrived later for trial and asked for a continuance. He was discharged. He told the judge he would refund a portion of his retainer, but he did not. As to Count IV, the court adopted the board's findings of violations of DR 1-102(A)(5), 1-102(A)(6), 6-101(A)(1), 6-101(A)(2), 6-101(A)(3), 7-101(A)(1), and 9-102(B)(4) and the court also found a violation of DR 1-102(A)(4). As to Count VI, he received notice from relator in May 2006, but did not respond until subpoenaed. Respondent became addicted to Percocet and Vicodin in 2005, then became addicted to Suboxone after being prescribed the drug for relief for withdrawal symptoms and began to use it illegally. He also used crack cocaine. He represented clients and accepted court appointment through this period of illegal drug use. In the summer of 2006, he was failing to take care of clients' cases. He recently entered outpatient treatment, signed an OLAP contract, and received inpatient treatment. The aggravating factors under BCGD Proc.Reg. 10(B)(1)(b), (c), (d), (h), and (i) were weighed with the mitigation of absence of prior record, full and free disclosure, cooperative attitude, and chemical dependency successfully treated. BCGD Proc.Reg. 10(B)(2)(a), (d), and (g). There was testimony that his chemical dependency contributed to his misconduct. There was also testimony as to his attention-deficit hyperactivity disorder, dysthymia, and anxiety disorder. The court adopted the board's recommended sanction and so ordered. Respondent is suspension for two years, with six months stayed upon conditions that he continue to comply with OLAP contract, provide a current report from a psychologist or psychiatrist, pay full restitution by or behalf of client who filed the grievance with the bar association the Client Security Fund, pay cost of the proceeding and commit no further violations; and serve a three year probation period subject to similar conditions.

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**Rules Violated:** DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 6-101(A)(1), 6-101(A)(2), 6-101(A)(3), 7-101(A)(1), 7-101(A)(3), 9-102(B)(4)

<b>Aggravation:</b> (b), (c), (d), (h), (i)		<b>Mitigation:</b> (a), (d), (g)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Two-year suspension, 6 months stayed		

*Heiland, Disciplinary Counsel v.*

116 Ohio St.3d 521, 2008-Ohio-91. Decided 1/17/2008.

As to Count I, respondent filed a complaint in common pleas court on behalf of his wife, her sister, and their parents to enjoin a health care company (Royal Manor) from discharging the mother from a nursing home (Palm Crest) for nonpayment of fees. The complaint asserted the mother was incompetent and an attached affidavit of respondent's wife stated the mother had a condition of suspected Alzheimer's disease so advanced she does not understand who or where she is. On January 31, 1998, a day after filing the complaint, respondent witnessed a document signed by the mother purporting to grant respondent's wife power of attorney to act on her behalf. Panel and board found violation of DR1-102(A)(6). As to Count II, on February 4, 1998, the father granted power of attorney to respondent's wife. Between 1998 and 2001, respondent, with his wife's assistance, deposited the mother's pension checks and the father's pension and Social Security checks into his client trust account. He also deposited some of his wife's earnings from a church into his client trust account. During this time, he deposited \$68,917.79 into his trust account, \$40,000 of which came from the in-laws and his wife. He wrote 292 checks for a total of \$60,195, from his trust account, 262 of the checks were payable as cash. Respondent has no records accounting for the money. He testified he gave the money to his wife as attorney-in-fact for her parents. From February 1995 to February 1999, the father resided at retirement village (Anchor Lodge). Respondent's wife wrote four checks totaling \$9,162 that were returned for insufficient funds. Anchor Lodge made repeated attempts to collect the debt and then caused criminal charges to be filed against respondent's wife for passing bad checks. The charges were dismissed after respondent paid Anchor Lodge \$4,141.86 by a check drawn on his trust account. From February 5, 1999 to January 6, 2000, the father resided at another facility (Parkvue), during which time respondent wrote 92 checks on the IOLTA account with 87 checks payable to cash and totaling \$28,530.86. Respondent could not account for the money received when he negotiated the checks other than to say he gave the money to his wife for the father's care. None of the withdrawals was used to pay Parkvue. When Parkvue discharged the father on January 6, over \$53,000 was owed to Parkvue. On May 5, 2000, the father was admitted to another facility (Avon Oaks). Respondent wrote 86 checks on the trust account payable to cash for a total of \$20,306.62. Respondent could not account for the money other than to say he gave the money to his wife to use for the father's care. None of the money was used to pay Avon Oaks. By November 2000, over \$29,000 was owed to Avon Oaks. Respondent was indicted by a grand jury on June 5, 2002 on three counts felony theft for his participation in the scheme to defraud his in-laws and various nursing homes from January 31, 1998 to April 30, 2001. He entered an Alford guilty plea on April 30, 2001 to three misdemeanor counts of defrauding creditors. Board concluded he used his client trust account to launder money from the couple's retirement funds. By depositing the money into his trust account and doling it out in cash to his wife, he and his wife were able to keep it from the nursing homes and Medicaid. Respondent overdraw his bank account on four separate occasions in August 1998. Board found violations of DR 1-102(A)(3), 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), and 9-102(B)(3). As to Count III, respondent's client trust account was entitled "Legal Aid Trust Account/State of Ohio/Eric K. Heiland. Board found a violation of DR 1-102(A)(4) because respondent had no affiliation with Legal Aid or any other government-subsidized legal-services organization. As to Count IV, respondent agreed at his deposition to provide federal income tax return for 1999, 2000, and 2001, but failed to do so. Twice the panel chair ordered him to produce the tax return, but he has not and at hearing refused to answer question regarding their production. Board found a violation of Gov.Bar R. V(4)(G). In aggravation, he acted with dishonest or selfish motive, showed a pattern of misconduct involving multiple offenses, failed to cooperate fully and submitted false evidence, made false statements, engaged in other deceptive practices, refused to acknowledge wrongful nature of his misconduct and that the victims suffered harm. BCGD Proc.Reg. 10(B)(1)(b), (c), (d), (e), (f), (g), (h). In mitigation, he had no prior discipline and has been sentenced for his misdemeanor. BCGD Proc.Reg.10(B)(2)(a), (f). Board recommended an indefinite suspension. Among other objections, respondent maintained the board was precluded from finding a Gov.Bar R. V(4)(G) violation because he invoked his Fifth Amendment right against self-incrimination. The court found his reliance on *Spevack*

*v. Klein* (1967), 385 U.S. 511 is misplaced. His failure to cooperate stemmed from events occurring before he invoked his Fifth Amendment privilege at the panel hearing. The court also rejected his claim that his due process right was violated when relator was allowed to amend the complaint less than 30 days before the hearing and respondent was given less than 20 days to answer the amended complaint. The court noted that the standards of due process in a disciplinary proceeding are not equal to those in a criminal matter, that a disciplinary proceeding is instituted to safeguard the courts and to protect the public from misconduct and is neither a criminal nor a civil proceeding. Gov.Bar R. V(6)(E) provides a respondent with 20 days to answer a complaint, but there is no such requirement for an amended complaint. Gov.Bar R. V(11)(D) states complaints may be amended at any time prior to final order of the court and the party affected by the amendment “shall be given reasonable opportunity to meet any new matter presented.” Respondent had ample opportunity to respond. Gov.Bar R. V and the regulations are to be construed liberally for the protection of the public, the courts, and the legal profession. The court found respondent’s conduct regarding promising but not producing the tax returns on several occasions gave panel had good cause to grant relator’s motion to amend the complaint within 30 days of the hearing. The court rejected respondent’s other objections as to a finding of a violation of DR 1-102(A)(4) in Count III and he objection to the recommended sanction of an indefinite suspension. Supreme Court of Ohio adopted the Board’s findings of misconduct and recommended sanction of an indefinite suspension and so ordered.

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**Rules Violated:** DR 1-102(A)(3), 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 9-102(B)(3); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> (b), (c), (d), (e), (f), (g), (h)		<b>Mitigation:</b> (a), (f)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

**Heisler, Cincinnati Bar Assn. v.**

119 Ohio St.3d 573, 2008-Ohio-5221. Decided 10/14/2008.

On 4/16/2007 respondent received an interim suspension for default of a child support order in *In re Heisler*, 113 Ohio St.3d 1455, 2007-Ohio-1751 (*Heisler I*). On 5/30/2007 respondent received a six-month suspension, all stayed, for misconduct in affiliating with non-lawyers to sell legal services in *Cincinnati Bar Assn. v. Heisler*, 113 Ohio St.3d 447, 2007-Ohio-2338 (*Heisler II*). On 12/21/2007, respondent was found in contempt for failing to pay the \$1,840.48 in costs ordered in *Heisler I* and was suspended until he purged himself of the contempt. See *Cincinnati Bar Assn. v. Heisler*, 116 Ohio St.3d 1448, 2007-Ohio-6842. On 1/8/2008, the interim child-support suspension was lifted upon notice respondent had cured the default. See *In re Heisler*, 116 Ohio St.3d 1465, 2008-Ohio-18. His license remains under suspension because of his continuing contempt of court. In this disciplinary case, respondent is charged with violations of DR 1-102(A)(6) and Prof.Cond.R. 8.4(h) for failing to comply with his child-support order. Board adopted the panel's finding of violations of DR 1-102(A)(6) and Prof.Cond.R. 8.4(h) and the recommended sanction of a one-year suspension with credit for prior suspensions. When respondent ended the business relationship which resulted in his discipline in *Heisler II*, he fell behind in his child support. He initially did not seek an adjustment of his child support because he hoped to bring himself into compliance with the existing payment schedule without disadvantaging his child. As of the panel hearing, he was working nights as a security guard, had cured the child support order, but had not been able to pay the costs to purge his contempt. His employment options were restricted by his suspension from practice, his administrative suspension of his driver's license, and his need to care for aged and ailing parents. In addition, he mistakenly sent his response to the wrong office when ordered to show cause why he should not be held in contempt. The court found a violation of DR 1-102(A)(6) for failure to comply with orders for child support prior to February 1, 2007 and a violation of Prof.Cond.R. 8.4(h) for failure to do so after February 1, 2007. The court ordered a suspension for one year, with credit for time served under the interim suspension ordered on April 16, 2007, with reinstatement conditioned upon, the requirements of Gov.Bar R. V(10)(A), and proof of compliance with the order in *Heisler*, 116 Ohio St.3d 1448, 2007-Ohio-6842.

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**Rules Violated:** Prof.Cond.R. 8.4(h); DR 1-102(A)(6)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> YES (x3)	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> One-year suspension		

**Helbling, Cincinnati Bar Assn. v.**

124 Ohio St.3d 510, 2010-Ohio-955. Decided 3/18/2010.

Respondent allowed his IOLTA account to be overdrawn and paid one client's debt with another client's money. Relator and respondent entered into a consent-to-discipline agreement, whereby they stipulated to the facts, violations, and sanction; the agreement was accepted by the Board. Respondent received two checks from a client totaling \$1790.92 to cover court reporting costs owed to Litigation Support Services and put them in his IOLTA. Four days later, respondent issued a check to Litigation Support Services for \$1790.92. In the weeks after issuing the check, respondent made several online transfers from his IOLTA to his business account and drew a check on his IOLTA for a separate client matter. Respondent also transferred \$3000 from his IOLTA to his business account for "fees earned," leaving a balance of \$556.30 in the IOLTA. At this time, the check to Litigation Support Services had still not been presented to the bank for payment. When Litigation Support Services did deposit the check, it was returned for insufficient funds. The next day, respondent deposited another client's \$1500 retainer in his IOLTA which allowed Litigation Support Services check to clear. Respondent admitted violating Prof.Cond.R. 1.15(a)(2)(iv) by failing to maintain a record of the first client's current balance and outstanding checks; 1.15(a)(3)(ii) by failing to maintain a record of which client's funds were affected by each IOLTA account credit and debit; 1.15(c) by failing to maintain \$1,790.92, advanced by the first client for litigation expenses, in his IOLTA; and 1.15(c) by causing a portion of a \$1,500 IOLTA deposit belonging to a another client to be misapplied to cover an overdraft. No aggravating factors were found. In mitigation, respondent had no prior disciplinary record, exhibited a cooperative attitude and full and free disclosure during the disciplinary process, and immediately funded his IOLTA with personal funds upon learning of the overdraft. BCGD Proc.Reg. 10(B)(2)(a), (c), and (d). Public reprimands have been imposed for similar conduct in *Piszczek* (2007) and *Holda* (2006). The Court adopted the board's recommendation of the consent-to-discipline agreement, and so ordered a public reprimand.

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**Rules Violated:** Prof.Cond.R. 1.15(a)(2)(iv), 1.15(a)(3)(ii), 1.15(c)

<b>Aggravation:</b> (a), (c), (d)		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Public Reprimand</a>		

*Henry, Disciplinary Counsel v.*

127 Ohio St.3d 398, 2010-Ohio-6206. Decided 12/22/2010.

Respondent neglected client matters, failed to keep clients reasonably informed about the status of their matters, failed to return unused fees and client documents, and failed to respond to the disciplinary investigation. Respondent did not file an answer to the complaint. A master commissioner granted relator's motion for default and made findings, conclusions, and a recommended sanction that were adopted by the Board. In Count One, a father retained respondent to represent him in a custody matter and paid respondent \$600. Respondent filed a motion to designate the father as the sole residential parent and legal custodian. The parties appeared for a hearing and advised the court an agreement had been reached and that respondent would prepare an entry memorializing the agreement. Respondent failed to submit a timely entry, so the court set another hearing. The father travelled to the hearing from his home in Indianapolis, only to learn he was four days early because respondent had given him the wrong date. The court denied respondent's motion for a continuance, and neither the parties nor their attorneys appeared at the hearing. The court ordered the parties to submit a motion for a final hearing or and agreed entry. When they failed to do so, the court dismissed the client's motion; but later granted the father's pro se motion for immediate or emergency change of custody. Board found violations of Prof.Cond.R. 1.3, 8.4(d), and 8.4(h). The court agreed. The court disagreed with the board's findings that respondent violated Prof.Cond.R. 1.16(e) by failing to provide a refund as requested by the father because that finding was not supported by sworn evidence and was thus dismissed by the court along with Prof.Cond.R. 1.5(a). Counts Two and Three were withdrawn by relator because he was unable to obtain affidavits from the grievants involved in those counts; however, respondent's failure to cooperate with regard to those counts still remain as violations. In Count Four, a woman paid respondent \$500 to obtain grandparent visitation rights. Respondent requested additional fees and received another \$650. Respondent never completed any work on her behalf. Whenever the client reached him by telephone, he explained that he was busy with another client and would call her back, but never did. Later, the client found that respondent's telephone number was disconnected. The board found violations of Prof.Cond.R. 1.3 and 8.4(d). In Count Five, respondent was hired by a couple to prepare a trust. Respondent quoted his fee as \$1500, and the husband paid respondent \$750 and signed some papers. Respondent subsequently missed a meeting with the clients. Two days later the husband paid respondent \$778, the remainder of the attorney's fees and filing fees. Respondent subsequently arrived two hours late to a meeting at the clients' home. Respondent said he was going home to change clothes and that he would return, but he never did. The clients tried to call respondent, but his voicemail was always full. They left messages four times when someone did answer the phone. Respondent never returned their calls. The clients terminated respondent and requested by certified mail that he return of their documents and money. Although he received the letter, he did not respond. The board found violations of Prof.Cond.R. 1.3, 1.16(d), 1.16(e), 8.4(d) and 8.4(h), but not Prof.Cond.R. 1.5(a), as it was not supported by clear and convincing evidence. The court agreed. In Count Six, a father paid respondent \$750 to represent him in a custody matter, and later paid an additional \$150 to prepare a motion for a protective order. Respondent filed a complaint to allocate parental rights and responsibilities on the father's behalf in March 2009. At the conclusion of an August 31, 2009 pretrial, the court ordered respondent to prepare a decision and submit it for the magistrate by September 18. Apparently this entry was not completed, as mediation was set for October. The mediation was later rescheduled for November, but respondent failed to notify the father. The father requested by certified mail a refund. Respondent received the letter but no money was returned to the father. The board found violations of Prof.Cond.R. 1.3 and 1.16(e). The court agreed. In Count Seven, a man paid respondent \$2500 in February 2007 to represent him against his former employer. In September 2009, the client attempted to call respondent to discuss the case, but found that respondent's number had been disconnected. The client cannot locate him. The client is unaware of any work done by respondent. The board found violations of Prof.Cond.R. 1.3, 1.4(a)(3), 8.4(d), and 8.4(h). The court agreed. In Count Eight, an heir paid respondent \$200 to probate a will. Respondent filed the application to probate the will, and for authority to administer the estate. He later filed inventory and appraisal, but then did little or nothing. Months

later, when the heir spoke with him he promised to complete the matter and he requested another \$1500, which was paid by cashier's check. The heir never heard from respondent again. When the heir called the office he was never there and when he stopped at the office he was told respondent was out of the office "indefinitely." The heir contacted another attorney who told the heir that the attorney should not have been paid until the estate administration was completed. The Board found violations of Prof.Cond.R. 1.3, 1.5(a), 8.4(d) and 8.4(h). The court agreed. In Count Nine, respondent was hired in February 2009 to probate an estate. Respondent was paid \$500 and given numerous documents, including vehicle titles, property deeds, bank records, and the deceased's death certificate. After trying to reach respondent for several weeks, the client met with respondent, who had not prepared any of the documents. Respondent asked the woman to sign the blank documents. Respondent led the client on for several months, all the while not completing the work. In mid September she was told he would not be in the office that week. In December 2010, she went to respondent's office to retrieve the documents and found that his office was no longer there. The board found violations of Prof.Cond.R. 1.3, 1.5(a), 1.16(d), 1.16(e), 8.4(d), and 8.4(h). Of the 11 letters of inquiry sent to respondent, respondent received the first four and the rest were returned as undeliverable. In January 2010, respondent called relator to say he was in a rehabilitation center and to send the grievances there. Respondent never responded to any of the grievances, did not answer the complaint, and did not respond to the default motion. The Board found violations of Prof.Cond.R. 8.1(b) and Gov.Bar R. V(4)(G) with respect to all the counts except Counts Two and Three. The court agreed with the master commissioner that respondent violated Prof.Cond.R. 8.1(b) and Gov.Bar R. V(4)(G) as to all the counts. In aggravation, there was a pattern of misconduct involving multiple offenses, a failure to cooperate with the disciplinary process and failure to acknowledge the wrongful nature of respondent's conduct, harm to vulnerable clients and a failure to return unearned fees. BCGD Proc.Reg. 10(B)(1)(c), (d), (e), (g), (h), and (i). In mitigation, there was no prior disciplinary record. BCGD Proc.Reg. 10(B)(2)(a). The respondent claimed to suffer from a chemical dependency, but no mitigating effect was given because the requirements of 10(B)(2)(g) were not met. The board recommended disbarment, which is the presumptive sanction for attorneys who accept retainers and fail to perform legal services- tantamount to theft. See *Moushey* (2004), *Weaver* (2004). The Court adopted the recommended sanction and ordered respondent be permanently disbarred.

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**Rules Violated:** 1.3, 1.4(a)(3), 1.5(a), 1.16(d), 1.16(e), 8.1(b), 8.4(d), 8.4(h); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> (c), (d), (e), (g), (h), (i)		<b>Mitigation:</b> (a)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Disbarment		

**Hickman, Toledo Bar Assn. v.**

119 Ohio St.3d 102, 2008-Ohio-3837. Decided 8/6/2008.

Respondent was suspended for six months stayed for neglecting two personal injury matters and lying to his clients about the neglect in *Toledo Bar Assn. v. Hickman*, 107 Ohio St.3d 296, 2005-Ohio-6513. During that suspension, relator found other misconduct and charged respondent with additional violations which resulted in a suspension for one year to be served consecutively to his first suspension for taking a retainer when there was no legally viable claim and for neglecting the criminal defense of a client in *Toledo Bar Assn. v. Hickman*, 113 Ohio St.3d 164, 2007-Ohio-1256. Relator filed this third complaint. In 2003, respondent received a retainer to investigate a possible forged will of which the client would have been a beneficiary. Respondent made misrepresentations to the client about the work he was performing. He falsely told the client a pretrial hearing and a trial date had been scheduled and that he had filed for discovery. Panel and board found violations of DR 1-102(A)(4) and 6-101(A)(3). On May 10, 2006, a client paid respondent a \$1,500 retainer for representation in a domestic relations matter. Respondent told the client he was suspended, but that his suspension was about to terminate and he would be reinstated in June or July 2006. This was not true because he was aware of additional grievances pending against him that would likely prevent his reinstatement. Two days after he received the client's check, he attended a disciplinary hearing on those grievances and stipulated to the charged misconduct and was informed that the hearing panel would recommend a one-year suspension in addition to the six months he was already serving. He did not inform the client he would not be reinstated and he did not refund the retainer. He deposited the retainer into his client trust account and agreed to transfer it to another attorney he occasionally worked with once the attorney started to represent the client. He did not pay the attorney any money and he avoided the client's calls. In response to the grievance, he stated the retainer was still in the trust account. However, the trust account had already dropped below the retainer amount. Panel and board found violations of DR 6-101(A)(3), 3-101(B), 9-102(A), 1-102(A)(4). As to another client, in August 2005, he accepted a \$12,500 retainer and placed it in his trust account. He made numerous withdrawals even though he had not earned the money. When it was gone, he asked for and received another \$5,000. A month latter, he asked for and received another \$5,000. Panel and board found violations of DR 2-106(A) and 9-102(B)(4). In aggravation, he committed the same type of misconduct-client neglect, improper retention of client funds, and lying to clients-in the two prior disciplinary cases; he acted with dishonest or selfish motive; engaged in a pattern of misconduct; failed to acknowledge the wrongful nature of the misconduct; and failed to make restitution to clients, many of whom were vulnerable. BCGD Proc.Reg. 10(B)(1)(b), (c), (g), (h), and (i). In mitigation, he cooperated. BCGD Proc.Reg. 10(B)(2)(d). Board adopted panel's recommended sanction of a permanent disbarment. Supreme Court of Ohio agreed and so ordered.

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**Rules Violated:** DR 1-102(A)(4), 2-106(A), 3-101(B), 6-101(A)(3), 9-102(A), 9-102(B)(4)

<b>Aggravation:</b> (b), (c), (g), (h), (i)		<b>Mitigation:</b> (d)	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Disbarment		

**Higgins, Disciplinary Counsel v.**

117 Ohio St.3d 473, 2008-Ohio-1509. Decided 4/3/2008.

As of April 8, 2005 respondent was suspended for failure to comply with CLE requirements of Gov.Bar R. X in *In re Higgins*, 105 Ohio St.3d 1490, 2005-Ohio1647. As of December 5, 2005, respondent was suspended for failure to comply with registration requirements of Gov.Bar R. VI in *In re Higgins*, 107 Ohio St.3d 1431, 2005- Ohio-6408. Upon granting relator's motion for default, a master commissioner made findings and conclusions which the Board adopted. Respondent undertook representation of a client in divorce and child-custody cases after his license had been suspended. Respondent did not reveal that his license had been suspended. The client paid a \$500 retainer and agreed to pay an hourly rate of \$75. Respondent billed the client \$300 in June 2005 and the client paid the invoice. The client received a second bill in August 2005 for \$525 and paid it in \$50 installments. The client received a third bill in October 2005 for approximately \$550 and paid \$250 in \$50 installments toward the balance. In June 2005, respondent filed the divorce complaint while under suspension. Respondent did not attend the December 14, 2005 scheduled trial in the custody dispute, but the client obtained custody in respondent's absence. Respondent did not appear at the February 1, 2006 pretrial hearing in the divorce action. He called the client the day before and told the client not to go. The client went anyway and learned from the bailiff that respondent had advised the court that neither he nor the client would appear. Respondent did not appear at a March 6, 2006 trial in the divorce case. Another attorney (Kuntz) apparently appeared on respondent's request. The court rescheduled the trial. Later in March, the client asked in an e-mail for a refund of his retainer and for the return of the file within a week. The client received nothing. The client eventually learned of the suspension and tried to meet with respondent but plans fell through. Respondent eventually e-mailed copies of some of the file documents. A few days before the rescheduled 5/10/2006 trial date, Kuntz told the client that respondent did not intend to appear. By e-mail, the client demanded a refund of the retainer and respondent replied that the client owed an outstanding balance. The client e-mailed back and demanded return of all the fees he paid. When the client threatened to file a grievance and insisted that respondent was not entitled to any money for services while under suspension, the respondent agreed to determine how much the client paid during suspension. The client never received any refund. The day before the divorce trial the client retained counsel. Respondent did not appear at the trial, but the new counsel did appear. Board adopted master commissioner's findings of a violation of DR 1-102(A)(4), 1-102(A)(6), 3-101(B), 6-101(A)(3), 7-101(A)(1), and 7-101(A)(2). Board adopted master commissioner's findings of a violation of Gov.Bar R. V(4)(G) for respondent's failure to respond to relator's investigative efforts. Board adopted master commissioner's recommended sanction of an indefinite suspension. The court noted that an indefinite suspension is warranted when a lawyer practices while under suspension and then fails to cooperate. Citations to *Crandall* (2003), *Barron* (1999), *Christensen* (1996). There was no mitigation. The court adopted the findings and recommended sanction and so ordered an indefinite suspension. One justice dissented in favor of permanent disbarment.

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**Rules Violated:** DR 1-102(A)(4), 1-102(A)(6), 3-101(B), 6-101(A)(3), 7-101(A)(1), 7-101(A)(2)

<b>Aggravation:</b> (a)		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

**Hildebrand, Cleveland Metro. Bar Assn. v.**  
127 Ohio St.3d 304, 2010-Ohio-5712. Decided 12/1/2010.

Respondent accepted fees from clients, failed to perform any work, failed to respond to clients' inquiries and to deliver clients' files upon request, and made false statements to relator regarding intentions to respond to grievances and failed to cooperate in the disciplinary investigation. A master commissioner considered relator's motion for default and made findings, conclusions, and a recommended sanction, . As to client one, in March 2007 respondent was retained by a woman to represent her son in a criminal appeal and bond reduction. Respondent was paid \$5000 as a retainer and another \$900 as a deposit for the trial transcript which the respondent failed forward to the court reporter. The day before the transcript was due in the court of appeals, the client realized respondent had not filed it. The client's fiancée borrowed \$900 and paid the court reporter. Respondent said he would refund the money, but never did. Respondent also ignored repeated requests from the mother for information about the status of the appeal and claimed that she owed him for additional work. After the appellate court dismissed the appeal, respondent was terminated. He failed to hand over the client file upon request to the new attorney. Respondent ignored investigatory letters and telephone calls from relator, and failed to submit subpoenaed documents after seeking an extension of time and promising to submit the materials. The board found violations of Prof.Cond.R. 1.3, 1.4(a)(3), 1.4(a)(4), 1.5(a), 1.15, 8.1(b), and Gov.Bar R. V(4)(G). As to Client Two, in March 2008 a man retained respondent in a replevin action. The man provided a detailed list of the property sought and paid \$625. Respondent never filed the action, failed to communicate with the client, and did not refund the client's money. The man filed a grievance. He promised relator he would send a written response to the grievance. He later claimed he had sent the written response. Later, he faxed the response to relator. Respondent further failed to respond to a subpoena duces tecum, even after promising to do so. The board found violations of Prof.Cond.R. 1.3, 1.4(a)(3) and (4), 1.5(a) and 8.1(b), and Gov.Bar R. V(4)(G). A third client sought respondent's help with a domestic relations matter. Respondent quoted a \$500 fee. He cashed a check from the client's father for \$200 and then failed to respond to the client's numerous phone calls. The client had to retain different counsel just days before the hearing. Respondent did not refund any of the \$200 even though the client's father made numerous phone calls and sent a certified letter requesting the refund. Respondent failed to respond to a letter from relator's investigator. The Board found violations of Prof.Cond.R. 1.3, 1.4(a)(3) and (4), 1.5(a) and 8.1(b), and Gov.Bar R. V(4)(G). Relator sent respondent a notice of intent to file a complaint via regular and certified mail. Respondent responded to relator, saying he had been in a car accident. Relator advised him that he should send his written response to by boar if he wished it to be considered by the probable cause panel. He sent it to relator, but failed to submit anything to the probable cause panel of the board. Relator sent him by certified mail a notice of intent to file a motion for default which was delivered and a letter sent by regular mail was not returned as undeliverable. The board recommended a permanent disbarment. No mitigating factors were present. In aggravation, respondent currently is under attorney registration suspension and had a former registration suspension, committed multiple ethics violations, caused economic harm to vulnerable clients and jeopardized appeal rights of one, and failed to cooperate in the disciplinary process and made false statements of his intentions to respond to grievances. BCGD Proc.Reg. 10(B)(1)(a), (d), (h), (e) and (f). The Court provided respondent an opportunity to make objections to the report, but none were filed. The court noted that taking retainers and failing to carry out employment is tantamount to theft and that permanent disbarment is the presumptive sanction. Citations to *Weaver* (2004), *Horan* (2009), *Marshall* (2009), *Helfgott* (2006), and *Moushey* (2004). The court so ordered a permanent disbarment. One justice in dissent would have imposed an indefinite suspension.

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**Rules Violated:** Prof.Cond.R. 1.3, 1.4(a)(3), 1.4(a)(4), 1.5(a), 1.15, 8.1(b); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> (a), (d), (h), (e), (f)		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> YES (x2)	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Disbarment		

**Hoff, Disciplinary Counsel v.**

124 Ohio St.3d 269, 2010-Ohio-136. Decided 1/26/2010.

Respondent accepted money to provide his services in a tax matter, but performed no work and failed to refund the money. Client hired respondent in May 2006 to help resolve some tax issues with the IRS. Respondent collected a \$5000 advance from the client, without explaining his hourly rate. In June 2006, client provided respondent with copies of her financial records and executed a power of attorney. Respondent said he would forward the power of attorney to the IRS and try to negotiate a compromise. In the following months, however, client continued to receive tax delinquency notices from the IRS. In the fall of 2006, client learned that the IRS had no record of respondent's power of attorney. The client and her husband attempted to contact and search for the respondent, but were unsuccessful and gave up in early 2007. Respondent later gave client's case file to relator during the investigation, but never refunded any of the \$5000. During the investigation, the respondent moved and failed to provide a new address to relator as promised. He did not answer the complaint. A master commissioner granted relator's motion for default judgment and made findings, conclusions, and a recommended sanction which the board adopted. The board found that respondent violated DR 1-102(A)(4) and Prof.Cond.R. 8.4(c); DR 1-102(A)(6) and Prof.Cond.R. 8.4(h); DR 6-101(A)(3) and Prof.Cond.R. 1.3; DR 7-101(A)(1) and Prof.Cond.R. 1.2(a); DR 7-101(A)(2); and Gov.Bar R. V(4)(G). In footnote 3, the court noted that the master commissioner and the board also found a violation of Prof.Cond.R. 1.4(A)(3), but the court did not accept the finding because it was not charged in the complaint. The board found the only mitigating factor to be respondent's lack of prior discipline. BCGD Proc.Reg. 10(B)(2)(a). Alternatively, the board found numerous aggravating factors, including: failure to cooperate in the disciplinary process, refusal to acknowledge the wrongfulness of his conduct and the serious harm he caused his vulnerable victim, and failure to make restitution. BCGD Proc.Reg. 10(B)(1)(e), (g), (h), and (i). Citing *Mathewson* (2007) for the general rule that neglect and failure to cooperate in the disciplinary investigation generally warrant an indefinite suspension, the board recommended an indefinite suspension. The Supreme Court of Ohio agreed with the board's findings and recommended sanction, and so ordered.

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**Rules Violated:** Prof.Cond.R. 1.2(a), 1.3, 8.4(c), 8.4(h); DR 1-102(A)(4), 1-102(A)(6), 6-101(A)(3), 7-101(A)(1), 7-101(A)(2); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> (e), (g), (h), (i)		<b>Mitigation:</b> (a)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Holda, Akron Bar Assn. v.*

125 Ohio St.3d 140, 2010-Ohio-1469. Decided 4/7/2010.

In 2006, respondent received a public reprimand for failing to maintain a retainer in a separate trust account, neglecting a legal matter, and failing to properly refund a retainer upon termination of the representation. *Akron Bar Assn. v. Holda*, 111 Ohio St.3d 418, 2006-Ohio-5860. Now, respondent failed to act with reasonable diligence and promptness in the representation of two clients and failed to deliver the case file to one of the clients. In Count I, in December 2008, a client retained respondent to handle a release from administration of his father's estate. The client gave respondent the signed probate documents, the will, and a \$1000 retainer. The respondent put the \$1000 in her IOLTA account, but withdrew it after a few months. Respondent never filed an estate case. The client terminated respondent and hired a new attorney. In June 2008, the new attorney requested the case file, but respondent did not turn it over until late September 2008. The Board adopted the panel's findings of violations of Prof.Cond.R. 1.3 and 1.16(d). Rule 1.16(d) was a charged violation that relator dismissed at the hearing. Under *Millonig* (1999), the panel could find a violation of Prof.Cond.R. 1.16(d) because violations originally charged but withdrawn by relator at the hearing can be found by the panel. In Count II, in June 2008 a client paid the respondent \$1500 to pursue custody of the client's grandchild. Respondent filed the motion and was notified of the date and time of the status hearing. Respondent failed to appear at the hearing and did not advise the court or her client that she would be late or unable to attend. Later, respondent agreed to file objections to the magistrate's order, but failed to do so. Board adopted the panel's finding of a violation of Prof.Cond.R. 1.3. In aggravation, the respondent had a prior public reprimand. BCGD Proc.Reg. 10(B)(1)(a). In mitigation, there was a lack of a dishonest or selfish motive, an agreement to make restitution, a cooperative attitude toward the disciplinary process, and several letters attesting to the respondent's good character. BCGD Proc.Reg. 10(B)(2)(b), (c), (d), and (e). In further mitigation, the panel was impressed that the respondent had moved her practice in with another attorney who will monitor her work and provide a structured environment and support staff. The board adopted the panel's recommended sanction of a one-year suspension, stayed on the conditions that respondent submit to an OLAP contract during the period of her stayed suspension, submit to the monitoring of her practice by relator during the stayed suspension, and take additional CLE training in law office management program; and refund \$1,000 to one client and \$1,500 to the other. The court noted that this case involves less egregious conduct than *Lowden* (2005) (two-year conditionally stayed suspension), but warrants a harsher sanction than *Watson* (2005) (six-month conditionally stayed suspension) because of respondent's prior discipline. The court adopted and so ordered the board's recommended sanction, but added the extra condition that respondent make restitution of the retainers to both clients by June 1, 2010.

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**Rules Violated:** Prof.Cond.R. 1.3, 1.16(d)

<b>Aggravation:</b> (a)		<b>Mitigation:</b> (b), (c), (d), (e).	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> One-year suspension, stayed		

**Hoppel, Disciplinary Counsel v.**

129 Ohio St.3d 53, 2011-Ohio-2672. Decided 6/8/2011.

Respondent accepted fees to represent clients in many bankruptcy proceedings, and then failed to perform the legal work. The parties stipulated to many of the facts and exhibits presented to the panel. Respondent accepted retainers and deposits for court costs totaling over \$14,000 for 14 separate client matters and converted them for personal use to buy cocaine. He repeatedly failed to perform legal work and appear at court hearings. He also failed to respond to clients, failed to keep them reasonably informed about their matters, and failed to reasonably consult with one client about the means to obtain her objectives. He collected excessive fees compared to what work he did. He dishonestly stated to the court that he needed to pay the bankruptcy fees in installments when he had already received the money from his clients, and further misrepresented to his clients that he needed more time to prepare their bankruptcy petitions. Respondent was found in contempt by one court and sentenced to two 60-day jail terms; he served 13 days before having his sentence suspended so that he could go to drug rehabilitation. Respondent's conduct amounted to one violation of Prof.Cond.R. 1.4(a)(1) and 1.4(a)(2); three violations of Prof.Cond.R. 1.1 and 3.3(a)(1); six violations of Prof.Cond.R. 8.4(d); ten violations of Prof.Cond.R. 1.4(a)(3); 13 violations of Prof.Cond.R. 1.5; 14 violations of Prof.Cond.R. 1.3 and 8.4(c); and 15 violations of 8.4(h). The Court adopted the findings of fact and conclusions of law. In mitigation, the parties stipulated to, and the board found, a lack of prior disciplinary record, full and free disclosure to the board, a cooperative attitude during the disciplinary process, and a cocaine addiction that rose to the level of chemical dependency mitigation. BCGD Proc.Reg. 10(B)(2)(a), (d), and (g). In aggravation, the board found a dishonest or selfish motive, a pattern of misconduct involving multiple offenses, harm to vulnerable victims, and a failure to make restitution. BCGD Proc.Reg. 10(B)(1)(b), (c), (d), and (i). The relator, panel and board recommended an indefinite suspension. Respondent objected to this finding, arguing that the board lacked information regarding restitution he made and failed to consider character evidence in mitigation. The Court found that respondent did present evidence of good character and, since the board meeting, had made restitution to his clients. The Court also rejected the board's finding of no prior discipline, noting that respondent was previously suspended for failure to properly register and found it to be an aggravating factor. The Court reiterated that the presumptive sanction for misappropriation of client funds is disbarment, but that substantial mitigation can overcome that presumption. Relying on *Greco* (2005), *Shouser* (2007), and *Washington* (2006), the Court ordered respondent be suspended from the practice of law for two years, with 18 months stayed on the conditions that he extend his OLAP contract for two years, maintain full compliance with it, and commit no further misconduct.

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**Rules Violated:** Prof.Cond.R. 1.1, 1.3, 1.4(a)(1), 1.4(a)(2), 1.4(a)(3), 1.5, 3.3(a)(1), 8.4(c), 8.4(d), 8.4(h)

<b>Aggravation:</b> (b), (c), (d), (i)		<b>Mitigation:</b> (a), (d), (g)	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Two-year suspension, 18 months stayed		

*Horan, Disciplinary Counsel v.*

123 Ohio St.3d 60, 2009-Ohio-4177. Decided 8/27/2009.

Respondent received an attorney registration suspension in *In re Attorney Registration Suspension*, 116 Ohio St.3d 1420, 2007-Ohio-6463. Respondent's whereabouts are unknown. She has been indicted on several felony charges, she accepted payment from clients and failed to take action, failed to advise a client that she did not maintain malpractice insurance, converted funds of a minor that she held in her capacity as guardian ad litem, and failed to respond during relator's investigation. As to Count I, board found a violation of Rule 8.4(b) and 8.4(h) arising from her indictments by a county grand jury on 28 counts of tampering with records, one count of forgery, and one count of grand theft for altering many fee applications to cover court-appointed work by replacing other attorneys' names and addresses with Jeff Stone and her home address; she altered fee applications for her services performed for indigent clients, by whitening out the reduced compensation granted by the court because her application were filed late and replacing these with the originals amounts. As to Count II, the board found a violation of Rule 1.3, 1.4(a)(3), 1.4(a)(4), 1.15(a), 8.4(h) and Gov.Bar. R. V(4)(G) for accepting a retainer to represent a client in a divorce action and filing a complaint, but not appearing at a scheduling conference, failing to maintain any contact with the client or refund the money, and signing the check over to a relative instead of depositing the funds into her IOLTA. As to Count III, the board found violations of Rule 1.3, 1.4(a)(3), 1.4(a)(4), 1.15(a), 8.4(c), 8.4(h), and Gov.Bar R. V(4)(G) for signing over a \$10,000 retainer in a criminal matter to a relative, not appearing for a preliminary hearing, although another attorney appeared on her behalf. The mother of the criminal defendant hired a new attorney and she has not heard from respondent or received a refund. As to Count IV, the board found violations of Rule 1.3, 1.4(a)(3), 1.4(a)(4), 8.4(c), 8.4(h), and Gov.Bar R. V(4)(G) for accepting \$1,000 to assist a client in reducing his child-support obligations due to a reduction in income, but taking no action for the client, and telling the client he would have to wait because she could not file it immediately because the court was too busy. The client was later found in default of the unreduced child-support order and had his driver's license suspended and accrued child-support arrearage of approximately \$4,000. As to Count V, the board found violations of Rule 1.3, 1.4(a)(3), 1.4(a)(4), 8.4(c), 8.4(h), and Gov.Bar R. V(4)(G) for accepting \$5,280 to represent a couple as plaintiffs in a defamation case. Respondent defended a civil protection order and wrote opposing party a letter requesting he refrain from slanderous comments, but then did not file a lawsuit, and she falsely informed the clients a suit had been filed in Preble County, but that court was too busy and then accepted additional fees to transfer the case to Butler County. As to Count VI, board found violations of Rule 1.3, 1.4(a)(3), 1.4(a)(4), 8.4(c), 8.4(h), and Gov.Bar R. V(4)(G) for accepting \$3,000 to represent a client in a custody matter but failing to appear at the custody hearing, after which the client attempted to contact her and learned she had left the country, and failing to attend a traffic matter for which the client had retained her. As to Count VII, the board found a violation of DR 1-104(A) and Gov.Bar R. V(4)(G) for not responding to relator's inquiries and for not informing a divorce client she did not maintain malpractice insurance during the original divorce action, then when the client's legal malpractice against her settled for \$500,000 it remains uncollected, in part because respondent did not maintain malpractice insurance. As to Count VIII, board found violations of DR 9-102(B)(3), 9-102(B)(4), and Gov.Bar R. V(4)(G) for not paying funds to a beneficiary on his 18th birthday as respondent was supposed to do as guardian ad litem of the minor beneficiary's trust account and the beneficiary has been unable to contact respondent or to locate the money. In aggravation, respondent took advantage of vulnerable clients, including a teenage beneficiary, for monetary gain; there was a pattern of behavior, the misconduct resulted in financial hardship for the clients and some had to obtain new counsel for services they had paid respondent to perform; she took advantage of the indigent system and falsified documents to collect fees she did not earn; converted funds of a minor and abused her fiduciary position; ignored the Board's attempts to contact her and fled the country to avoid criminal charges. BCGD Proc.Reg. 10(B)(1)(h), (c), (b), (g), (i), (e). There was no mitigation of which the Board was aware. Board recommended permanent disbarment. The court adopted the findings, conclusions, and recommended sanction and so ordered a permanent disbarment.

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**Rules Violated:** Prof.Cond.R. 1.3, 1.4(a)(3), 1.4(a)(4), 1.15(a), 8.4(b), 8.4(c), 8.4(h); DR 1-104(A), 9-102(B)(3), 9-102(B)(4); Gov.Bar. R. V(4)(G)

<b>Aggravation:</b> (b), (c), (e), (g), (h), (i)		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Disbarment		

**Horton, Disciplinary Counsel v.**

124 Ohio St.3d 434, 2010-Ohio-579. Decided 2/24/2010.

Respondent endorsed settlement checks without the clients' authority and converted the proceeds to her use. In February 2005, respondent was retained by a couple to recover for injuries they and their daughter sustained in an automobile accident. Respondent explained the recovery would probably be less than \$5,000 because the injuries were minor. The couple agreed to pay a 1/3 contingent fee, but did not authorize respondent to resolve the dispute by entering into a final settlement agreement. Respondent negotiated a settlement and in the summer of 2005 accepted a \$3,800 settlement offer without notifying the clients or obtaining their consent to the agreement; forged their names on three separate checks; cashed the checks; and converted the proceeds. She did not provide the tortfeasor's insurance carrier with the releases she had promised. In October 2006, the clients contacted her and she falsely represented she had filed suit and a trial was scheduled for early 2007. After authorizing another lawyer to investigate, the couple learned of the misrepresentation and conversion. Respondent sent the clients a cashier's check for \$2,500 and retained \$1,300 as fees. Respondent did not continuously maintain a trust account. Board adopted the panel's findings of violations of DR 1-102(A)(4), 1- 102(A)(6), 6-101(A)(3), 9-102(A), 9-102(B)(4), 1-102(A)(5), 7-101(A)(2). In mitigation, the Board found "significant" evidence weighing in favor of leniency: serious illness in her family, caretaking demands that prevented her from sustaining her formerly busy practice, her husband's job loss caused her to lose her home and file for bankruptcy; no prior discipline since she began practice in 1991; cooperation; partial restitution to the clients; witness testimony as to character and reputation. BCGD Proc.Reg. 10(B)(2)(a), (c), (d), (e). Also, respondent acknowledged the gravity of her ethical breaches and sought counseling from OLAP for stress management. The Board found respondent case similar to *Mishler* (2008). The Board adopted the panel's recommendation of a two-year suspension with one year stayed on conditions aimed at her rehabilitation. The supreme court agreed with the Board's recommended finding and recommended sanction and so ordered a two-year suspension with the second year stayed on condition that she complete the three-year treatment regimen in accordance with OLAP recommendations; complete 12 hours of CLE in law-office, caseload, and time management, in addition to the CLE requirement of Gov.Bar R. X; complete one year monitored probation pursuant to Gov.Bar R. V(9), and repay the client the \$1,300 she charged in fees.

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**Rules Violated:** DR 1-102(A)(4), 1- 102(A)(6), 6-101(A)(3), 9-102(A), 9-102(B)(4), 1-102(A)(5), 7-101(A)(2)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (c), (d), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Two-year suspension, 12 months stayed		

*Hoskins, Disciplinary Counsel v.*

119 Ohio St.3d 17, 2008-Ohio-3194. Decided 7/3/2008.

Respondent, a common pleas court judge, attempted to conceal a conflict of interest, secretly benefit from illegally acquired funds, mishandled two estates, made public comments on a pending case, and showed favoritism in sentencing. In Count IV and VII, the most egregious counts, respondent attempted to conceal a possible conflict of interest and benefit from illegally acquired funds. Respondent and his wife created Three Irish Sons, Inc. and purchased the Fifth Third Building with loans from a bank planning to lease office space to the Adult Parole Authority, members of which regularly appeared in respondent's court as witnesses because he was the only Common Pleas judge in the county. Eventually he was informed that this lease could show impropriety and might violate R.C. 2921.42 (having an unlawful interest in a public contract), prompting him to take steps to divest himself from the property. Over the course of several months his wife and his friend, Yeullig, took ownership of the property and the corporation on paper, but respondent continued to exercise control over the building. In order to solve his financial problems, dissolve the appearance of impropriety, and get rid of the Fifth Third building, respondent began negotiations to convey the property and Three Irish Sons for an exaggerated value, \$595,000 more than the bank's appraised value, to David Bliss, a felon convicted for a credit card scam that respondent believed was highly lucrative. As part of a criminal investigation of respondent, Bliss wore a wire for the negotiations and recorded respondent giving step by step directions to Bliss about how to get his criminally acquired money back into the country while evading money laundering charges and explaining how the acquisition would benefit both Bliss and respondent. As to Count IV, the court adopted the board's findings of violations of Canons 1, 2, 3(E)(1), and 4 and DR 1-102(A)(4) and as to Count VII violations of Canons 1, 2, and 4 and DR 1-102(A)(4), (5) and (6). The court noted that respondent's acquittal of criminal misconduct does not preclude the court from finding the conduct unethical. In Count I, respondent made misleading comments about a pending case involving his employee, Sandlin that possibly swayed potential jurors. The court adopted the board's findings of violations of Canon 3(B)(9) and DR 1-102(A)(5). Further, in Counts II and III, respondent failed to disqualify himself on two cases, in Count II, a criminal case of an employee's son, whom respondent had represented in private practice, and in Count III, a foreclosure action against the employee and her husband. As to Count II, the court adopted the board's findings of violations of Canons 1, 2, and 4 and DR 1-102(A)(5). As to Count III, the court adopted the board's findings of violations of Canons 1, 2, and 4. In Counts V and VI, respondent mishandled the estates of his uncle and cousin while in private practice and also while holding judicial office when he failed to follow the prescribed probate court rules and file the required accountings, made 26 undocumented withdrawals, at least 20 debit withdrawals, paid his personal creditors with estate assets at least 16 times, and paid himself attorney and fiduciary fees without probate court approval five times, totaling \$64,629.86, and kept few records that were rife with inaccuracies and omissions. The court adopted the Board's findings as to Counts V and VI of violations of DR 1-102(A)(4), (A)(5), (A)(6) 6-101(A)(3), and 9-102(B)(3) and Canons 1, 2, and 4 and also as to Count VI, DR 2-106(A). In Count VIII, respondent, who had properly sentenced his friend's cousin for sexual imposition, suspended the sentence after a lunchtime conversation with his friend and misrepresented the reason for the suspension when he characterized the order as "Upon Motion of the Defendant," although the defendant had not so moved. As to Count VIII, the court adopted the Board's findings that respondent violated Canons 1, 2, 4 and 4(A) of the Code of Judicial Conduct and DR 1-102(A)(4), (5), and (6). In aggravation, respondent's acts demonstrated a pattern of dishonest and selfish motives. BCGD Proc.Reg. 10(B)(1)(b) and (c). Further, he committed multiple offenses, submitted false evidence and statements, was deceptive throughout the disciplinary process, refused to acknowledge the wrongful nature of some of his conduct, and failed to make restitution by never repaying one of the estates. BCGD Proc.Reg 10(B)(1)(d), (f), (g), and (i). He also failed to heed the warnings of others who tried to persuade him to avoid the ethical violations here. In mitigation, he has no prior disciplinary record and there was testimony as to his generally exemplary character and judicial temperament apart from the events at bar. BCGD Proc.Reg. 10B(2)(a) and (e). Although respondent did acknowledge some wrongful conduct, respondent's lengthy delay in repaying

one estate over \$8,000 in debit withdrawals minimized the mitigating impact of the voluntary repayment. There was no evidence of substance abuse or mental illness for mitigation. The court discussed higher standard of ethical conduct for judges, clear and convincing evidence, and applicable precedent. The Supreme Court agreed with the Board’s recommended sanction of disbarment and so ordered.

**Rules Violated:** DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 2-106(A), 6-101(A)(3), 9-102(B)(3); Code of Judicial Conduct Canons [1](#), [2](#), [3\(B\)\(9\)](#), [3\(E\)\(1\)](#), [4](#), [4\(A\)](#)

<b>Aggravation:</b> (b), (c), (d), (f), (g), (i).		<b>Mitigation:</b> (a), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> YES	<b>Sanction:</b> Disbarment		

**Howard, Disciplinary Counsel v.**

123 Ohio St.3d 97, 2009-Ohio-4173. Decided 8/25/2009.

On August 30, 2007, respondent received and interim felony suspension in *In re Howard*, 114 Ohio St.3d 1515, 2007-Ohio-4425. In April 2007, respondent pleaded guilty to assault with a deadly weapon in violation of R.C. 2903.11, a felony of the second degree, and to inducing panic in violation of R.C. 2917.31(A), a felony of the fifth degree. The underlying incident occurred on the night of January 19, 2007 when a Dayton police officer entered the back yard of respondent's residence to investigate a vehicle that the officer thought was stolen. A standoff between the police and respondent lasted several hours. The police had been dispatched in uniform and in a marked cruiser to identify and recover a stolen car found in an alley near respondent's home. While waiting for a tow truck in a high crime neighborhood, the officer saw another car parked, almost touching respondent's unlit car. The officer fixed his searchlight on the back of the house and got out of the cruise to get the license plate to run a check on the car. Respondent awoke to the search light, but could not see the officers. Respondent discharged a firearm out the window to frighten whoever was in the yard. The officer did not identify himself as the police, but shouted "Hey Buddy, did you throw something or shoot something at me?" He heard only a low growl. After circling the house, he saw someone at an open window. He shined his flashlight and demanded, "Now are you going to talk to me now or what." The officer saw a white arm reach out with a black handgun. Respondent fired the gun and closed the window quickly. Backup officers arrived, secured the area, blocked traffic, warned neighbors to remain indoors, and attempted to communicate by telephone and a bullhorn. The bullhorn was respondent's first indication that the person in the backyard was a police officer. The SWAT team was called in. They found a bullet hole in the first officer's car in the rear passenger door. Respondent refused to leave the house, until tear gas forced him out. He was sentenced in April 2007 and placed under five years of intensive community supervision, requiring him to undergo crisis care assessment and comply with recommended treatment; attend a "Victim Impact Panel/Victim of Violence program; obtain verifiable full-time employment; move from that address; and pay all court costs, a \$50 supervision fee, and restitution of \$6,198.95. Because of his good behavior, the court modified the terms of the sentence in May 2008 to reduce his intensive community supervision to basic probation and in September 2008 to reduce it to "monitored time supervision." Board adopted the panel's finding that respondent violated DR 1-102(A)(3) and (6). In mitigation, respondent practiced 30 years with no prior discipline; he cooperated; he acknowledge his criminal conduct and convictions he is paying the price for his crimes by paying fines and penalties; he had letters of support of his character and reunion that his family and a retired police sergeant had written for the presentence investigation. BCGD Proc.Reg. 10(B)(2)(a), (d), (f). In aggravation, he shot a loaded handgun twice at a uniformed police officer at short range. Though not an aggravating or mitigating circumstance, respondent's explanation for his conduct during the shootoff troubled the panel and board. Among other things he said "it seemed like he was being attacked by terrorists or something." He believed at the time that the police were trying to hurt or kill him. He did not offer proof of a mitigating mental disability, but he acknowledged a possible problem and promised to comply with any conditions of reinstatement that included a mental-health evaluation. The extenuating facts found by the Board were that respondent lived in a high crime neighborhood, his car had been stolen twice, the investigating officer did not properly identify himself before he began searching respondent's property. Panel recommended an indefinite suspension, but the Board recommended a two-year suspension. Supreme Court of Ohio adopted the findings and conclusions of violations of DR 1- 102(A)(3) and 1-102(A) (6) and the recommend sanction of a two-year suspension and so ordered.

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**Rules Violated:** DR 1- 102(A)(3), 1-102(A)(6)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (d), (f)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> NO	<b>Sanction:</b> Two-year suspension		

*Hunt, Dayton Bar Assn. v.*

127 Ohio St.3d 390, 2010-Ohio-6148. Decided 12/21/2010.

Respondent failed to act with reasonable diligence and promptness, failed to keep a client informed, and failed to cooperate in the disciplinary process. A consent-to-discipline agreement was rejected by the panel and a hearing was held. In Count One, respondent filed a complaint for two clients who hired him to represent them in a medical negligence lawsuit. Respondent then subsequently failed to obtain an expert witness, respond to discovery, or respond to separate motions for summary judgment. As a result the case was dismissed, but respondent did not notify his clients of the dismissal. On several occasions, he also failed to respond to their inquiries during the representation. The board adopted the panel's findings of violations of Prof.Cond.R. 1.3 and 1.4. Count Two was dismissed by relator prior to the hearing. In Count Three, another client retained respondent in a divorce proceeding. Respondent failed to communicate with her and filed an answer to the complaint out of rule. The client filed a grievance. Respondent failed to cooperate with the disciplinary investigation by ignoring relator's repeated attempts to contact him by telephone and certified mail. The board adopted the panel's finding of a violation of Gov.Bar R. V(4)(G). The court adopted these findings of fact and conclusions of law. In aggravation, there are multiple offenses and a failure to cooperate in the disciplinary investigation. BCGD Proc.Reg. 10(B)(1)(d) and (e). In mitigation, there is a lack of a prior disciplinary record. BCGD Proc.Reg. 10(B)(2)(a). The parties originally stipulated to an 18-month suspension, with the possibility of reinstatement after 6 months conditioned on a favorable mental health evaluation. The panel rejected this stipulated violation and instead recommended a six-month suspension. The panel noted that the stipulated sanction was inappropriate because the evidence did not establish the conduct was the result of a medical or psychological infirmity. The board adopted the panel's recommended sanction. Neither party objected to the recommended six-month suspension. In *Marosan* (2006) an attorney received a six-month suspension for neglecting a case and failing to cooperate in the disciplinary investigation. The Court agreed with the board's recommended sanction and so ordered that respondent be suspended for six months.

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**Rules Violated:** Prof.Cond.R. 1.3, 1.4; Gov.Bar R. V(4)(G)

<b>Aggravation:</b> (d), (e)		<b>Mitigation:</b> (a)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Six-month suspension		

**Hunter, Columbus Bar Assn. v.**

130 Ohio St.3d 355, 2011-Ohio-5788. Decided 11/15/2011.

Respondent pleaded guilty to failing to report a cash receipt of greater than \$10,000, mishandled two clients' matters, and misused his trust account. Respondent received an interim felony suspension in May 2010. The parties stipulated to the following facts and misconduct. In Count One, respondent pleaded guilty to receiving more than \$10,000 in cash and failing to report it, in violation of 31 U.S.C. 5331 and 5322(a). He received six months in prison, was fined \$100, is subject to 3 years of supervised released, must receive substance and mental health treatment and do 50 hours of community service. This conduct violated Prof.Cond.R. 8.4(b) (illegal act adversely reflects on fitness to practice law), 8.4(c) (dishonesty, fraud, deceit, or misrepresentation), 8.4(h) (conduct adversely reflects on fitness to practice law). In Count Two, respondent took a case and money from a client, but did little if any work. Respondent failed to respond to client and when he did, told her he was doing work that he was not doing. The client had to obtain new counsel and was harmed by his actions. This conduct violated Prof.Cond.R. 1.1 (competent representation), 1.3 (reasonable diligence), 1.4 (reasonable communication with client), and 8.4(h). In Count Three, respondent took a case and did some of the work required. However, with a lot of work still to do, respondent withdrew from the case due to issues with the IRS. Respondent found a new lawyer for his client and transitioned them, but did not ever withdraw from the case. Respondent stipulated that he believes he earned the fee, but that he would go to binding fee arbitration if the client requested. This conduct violated Prof.Cond.R. 1.1, 1.3, 1.4, and 8.4(h). In Count Four, respondent admitted that he had overdrafts from this trust account and that he failed to keep adequate records of those accounts. This conduct violated Prof.Cond.R. 1.15(a) (requiring client funds be held in a separate account), and 8.4(h). The Court agreed with the above findings. The Court noted that the board dismissed many violations that were stipulated to, but not proven by clear and convincing evidence. The Court also found that two violations charged in Count Two, Prof.Cond.R. 1.16(d) and 1.16(e) were not proven by clear and convincing evidence and dismissed them also. In aggravation, respondent acted with dishonest or selfish motive, engaged in a pattern of misconduct involving multiple offenses, and harmed vulnerable clients. BCGD Proc.Reg. 10(B)(1)(b), (c), (d), (h). In mitigation, respondent lacked a prior disciplinary record, cooperated in the investigation, and had other penalties imposed upon him. BCGD Proc.Reg. 10(B)(2)(a), (d), (f). The board recommended an indefinite suspension, with the requirement of restitution to all parties; neither party objected to this recommendation. Citing *Smith* (2011), *Zapor* (2010), *Kellogg* (2010), *Gittinger* (2010), and *Bennett* (2010), the Court agreed with the board's recommended sanction.

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**Rules Violated:** Prof.Cond.R. 1.1, 1.3, 1.4, 1.15(a), 8.4(b), 8.4(c), 8.4(h)

<b>Aggravation:</b> (b), (c), (d), (h)		<b>Mitigation:</b> (a), (d), (f)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Ita, Disciplinary Counsel v.*

117 Ohio St.3d 477, 2008-Ohio-1508. Decided 4/3/2008.

Respondent and relator entered into a consent-to-discipline agreement recommending a public reprimand for violations of DR 1-102(A)(5) and 6-101(A)(2). The consent-to-discipline agreement was adopted by the panel, the board, and the Supreme Court of Ohio. In February 2003, respondent who was an associate in a law firm took over representation of a personal injury client from a lawyer who left the firm. The client had been injured in a motor vehicle accident in October 2002. Respondent learned from reviewing his predecessor's interview notes that the client had been married at the time of the accident. The notes did not disclose that the client, who later would file for divorce, was living separately from the wife at the time of interview. Respondent did not ask the client about his marital status and did not consult the wife. In October 2004, respondent filed the complaint and without consent, included the wife as a party asserting a claim for loss of consortium. By September 2005 the defense had offered a settlement. While discussing the settlement offer with the client, respondent explained that both the client and the wife would be required to sign the settlement agreement. The client said he was separated and he did not want his wife to be a party to the settlement agreement. Respondent reviewed the file and realized that the wife had not signed a fee agreement with the law firm and had not had any contact at all with the law firm. Respondent explained to the client that the defendant would likely require the client to indemnify the defendant for the loss-of-consortium claim. Defendant's counsel agreed to pay the \$15,000 settlement if the client dismissed the wife's consortium claim with prejudice and agreed to indemnify the defendant for the potential value of that loss. Respondent accepted these terms on the client's behalf and the settlement was consummated and the court was advised of the agreement. In September 2005, respondent filed an entry of voluntary dismissal with prejudice. The client later filed for divorce, and in November 2005, the wife discovered she had been a party to his lawsuit, and the court had dismissed her claim with prejudice. Respondent, who never represented the wife and had no authority to file and then dismiss a claim on her behalf, violated DR 1-102(A)(5) and 6-101(A)(2). Accepting the consent to discipline agreement, the Supreme Court of Ohio ordered a public reprimand for violations of DR 1-102(A)(5) and 6-101(A)(2).

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**Rules Violated:** DR 1-102(A)(5), 6-101(A)(2)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Public Reprimand</a>		

*Jackel, Ohio State Bar Assn. v.*

118 Ohio St.3d 186, 2008-Ohio-1981. Decided 5/1/2008.

A consent-to-discipline agreement was entered by the parties, accepted by the panel, and adopted by the board. Respondent accepted clients from United Financial Systems Corporation, a company that uses direct mailings to market estate-planning services in Ohio and other states. United Financial hired non-lawyers to meet with prospective clients, obtain personal financial information necessary for estate planning, discuss various options for estate planning, and then forward the information to attorneys to actually draw up the estate plan. Clients would pay United Financial directly, who would then pay respondent per case. While licensed in Indiana, respondent worked with United Financial from March 1999 until sometime in 2000. She moved to Ohio in late 2002, and resumed her relationship with United Financial and from 2002 to 2004 performed estate-planning services for Indiana residents both directly and through United Financial. She passed the Ohio bar in 2004 and began accepting referrals from United Financial of client who lived in Ohio. She moved to Michigan in April 2005 and continued to perform services for Ohio and Indiana resident through United Financial. She ended her affiliation with United Financial sometime in March 2006. In December 2004, while residing in Ohio, she received information from United Financial for a woman (Momot) and she spoke with her by phone. She prepared the estate-planning documents and forwarded the documents to United Financial. She never met with Momot. A United Financial representative took the documents to Momot for her signature. United Financial charged Momot \$2,495 and paid respondent \$175 for preparing the documents. Pursuant to the consent to discipline agreement respondent's acts constituted violations of DR 2-103(C) (prohibiting a lawyer from requesting an organization to recommend or promote the use of the lawyer's services), 3-101(A) (prohibiting a lawyer from aiding a non-lawyer in the unauthorized practice of law), 3-101(B) (prohibiting a lawyer from practicing law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction), 3-102(A) (prohibiting a lawyer from sharing legal fees with a non-lawyer), and 4-101(B)(1) (prohibiting a lawyer from knowingly revealing a client's confidences or secrets). The parties stipulated in the agreement to mitigating factors including respondent had no prior disciplinary record, no evidence of a dishonest or selfish motive, termination of her relationship with United Financial upon discovery of the violations, and full cooperation with these proceedings. BCGD Proc.Reg. 10(B)(2)(a), (b), (d). Pursuant to the consent to discipline agreement the parties agreed and the panel and board accepted a two-year suspension from the practice of law in Ohio. The Supreme Court also accepted this agreement and therefore suspended respondent for two years.

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**Rules Violated:** DR 2-103(C), 3-101(A), 3-101(B), 3-102(A), 4-101(B)(1)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (b), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Two-year suspension</a>		

*Jackson, Cuyahoga Cty. Bar Assn. v.*  
120 Ohio St.3d 173, 2008-Ohio-5378. Decided 10/23/2008.

A consent-to-discipline agreement was entered by the parties. Respondent failed to account to a client for his time, fees, and expenses and failed to apprise a client that he does not maintain professional malpractice insurance. Although respondent rarely accepted domestic-relations cases, he agreed to represent a client in a divorce. The client discharged him after 10 months of service. He helped the client find new counsel and transferred the file. The client asked for a complete accounting of fees paid and time expended. Respondent did not rely to the request. Respondent did not keep contemporaneous records, despite having agreed to charge an hourly fee. After the client filed a grievance, respondent reconstructed a detailed record of time spent and expenses incurred. He substantiated 104.9 hours at \$225 per hour, for a total cost of \$23,602.50. The client claims he paid in excess of \$20,000, but respondent found records for payments of only \$13,098.75. Respondent did not inform the client he had no professional liability insurance. In mitigation, there was no prior discipline, lack of ill motive, full and free disclosure and overall good character and reputation. BCGD Proc.Reg. 10(B)(2)(a)(b), (d), and (e). There were no aggravating factors. Panel and board adopted the consent to discipline agreement recommending a public reprimand for violations of DR 1-104(A) and (B) and 9-102(B)(3).

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**Rules Violated:** DR 1-104(A), 1-104(B), 9-102(B)(3)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (b), (d), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Public Reprimand</a>		

*Jackson, Disciplinary Counsel v.*

127 Ohio St.3d 250, 2010-Ohio-5709. Decided 11/30/2010.

Respondent charged a clearly excessive fee, divided fees with other lawyers without disclosing the terms of the division, intentionally damaged or prejudiced a client, and knowingly made false statements of material fact during the disciplinary investigation. As to Count I, respondent refused to provide a refund to client who had hired him in December 2007 and paid \$25,000, but then 15 days later terminated his services and requested a \$22,000 refund. Respondent did not answer several letters he received from the client's representative. The client was an artist charged with carrying a concealed weapon in an airport in Cleveland. Respondent claimed he earned the \$30,000 flat fee he had quoted the client by making sure bond was not excessive, obtaining the client's release from jail, negotiating with federal authority so that the client did not face federal prosecution, and having the matter prosecuted by the city. The board adopted the panel's findings of violations of Prof.Cond.R. 1.5(a) and 1.16(e). Pursuant to Gov.Bar R. V(6)(H), the panel dismissed six other alleged violations. As to Count II, in October 2004, a man executed a limited power of attorney authorizing respondent alone to seek the return of \$55,000 that a police department had seized during a traffic stop. The man agreed to pay respondent a \$750 flat fee plus 30 percent of any funds recovered. At respondent's request, another attorney served as co-counsel in exchange for a portion of the fees. The client did not consent to the arrangement and did not receive a written notification of the arrangement. When the client told the co-counsel he did not want his service, the co-counsel claimed he was owed \$5,000 and had a lien against any money the client received in the case. After an unfavorable court ruling and consulting with the client, respondent filed a notice of appeal. A second attorney, unaffiliated with respondent's firm agreed to be co-counsel and serve as lead counsel on the appeal and to receive a portion of the fees. As with the first co-counsel agreement, there was no disclosure to or consent by the client. During the pending appeal, respondent and the co-counsel filed, without the client's consent or knowledge, a federal civil rights action on the client's behalf. After the appellate court affirmed the trial court, respondent settled the related civil rights lawsuit for \$2,500 without the client's knowledge and filed a stipulation to dismiss the action with prejudice. Respondent signed the client's name without the client's consent on the settlement check which was made payable to respondent, the two co-counsel attorneys, and the client. Respondent deposited the check into his client trust account and withdrew \$2,500 which he claims to have distributed to his former co-counsel in the municipal court case. He admits he did not distribute any of the settlement proceeds to the client or provide a closing statement. He did not comply with the client's request for the file and claims that co-counsel was responsible for maintaining the file. The board adopted the panel's findings of violations of DR 2-107(A)(2); 1-102(A)(6) and Prof.Cond.R. 8.4(h); 7-101(A)(3); 9-102(B)(4) and 1.15(d). The Board also found a violation of DR 1-102(A)(4). The panel made no finding as to the alleged violation of DR 1-102(A)(4), but did not dismiss it like several other alleged violations. As to Count III, respondent made inconsistent statements of material fact throughout the disciplinary proceeding. He made inconsistent statements in depositions as whether he went to the airport and talked to the FBI or he turned around before reaching the airport. He gave conflicting testimony about the handling of the settlement check, for example, he testified that co-counsel signed the client's name, but he later admitted he signed the client's name. He claimed no direct knowledge as to how or to whom the funds were distributed, then in a written response to relator he stated the client authorized the payment to the former co-counsel. He testified he presented the former co-counsel with the entire amount of the settlement, but the former co-counsel testified he received only \$600. The board adopted the panel's finding of violations of Prof.Cond.R. 8.1(a) and Gov.Bar R. V(4)(G). The court adopted the board's findings and conclusions as to all three counts. In aggravation, he committed multiple offenses and made false and inconsistent statements in the disciplinary process. BCGD Proc.Reg. 10(B)(1)(d) and (f). In mitigation, he had no prior discipline, reported good-faith effort to make restitution to the Count I client, and had eight letters of support. BCGD Proc.Reg. 10(B)(2)(a), (c), (e). Although not cited as mitigating factor, respondent's volunteer work and creation of a scholarship program for underprivileged students at his college alma mater were noted. The Board rejected the panel's recommended sanction of a suspension for two year with the second year stayed on

the conditions he pay restitution to the Count I client and get education in proper law-office management. The board recommended a two-year suspension with no stay. The court considered sanctions imposed in other cases in which the court imposed suspensions of 18-24 months with some portions stayed, *Davis* (2009), *Kealy* (2010), *Larson* (2009), *Mishler* (2008), but the court noted that none of these cases reflect the full spectrum of ethical violations that respondent committed. The court noted respondent's limited cooperation is outweighed by his misconduct continuing through the investigation and panel hearing; the record reflects he has violated his agreement to repay the Count I client, his character evidence is of limited value in mitigation. The court ordered a two-year suspension, with six months stayed on condition that respondent commit no further misconduct. Comply with his written agreement to pay restitution to the Count I client, serve one year of monitored probation upon reinstatement to the practice of law.

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**Rules Violated:** Prof.Cond.R. 1.5(a), 1.15(d), 1.16(e), 8.1(a), 8.4(h); DR 1-102(A)(4), 1-102(A)(6), 2-107(A)(2), 7-101(A)(3), 9-102(B)(4); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> (d), (f)		<b>Mitigation:</b> (a), (c), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES		<b>Criminal Conduct:</b> NO
<b>Public Official:</b> NO	<b>Sanction:</b> Two-year suspension, 6 months stayed		

*Jaffe, Cleveland Metro Bar Assn. v.*

121 Ohio St.3d 260, 2009-Ohio-763. Decided 2/26/2009.

Respondent failed to cooperate in a disciplinary investigation. On February 16, 2007, relator notified respondent that a grievance had been filed against him, that he had a duty to cooperate, and that he should respond within 14 days. On March 29, 2007, respondent e-mailed relator, acknowledging receipt of relator's letter and indicating he hoped to respond within three weeks. Approximately two weeks later, he e-mailed the investigator falsely indicating he had prepared and placed a response in the mail. The following month, the investigator sent respondent a letter by both e-mail and certified mail stating no response had been received and demanding a response within 10 days. The certified mail was returned marked "refused." Subsequent attempts to reach respondent by telephone and e-mail were unsuccessful. On February 26, 2008, relator filed a complaint charging respondent with failure to cooperate. Respondent filed an answer denying failure to cooperate. A notice of deposition was served upon him, but he left a voicemail on the morning of the deposition advising relator's counsel that he did not believe his attendance was required because he had delivered the client's file to relator's counsel. He attended a subsequently scheduled deposition and admitted the allegations in the complaint. On June 11, 2008, the parties filed an application for discipline by consent which was not accepted because it was untimely filed pursuant to BCGD Proc.Reg. 11(B). The matter was submitted to a panel of the board upon the parties' stipulations of facts, exhibits, aggravating and mitigating factors, and agreed-upon sanction of a six-month suspension. The board accepted the panel's finding that respondent violated Gov.Bar R. V(4)(G). In aggravation, respondent had a prior disciplinary violation resulting in a two-year suspension with the second year stayed on conditions in 2004. *Disciplinary Counsel v. Jaffe*, 102 Ohio St.3d 273, 2004-Ohio-2685. In mitigation, there was a lack of a dishonest or selfish motive, the absence of harm to a client, the absence of a pattern of misconduct, respondent's eventual cooperation in the disciplinary process, and his admission of the wrongful nature of his conduct. Also, noted were his closing of his law office and plans to cease practicing law. The board adopted the panel's recommendation of a six-month suspension from the practice of law. The Supreme Court agreed with the finding of a violation of Gov.Bar R. V(4)(G) and the recommended sanction of a six month suspension and so ordered.

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**Rules Violated:** Gov.Bar R. [V\(4\)\(G\)](#)

<b>Aggravation:</b> (a)		<b>Mitigation:</b> (b), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Six-month suspension</a>		

**Jarabek, Disciplinary Counsel v.**

121 Ohio St.3d 257, 2009-Ohio-748. Decided 2/25/2009.

Respondent was convicted of a fifth degree felony for drug possession, failed to appear at a client's court proceeding while respondent was incarcerated for that offense, and practiced law in violation of his interim suspension. Respondent was suspended for an interim period on October 3, 2006, pursuant to Gov.Bar R. V(5)(A)(4) upon notice to the Supreme Court that he had been convicted of a felony. 111 Ohio St.3d 1403, 2006-Ohio-5200. Relator filed a complaint alleging that respondent was chargeable with professional misconduct arising from his conviction under R.C. 2925.11 for a fifth degree felony of drug possession and his failure to appear at a client's court proceeding while respondent was incarcerated for that offense. Relator subsequently received another grievance against respondent, alleging that respondent, while subject to a court order preventing him from practicing law without prior written permission from the court, prepared and filed a motion, as well as a notice of appearance, and that respondent signed another attorney's name to each document. The board adopted the pane's findings of violations of DR 1-102(A)(6) by reason of his conviction under R.C. 2925.11, DR 6-101(A)(3) for failing to appear at his client's court appearance, and based on the conduct alleged in the additional grievance, Prof.Cond.R. 5.5(a), 8.4(d), and 8.4(h). In aggravation, respondent has a long history of problems with drugs, alcohol, and mental illness, which began during his teenage years, with a history of apparently unsuccessful efforts at rehabilitation. In mitigation, there was no proof that clients were substantially harmed by his conduct. Further, he has no prior disciplinary record, demonstrated that his chemical dependence or mental disability contributed to his misconduct, demonstrated remorse, and was working diligently to change his life and conquer his addictions and illness. Although he is not gainfully employed, respondent has volunteered as a law clerk, working nearly full-time, for Towards Employment, a Cleveland agency that assists clients with criminal records, mental health issues, and drug and alcohol problems to be able to reenter the workforce. Respondent is genuinely committed to remaining sober and controlling his mental health. He is attending daily AA meetings, refraining from using drugs or alcohol, and complying with a clinical psychologist's recommended treatments. The board recommends a two-year suspension, with no credit for time served on his interim suspension, and with the second year stayed upon conditions that respondent sign a contract with OLAP within 60 days of this order and comply with all the terms of that contract with respect to drugs, alcohol, and mental disability, submit to random drug testing, and refrain from working either paid or unpaid as a law clerk or paralegal, except under direct supervision of an attorney in full compliance with Gov.Bar R. V(8)(G). The Supreme Court agreed with the findings and the recommended sanction and so ordered. Citations to *Thomas* (1996) and *Lazarro* (2005).

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**Rules Violated:** Prof.Cond.R. 5.5(a), 8.4(d), 8.4(h); DR 1-102(A)(6), 6-101(A)(3)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (d), (g)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> NO	<b>Sanction:</b> Two-year suspension		

*Johnson, Toledo Bar Assn. v.*

121 Ohio St.3d 226, 2009-Ohio-777. Decided 3/3/2009.

Respondent impermissibly shared fees with another lawyer, charged clearly excessive fees, and failed to deposit unearned fees into a client trust account. Relator and respondent entered into a consent-to-discipline agreement, stipulating to the following facts, misconduct, and recommended sanction. As to the Mayer matter, in 2006, Attorney Mary Lou Sawers assisted respondent in preparing revocable and irrevocable trust documents for John G. and Nancy Mayer, a couple seeking estate-planning advice. The Mayers paid respondent \$9,800 for this work. Respondent agreed to pay 35 percent of this fee to Sawers, whom he was not formally associated, without notice to the Mayers. Respondent received generic forms from Sawers and made no effort to adapt the forms to the clients' needs. He did not even consider joint and survivorship accounts, which, given the size and nature of the Mayers' estates, would have avoided significant tax consequences and would have significantly reduced the Mayers' legal fees. Other documents were also produced for the Mayers, including durable general powers of attorney, health-care powers of attorney, living wills, and pour-over wills. Respondent failed to make sure that the documents were ready for the Mayers' review at the time of the signing. He improperly had the clients sign the signature pages only, without allowing them to see the completed papers. The Mayers, who ultimately lost confidence in respondent, had him terminate the still-unfunded trusts. He failed to deposit the \$9,800 unearned fee into his client trust account, instead depositing it directly into his operating account. As to the Hopping-Werner matter, respondent accepted a \$5,500 fee from Marian Hopping-Werner, another client for whom he had recommended an irrevocable trust, will, powers of attorney, and a living will, and directly deposited her fee into his office operating account. A few days later, Hopping-Werner reconsidered and asked respondent to refund her fees, but he refused even though he had done little or nothing for his client and their fee contract had specified that fees remained the property of the client until respondent completed the work. He told his client, in effect, that the fee was earned upon deposit. The panel and board accepted the consent-to-discipline agreement to a six-month suspension stayed upon conditions of restitution and no further for violations in the Mayers' matter of DR 1-102(A)(6) and 2-106(A) for charging a clearly excessive fee of \$9,800 to prepare the trusts and related documents, 2-107(A) for improperly sharing 35 percent of his legal fee with Sawers, and 9-102(A) for depositing the unearned fees into his operating account; and in the Hopping-Werner matter violations of DR 2-106(A) because client's assets and estate-planning situation did not warrant a fee of \$5,500 since the documentation necessary to satisfy her needs was neither unusual nor complex, and DR 9-102(A) for depositing the fee directly into his operating account instead of an IOLTA. The Supreme Court accepted the consent-to-discipline agreement and so ordered, however, in view of the restitution already provided stayed the suspension on only the condition of no further misconduct. See related case, *Toledo Bar Assn v. Sawers*, 121 Ohio St. 3d 229, 2009-Ohio-778.

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**Rules Violated:** DR 1-102(A)(6), 2-106(A), 2-107(A), 9-102(A)

<b>Aggravation:</b> (c), (d), (e)		<b>Mitigation:</b> (a), (b), (d), (e), (g)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Six-month suspension, stayed		

**Johnson, Disciplinary Counsel v.**

122 Ohio St.3d 293, 2009-Ohio-3501. Decided 7/23/2009.

Respondent lied to a client about having settled the client's personal injury action. A master commissioner granted relator's motion for default and made findings, conclusions, and a recommendation. In December 2004, respondent was retained by a client [Dowell] to recover damages for injuries sustained in a November 2004 automobile accident with an agreement that respondent would receive 33% of any amount recovered. Respondent contacted the insurance carrier to inquire about settling the claim, but the insurer was uncooperative. Respondent had fruitless communication with the insurer, obtained medical records, and towed away the vehicle after the accident. Respondent assured Dowell that the "legal matter was moving forward." In Spring 2006, respondent falsely told Dowell that the case was going to be resolved and she expected money soon and Dowell would have her money "by Mother's Day." The case never settled. The two-year statute of limitations lapsed, leaving Dowell with no remedy against the tortfeasor. Respondent refused to meet with and stopped communicating with Dowell. Respondent did not report the potential claim to her malpractice carrier. It is not evident from the record whether Dowell pursued that relief. Respondent testified that she intended pay Dowell with her own funds, but she never did. Board adopted the master commissioner's finding that respondent violated DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), and 6- 101(A)(3). The Supreme Court of Ohio agreed. In mitigation, respondent registered inactive in November 2007, has not practiced since, and there is no record of prior discipline. BCGD Proc.Reg. 10(B)(2). Respondent asserted that she has been deeply depressed because of the death of a close relative, but the record does not establish evidence to establish mitigating effect of mental disability under BCGD Proc.Reg. 10(B)(2)(g). Board adopted the master commissioner's recommendation of a one-year suspension with six months stayed on probationary conditions. The Board relied on *Hickman* (2005), *Keller* (2006), *Stollings* (2006) as precedent for the sanction. The Supreme Court of Ohio agreed with the recommended sanction and ordered a one-year suspension with six months stayed on condition of a successful completion of a six-month probation in accordance with Gov.Bar R. V(9); with readmission conditioned upon undergoing a mental-health examination and producing a report to establish mental fitness to return to the competent, ethical, and professional practice of law.

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**Rules Violated:** DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 6- 101(A)(3)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> One-year suspension, 6 months stayed		

**Johnson, Cuyahoga Cty. Bar Assn. v.**  
123 Ohio St.3d 65, 2009-Ohio-4178. Decided 8/26/2009.

Respondent failed to respond to court filings and appear in court on a client's behalf and failed to advise the client that she lacked professional liability insurance. Respondent had practiced law for approximately nine years, mostly criminal law. In April 2005, she agreed to represent an elderly client pursue a civil claim for lost or damaged property against Able One Moving Company ("Able One"). Respondent filed the complaint and Able One filed a counterclaim for \$4,000 in unpaid storage fees. Respondent replied to the counterclaim; but did not obtain the client's response to interrogatories, request of production of documents, and requests for admission. She failed to respond to the motion for summary judgment. In May 2006, she failed to appear at final pretrial. On the day of pretrial, the court granted the motion for summary judgment for Able One and awarded them \$4,000. Respondent testified that she had not received the order granting summary judgment and learned of it from the client. Afterward she started to draft a motion to vacate judgment but did not finish it before going on maternity leave from mid-July through August 2006. As a result of receiving notice that the client had filed a grievance, she hesitated to file the motion without the client's express consent. She wrote the client in early October 2006 to ask whether she should file the completed motion to vacate. The client did not reply and she did not file the motion. Board adopted the panel's finding that she violated DR 1-102(A)(5), 6-101(A)(2), 6-101(A)(3), 7-101(A)(1), and 7-101(A)(2) and that she violated DR 1-104(A) and (B) by not carrying malpractice insurance and failing to inform the client. In mitigation, she had no prior discipline, she cooperated, she admitted and apologized for her ethical breaches, and expressed deep remorse for the consequences to the client. The Board found no selfish motive and determined that the inaction and neglect occurred from a combination of poor scheduling practices and competing personal and professional demands. Respondent testified that her mother had moved out during 2006, leaving respondent to care by herself for two children under two years old-her own infant and a foster child. Respondent acknowledged that her commitment to her family compromised her practice at a time she was defending clients in separate capital murder homicide, and rape trials and her secretary resigned. She closed her practice and is now employed as the clerk of a municipal court. In aggravation was her neglect of a series of responsibilities to the client. The Board did not weigh against her the fact that she had not made restitution, because the board attributed the \$4,000 judgment against the client in large part to the client's reliance on independent advice from legal aid to stop paying storage fees to Able One. Board adopted the panel's recommendation of a public reprimand. The court adopted the board's findings, conclusions, and recommendation and so ordered a public reprimand. Two dissents in favor of stayed six months suspension.

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**Rules Violated:** DR 1-102(A)(5), 1-104(A), 1-104(B), 6-101(A)(2), 6-101(A)(3), 7-101(A)(1), 7-101(A)(2)

<b>Aggravation:</b> (c)		<b>Mitigation:</b> (a), (b), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Public Reprimand</a>		

*Johnson, Cleveland Metro. Bar Assn. v.*  
127 Ohio St.3d 97, 2010-Ohio-4832. Decided 10/7/2010.

Respondent neglected two unrelated legal matters. In the first matter, client hired respondent to defend himself, his wife, and his company in a civil action and to file a counterclaim. Respondent did not appear at the initial case management conference or at depositions of non-party witnesses. She failed to take any depositions. She failed to meet several discovery deadlines. Her motion to withdraw was denied by the court. Then she failed to respond to a motion to dismiss the counterclaim and a motion for default judgment, both of which were granted. Respondent then failed to notify her clients of or appear at a damages hearing, which resulted in a default judgment against her clients for \$331,279.80. In the second matter, a client hired respondent on a contingent fee basis to represent her in an action against the City of Cleveland. Respondent filed the complaint, but failed to timely reply to discovery requests and to a motion to dismiss. The case was dismissed without prejudice for failure to timely prosecute the case. Respondent later re-filed. The case was removed to federal district court, where that court granted respondent's motion to withdraw as counsel and dismissed the case without prejudice with a proviso setting a deadline to re-file the case. Respondent failed to notify her clients of the deadline and the case was not re-filed before the deadline. Panel found, as stipulated by the parties, violations of DR 6-101(A)(3), Prof.Cond.R. 1.3, 1.16(c) and 3.4(c) in the first matter and Prof.Cond.R. 1.3 and 1.16(d) in the second matter. The Board adopted the panel's findings of fact and conclusions of law. In aggravation, respondent: had a prior disciplinary record, and failed to notify her clients of her lack of malpractice insurance, though this was not charged in the complaint. BCGD Proc.Reg. 10(B)(1)(a). In mitigation, respondent lacked a selfish motive, cooperated with the disciplinary process, admitted to and apologized for her misconduct, and expressed remorse. BCGD Proc.Reg. 10(B)(2)(b) and (d). Respondent tried to get mitigation based on stress from family and financial matters, but this was not considered mitigating because she presented no affidavits, no reports from a psychologist, psychiatrist, therapist, or counselor, and no medical records to substantiate a mental disability as required by BCGD Proc.Reg. 10(B)(2)(g). The parties stipulated to a one-year suspension, all stayed on conditions. The panel recommended a suspension for one year with six months stayed on condition that she enter into an OLAP contract to learn to manage stress and personal problems, be in compliance with that contract before reinstatement and serve two years monitored probation. The Board agreed with the panel's recommendation, but specifies that respondent should enter into a three-year OLAP contract, eliminating the requirement for monitored probation. Respondent objected to the recommended sanction, challenging the board's failure to consider as mitigation her testimony regarding stress and her voluntary withdrawal from the practiced of law and contending that her case was distinguishable from cases cited by the board. The court noted that respondent fails to cite any decision in which general stress is considered to be a significant mitigating factor when it does not meet the requirements of BCGD Proc.Reg. 10(B)(2)(g). The court recently rejected a similar argument in *Robinson* (2010). The court will defer to the panel's credibility determinations unless the record weighs heavily against the determinations. *Heiland* (2008). In this case, the record does not weigh heavily against the panel's credibility determination that rejected respondent's testimony regarding stress. The Court noted that the standards in BCGD Proc.Reg. 10(B)(2)(g) "create an objective standard to ensure that there is some objective evidence of a mental disability that rises above the stresses of ordinary life that every attorney faces at some point during his or her career." The Court also noted that while respondent leaving the practice of law voluntarily was a "prudent decision" any mitigating value was outweighed by aggravating factors. Her inadequate communication and lack of attention to detail as she departed exacerbated the harm to one of her clients who did not get notice of a deadline to refile. In addition to the aggravating factors found by the board, the court found respondent's pattern of misconduct involving multiple offenses as aggravating factors. BCGD Proc.Reg. 10(B)(1)(c) and (d). The Court adopted the findings of fact, conclusions of law and the board's recommended sanction of one year with six months stayed on the conditions that respondent commit no further misconduct, submit to a mental health evaluation by OLAP, and, if OLAP determines that treatment is necessary, enter into and comply with an OLAP contract.

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**Rules Violated:** Prof.Cond.R. 1.3, 1.16(c), 1.16(d), 3.4(c); DR 6-101(A)(3)

<b>Aggravation:</b> (a)		<b>Mitigation:</b> (b), (d)	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> One-year suspension, 6 months stayed		

*Johnston, Disciplinary Counsel v.*

121 Ohio St.3d 403, 2009-Ohio-1432. Decided 4/2/2009.

Respondent commingled personal and client funds by using his client trust account for operating expenses. Board adopted panel's finding but not adopt the panel's recommendation of an 18-month conditionally stayed suspension. After passing the bar, respondent worked for an attorney for a year and a half and then opened his own law practice, mostly accepting court-appointed juvenile and criminal cases. As of the panel hearing in November 2008, he had office in three cities and devoted half of his practice to court-appointed criminal work but also represented clients in domestic-relations disputes and Social Security claims, and in cases involving contract and business litigation, workers' compensation, and personal injury. Soon after opening his practice, he opened a bank account for client trust funds. Because of financial difficulties he began overdrawn his office account and had large overdraft charges and other fees. He switched to using the client trust account for both entrusted funds and as his operating account. From January 2006 through October 2007, he commingled funds—he deposited client funds, personal funds, earned attorney fees, and unearned retainer fees into the account. During 2006, he made nine deposits (\$3,370.63 total) that had no relation to any client into the trust account and most of the deposits were from rent money he collected for the landlord from another tenant in his office building. During 2006, he cashed 37 checks (\$12,327.44 total) from the trust account. During 2007, he cashed 18 checks (\$6,455 total) from the trust account. During 2006-2007, he wrote 44 checks to pay personal obligations. He routinely made ATM or debit withdrawals and transferred funds from the trust account to pay both personal and business creditors. He insists that he earned all the funds he withdrew and relator did not charge that he misappropriated client funds. During 2006-2007, he overdrew his client trust account and his bank assessed him for either overdraft or insufficient-fund charges 22 times. The negative balances triggered the bank to report to relator. Respondent bounced one check to a client, but quickly covered the check. Paying the client by a certified check, including associated bank charges. Respondent did not have an acceptable reliable record-keeping system to allow him to account for client funds. Board found violations of DR 1-102(A)(6) and its counterpart, Prof.Cond.R. 8.4(h); 9-102(A) and its counterpart, Prof.Cond.R. 1.15(a); and DR 9-102(B)(3). The Board found his misuse of the client trust account of greater gravity than *Newcomer* (2008) (suspended for six months with six months stayed) and less than *Vogtsberger* (2008) (suspended for two years with second year stayed). In aggravation, respondent engaged in a pattern of misconduct. BCGD Proc.Reg. 10(B)(1)(c). In mitigation, he has no prior discipline, incorporated a new accounting system for his practice, and cooperated fully. BCGD Proc.Reg. 10(B)(2)(a), (c), and (d). No client suffered financial harm. His good character and reputation and his charitable work on behalf of victims of Huntington's disease, disadvantaged clients, and his church weigh in his favor. The board recommended a one-year stayed suspension. The Supreme Court of Ohio agreed and so ordered a one-year suspension, stayed on condition of a one-year monitored probation, with the monitor appointed by relator to provide oversight as to respondent's business practices, especially as to client trust account management. And that he complete in addition to other CLE requirements, six hours of CLE in law-office management and accounting.

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**Rules Violated:** Prof.Cond.R. 1.15(a), 8.4(h); DR 1-102(A)(6), 9-102(A), 9-102(B)(3)

<b>Aggravation:</b> (c)		<b>Mitigation:</b> (a), (c), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> One-year suspension, stayed		

*Jones, Mahoning Cty. Bar Assn. v.*  
123 Ohio St.3d 285, 2009-Ohio-5029. Decided 10/1/2009.

Respondent opened an estate but failed for approximately 8 months to completely list next of kin, identify estate assets and liabilities, and communicate with the client. Respondent is registered on inactive status in Ohio since September 1, 2007, but is employed in the Washington, D.C. area as an in-house corporate counsel which according to him is a position that does not require admission in any particular state. He agreed to represent a widow with respect to her husband's estate, which basically involved transfer of an automobile title and their residential real estate. In late September 2006, he deposited into his client trust account, a \$3,710 fee advance from his client. He filed applications for probate in the Mahoning County Probate Court. Over the succeeding months, the case languished. The client tried at least 15 times without success to contact him. At a status conference in late May 2007, respondent's client appeared but respondent did not because he had not received notice. The decision of the magistrate faulted respondent for having failed to identify the client as the surviving spouse on the next of kin form. The application for relief from administration was missing the form listing estate assets and liabilities. The magistrate disapproved of the amount of respondent's fee and his failure to obtain prior probate court approval. The magistrate advised the widow to obtain new counsel and a refund and he advised her to file a grievance. Upon request by the new attorney for a return of fee other than filing costs, respondent repaid all but \$400 or \$500. Relator dismissed a DR 2-106(A) charge. Panel and board found violations of DR 6-101(A)(3) and 7-101(A)(2). In mitigation, there was no prior discipline, he acknowledged wrongdoing, made restitution to the former client's satisfaction, and cooperated. BCGD Proc.Reg. 10(B)(2)(a), (c), and (d). There were no aggravating factors specified. Panel recommended a suspension for six months, stayed on condition of a one-year monitored probation. Board recommended a public reprimand. The Supreme Court noted that respondent took a disproportionately large fee to administer a simple probate estate and not perform the work, and the client was unable to reach him despite 15 attempts. The Supreme Court accepted the Board's findings of violations of DR 6-101(A)(3) and 7-101(A)(2), but rejected the Board's recommended sanction, and instead ordered a suspension for six months stayed on condition of successfully completing a one-year monitored probation under Gov.Bar R. V(9) and commit no further disciplinary infractions. The suspension, stay, and probation will take effect upon respondent's return to active practice in Ohio. One justice dissented in favor of a public reprimand.

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**Rules Violated:** DR 6-101(A)(3), 7-101(A)(2)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (c), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Six-month suspension, stayed		

*Jones, Mahoning Cty. Bar Assn. v.*  
127 Ohio St.3d 424, 2010-Ohio-6024. Decided 12/16/2010.

Respondent failed to cooperate in the disciplinary investigation of a matter that was subsequently dismissed. Respondent placed his attorney registration on inactive status effective September 1, 2007. His conduct prior to going on inactive status, resulted in a disciplinary sanction in 2009 for which he was suspended for six-months, with six months stayed on condition that he complete a one-year monitored probation and commit no further misconduct—this sanction was to take effect upon his return to active practice. In October 2009, relator filed this complaint involving an unrelated matter that also arose before respondent went inactive. Count one alleged that respondent neglected a client in a securities matter that ultimately went to arbitration. Respondent denied this charge and outlined the actions he took on the client’s behalf. The board agreed with the panel finding that there was no evidence of neglect of a legal matter entrusted and the recommendation that the count be dismissed. The court agreed. Count two alleged that respondent failed to cooperate in the disciplinary investigation of count one. Relator noted a substantial lack of cooperation by not timely providing contact information or verifying interrogatories, and repeated delays in responding to discovery requests. Respondent also never produced the client file for count one and failed to attend a deposition scheduled by relator. Respondent did not deny the delays and omissions, and instead offered excuses blaming relator. The board agreed with the panel’s finding of a violation of Gov.Bar R. V(4)(G). The court agreed. In aggravation, respondent had a prior disciplinary violation. BCGD Proc.Reg. 10(B)(1)(a). In mitigation, there was no dishonest or selfish motive. BCGD Proc.Reg. 10(B)(2)(b). The board adopted the panel’s recommendation that respondent be suspended from the practice of law for six months, all stayed on the condition of no further misconduct, but added that the sanction be served consecutively to the prior sanction. The Court adopted the Board’s recommended sanction and so ordered a suspension for six months, with all six months stayed on condition of no further violation with the sanction to be served consecutively to the 2009 sanction. The court noted in a footnote that because the misconduct occurred before the 2009 sanction was imposed the misconduct does not serve to revoke the previous stay.

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**Rules Violated:** Gov.Bar R. V(4)(G)

<b>Aggravation:</b> (a)		<b>Mitigation:</b> (b)	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Six-month suspension, stayed		

***Kafantaris, Trumbull Cty. Bar Assn. v.***  
121 Ohio St.3d 287, 2009-Ohio-1389. Decided 4/1/2009.

In 2003, respondent was suspended from the practice of law for one-year, with six-months stayed in *Disciplinary Counsel v. Kafantaris*, 99 Ohio St.3d 94, 2003-Ohio-2477. Count Two entails the earliest misconduct which arose from representation of a client that began before respondent's 2003 suspension. The client (Williams) was injured in a car accident and died of apparently unrelated causes shortly before the claim was settled. The decedent's daughter hired respondent to assist in the decedent's estate. Respondent had the daughter sign a release and endorse the \$25,000 settlement check. Respondent deposited the check in a client trust account, but did not disclose the proceeds to the probate court. Respondent misappropriated the funds for his own uses even while he was on suspension. Respondent was largely uncooperative in the disciplinary process. Despite relator's repeated requests, he failed to provide account records for months ostensibly due in part the fact that he kept virtually no written records for at least some of the client trust accounts. Board found violations of DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 7-102(A)(3), 9-102(B)(3), and 9-102(B)(4). Count Three arose from conduct that occurred after the 2003 suspension. Pursuant to his suspension order he was ordered to do certain things. He signed an affidavit stating he had satisfied the requirements of the suspension order and filed; however, he had not complied with the terms of the order—he still retained the proceeds of the settlement and had not filed a notice of disqualification with the probate court. Board found violations of DR 1-102(A)(4), (5), and (6), and DR 7-102(A)(3). Count One arose from conduct that occurred after respondent was reinstated to the practice of law and is similar to the conduct in Count Two. Respondent represented a client (Heasley) in a domestic matter. Respondent received an \$80,000 check payable to Heasley from a life insurance company. Heasley endorsed the check and respondent placed it into a client trust account. Over the next nine months he repeatedly converted the funds to his own use. He did not keep written records of the trust account and he delayed in providing the information to relator. Board found violations of DR 1-102(A)(5), 9-102(A)(2), and 9-102(B)(3) and (4). No mitigating effect was attributed to the testimony of numerous individuals (mostly family members) who stated he was a good family man. In aggravation, there was prior discipline, dishonest or selfish motives, a pattern of misconduct; lack of cooperation; and submission of false evidence or statements or other deceptive practice during the disciplinary process. Board recommended a permanent disbarment. Respondent filed objections to the Board's report, conceding the truthfulness of almost all the charges, but disagreeing with the finding of dishonest or selfish motive, claiming it was contradicted because his clients (Heasley and Williams) ultimately received their money back. The Supreme Court of Ohio agreed with the Board's findings, conclusions, and recommendation and so ordered a permanent disbarment. The court cited *Dixon* (2002) which "stated that misappropriation of client funds carried a 'presumptive sanction of disbarment.'" The court noted that respondent callously disregarded his client's interests and showed disrespect for the judicial system as a whole by failing to disclose to the probate court Williams' settlement proceeds, by failing to disclose to the probate court his disqualification after his suspension order, and by submitting to the Supreme Court of Ohio an affidavit containing lies and misrepresentation.

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**Rules Violated:** DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 7-102(A)(3), 9-102(A)(2), 9-102(B)(3), 9-102(B)(4)

<b>Aggravation:</b> (a), (c), (d), (e), (f)		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Disbarment		

**Kaplan, Cleveland Metro. Bar Assn. v.**  
124 Ohio St.3d 278, 2010-Ohio-167. Decided 1/28/2010.

Respondent neglected client matters, failed to maintain a record documenting receipt of a client's fee, failed to promptly comply with reasonable client requests for information, failed to keep a client reasonable informed about the status of the client's legal matter, and failed to cooperate in a disciplinary proceeding. As to the Burge matter, respondent received \$350 to convert client Burge's Chapter 13 bankruptcy into a Chapter 7. Respondent failed to respond to Burge's phone calls or do to the work, but eventually returned the fee. Respondent, by letter to relator, requested more time to respond to the disciplinary complaint because he had suffered a head injury, yet he never filed a written response or met with relator's investigator. As to the Smith matter, in March 2007 respondent received \$724 and relevant documents from client Smith to file a Chapter 13 bankruptcy case. Respondent failed to respond to phone calls by Smith in April and May 2007, so Smith discharged respondent as her attorney in a letter dated May 21, 2007 and requested a refund and a return of her documents. In June 2007, respondent left Smith a message saying he prepared her bankruptcy petition and needed her to sign it; he also asked her to provide him with a copy of the receipt for the retainer because he could not find any record of her payment. In July 2007, Smith filed a grievance. In January 2008, at a deposition, respondent, under oath, said he would promptly mail Smith her money and he presented a color photocopy of a check payable to Smith; Smith received her \$724 in August 2008. As to the Draper matter, client Draper retained respondent to file a Chapter 13 bankruptcy plan on her behalf. Respondent filed the plan, but the bankruptcy trustee objected to the plan because it failed to provide evidence of car insurance and the creditor Third Federal Savings & Loan objected because the plan did not adequately deal with the mortgage Third Federal held on Draper's home. Respondent moved the court to modify the plan to account for the omitted debt which increased the monthly withholding from Draper's paycheck, without Draper's knowledge or consent. Draper's payroll processing company failed to forward her payments to the bankruptcy trustee, and the court dismissed the proceeding for failure to fund the plan. Two months later, as Draper's home was about to be sold at a sheriff's sale, respondent petitioned the court to have the bankruptcy case reinstated. The court denied this request and further rejected respondent's effort to convert to a Chapter 7 bankruptcy. Respondent failed to notify Draper of these events and she filed a grievance. Respondent failed to answer the disciplinary complaint and a master commissioner granted the relator's motion for default judgment and made findings, conclusions, and a recommendation which the board adopted. The board found violations of Gov.Bar R. V(4)(G) and Prof.Cond.R. 8.1(b) in the Burge matter; Prof.Cond.R. 1.3, 1.4(a)(4) and 1.15(a) in the Smith matter; and Prof.Cond.R. 1.3 and 1.4(a)(3) in the Draper matter. The board found many aggravating factors, which included: a pattern of misconduct involving multiple offenses; a lack of cooperation with the disciplinary process and a refusal to acknowledge the wrongful nature of his conduct; commission of a deceptive practice during the disciplinary process by representing under oath that he would promptly mail Smith a refund of her retainer, when it actually took him eight months to do so; a lack of evidence that respondent attempted to make restitution to Draper for any financial loss she may have incurred due to the misconduct. BCGD Proc.Reg 10(B)(1)(c), (d), (e), (f), and (i). The only mitigating factor was respondent's lack of a disciplinary record. BCGD Proc.Reg 10(B)(2)(a). Respondent attempted to introduce various health problems (significant traumatic head injury, chronic obstructive pulmonary disease, diabetes, and anxiety) as a mitigating factor, but the board found no link between the medical conditions and his misconduct. Relying on *Goodlet* (2007) and other cases for the general rule that neglect and failure to cooperate generally warrant an indefinite suspension, the board recommended that respondent be indefinitely suspended from the practice of law. The Supreme Court adopted the board's findings and recommendation, and so ordered.

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**Rules Violated:** Prof.Cond.R. 1.3, 1.4(a)(3), 1.4(a)(4), 1.15(a), 8.1(b); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> (c), (d), (e), (f), (i)		<b>Mitigation:</b> (a)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

***Karris, Disciplinary Counsel v.***

129 Ohio St.3d 499, 2011-Ohio-4243. Decided 9/1/2011.

Respondent improperly notarized four documents and falsely testified about it during a deposition. In Count One, respondent notarized several documents that the party whose signature was purportedly on the documents testified that she did not sign. The woman's husband at the time of the incident, now ex-husband, stated that he signed the documents, while the respondent testified that the wife signed the instruments in his presence. A forensic document examiner supported the husband and wife's story. This conduct was found to have violated DR 1-102(A)(4) (dishonestly, fraud, deceit, or misrepresentation), 1-102(A)(6) (conduct adverse reflecting on fitness to practice law). In Count Two, respondent was deposed and stated that the documents from Count One were signed by someone claiming to be the woman, but that he did not request identification. Although this story is probably untrue based on the forensic evidence in Count One, the panel and board dismissed the Count due to a lack of clear and convincing evidence. The Court agreed with these findings. In aggravation, respondent engaged in a pattern of misconduct involving multiple offenses and failed to acknowledge the wrongful nature of his conduct. BCGD Proc.Reg. 10(B)(1)(c), (d), (g). In mitigation, respondent lacked a prior disciplinary record and presented evidence of his good character. BCGD Proc.Reg. 10(B)(2)(a), (e). Relator sought a one-year suspension, respondent sought dismissal of the charges, and the board recommended a public reprimand. Relator objected and stated that a six-month suspension is commensurate with the Court's precedent. The Court noted that cases involving dishonest usually warrant an actual suspension, but reviewed cases where exceptions to this rule have been carved out. Reviewing *Dougherty* (2005) and *Russell* (2007), the Court noted that respondent engaged in three separate acts of misconduct and refused to acknowledge the wrongfulness of his actions, whereas the other cases revolved around one instance of misconduct and remorseful respondents. The Court thus sustained relator's objection and imposed a six-month suspension.

**Rules Violated:** DR 1-102(A)(4), 1-102(A)(6)

<b>Aggravation:</b> (c), (d), (g)		<b>Mitigation:</b> (a), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Six-month suspension</a>		

*Kealy, Cleveland Metro. Bar Assn. v.*  
125 Ohio St.3d 238, 2010-Ohio-1554. Decided 4/12/2010.

Respondent failed to carry out an employment contract, neglected several matters, failed to cooperate and knowingly misrepresented facts in a disciplinary investigation, improperly borrowed \$20,000 from a client and failed to disclose the loan after the client's death while serving as the executor of the client's estate. The board adopted the panel's findings. In Count I, respondent undertook defense of Davis in an action by an automobile insurer to recover \$13,000 from Davis for causing an accident with a client of that automobile insurer. Respondent filed an answer and a counterclaim; the counterclaim alleged injuries to Davis caused by the other driver, but the other driver was never joined as a party. Respondent never replied to the automobile insurer's requests for admissions or its motion to dismiss the counterclaim. Respondent also failed to appear at the final pretrial hearing. Neither respondent nor Davis appeared at trial. The court granted a default judgment against Davis for \$13,609.08. As to Count I, the board found that this conduct violated DR 1-102(A)(5), 6-101(A)(3), 7-101(A)(2), and 7-101(A)(3). Count II occurred during the disciplinary investigation of Count I. During an interview with relator, respondent claimed that he never received notices of the pretrial or trial date, when he had in fact received written notices from the court. As to Count 2, the board found that respondent violated Prof.Cond.R. 8.1(a) and Gov.Bar R. V(4)(G), and Prof.Cond.R. 8.4(h). In Count III, respondent represented Krawulski, a client with serious medical issues. Krawulski signed a general power of attorney for respondent to handle his affairs and signed a will naming respondent as executor of his estate. Respondent and his wife borrowed \$20,000 from Krawulski through a promissory note. Respondent signed the check using his power of attorney. When Krawulski died, respondent filed an application to administer the estate, but did not disclose the \$20,000 promissory note. Months later Krawulski's heirs filed a motion to remove respondent as executor. The next day, respondent filed an inventory and appraisal of the estate, but again did not disclose the \$20,000 promissory note. Respondent soon after resigned as executor of the estate. The new executor sued respondent for breach of fiduciary duty and negligence. These claims were settled for \$45,000. As to Count III, the board found that respondent violated DR 1-102(A)(4), 1-102(A)(5), and 5-104(A). In aggravation, respondent engaged in a pattern of misconduct, failed to completely acknowledge the wrongfulness of his behavior, was not forthcoming during the disciplinary investigation, and caused actual harm to his clients. BCGD Proc.Reg. 10(B)(1)(c), (e), (g), and (h). In mitigation were respondent's lack of prior disciplinary record, and his activity with the local legal aid society for 25 years and his "staggering amount" of pro bono work, and his activity in his community, with a long history of volunteer work for his church, local charities, and other organizations. BCGD Proc.Reg. 10(B)(2)(a), and (e). The Board did not adopt the panel recommended sanction of an 18 month suspension with 12 months stayed. The Board recommended a sanction of an 18 month suspension with 6 months stayed. Sanctions in similar cases were considered, *Larson* (2009), *Peters* (1999), *Holder* (2004), and *Markovich* (2008) in recommending an 18-month suspension, with 6 months stayed. The Court adopted the board's findings of fact and conclusions of law, but ordered an 18-month suspension with 12 months stayed on the condition of no further misconduct. This was based heavily on his 39 years of practice with no prior disciplinary history and his immense pro bono work and activity in the community. Chief Justice Moyer, joined by Justices O'Connor and Cupp, dissented. They believed that the dishonesty displayed by respondent required a tougher sanction than the one imposed by the majority. They would have adopted the Board's recommended 18- month suspension with only 6 months stayed.

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**Rules Violated:** Prof.Cond.R. 8.1(a), 8.4(h); DR 1-102(A)(4), 1-102(A)(5), 5-104(A), 6-101(A)(3), 7-101(A)(2), 7-101(A)(3); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> (c), (e), (g), (h)		<b>Mitigation:</b> (a), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> 18-month suspension, 12 months stayed		

**Kellogg, Cincinnati Bar Assn. v.**  
126 Ohio St.3d 2010-Ohio-3285. Decided 7/20/2010.

On December 14, 2009, respondent received an interim felony suspension from the practice of law in *In re Kellogg*, 123 Ohio St.3d 1518, 2009-Ohio-6503. In August 2008, respondent was convicted of two counts of money laundering, two counts of conspiracy to commit money laundering; one count conspiracy to obstruct proceedings before the United States Federal Trade Commission (FTC), and count conspiracy to obstruct proceedings before the United States Food and Drug Administration (FDA). He was sentenced to one year and one day. He was released to a halfway house in August 2009. Upon the expiration of his prison term in November 2009, he began serving three years supervised release. In August 2003, respondent began working as general counsel for a rapidly growing nutraceutical company. In late 2003, early 2004 numerous federal agencies, including the FTC, the FDA, and attorney generals from 17 states began investigating the company. The primary focus of the investigations was the company's enrollment of customers into a continuity program under which the company automatically shipped and charged customers for product they had not ordered. In March 2004, the first of six class actions suited was filed against the nutraceutical company. Respondent was involved in a scheme to protect the owner's assets from the FTC and future legal claims by transferring \$14 million into two separate trusts. Outside counsel prepared the trusts, but respondent reviewed the trusts and served as trustee for both trusts. Respondent instigated the removal of a misbranded supplement from the company's warehouse after learning of an imminent FDA inspection. The board adopted the panel's findings that respondent's conduct violated DR 1-102(A)(3), (4), and (5), 7-102(A)(7) and (8), and 7-109(A). The court adopted the findings of fact and conclusions of law. The board adopted the panel's recommendation of a two-year suspension with six months stayed, with the suspension to begin to run on January 15, 2009, the day respondent began serving his prison sentence. The relator objected to this recommendation, arguing that pursuant to precedent that permanent disbarment was warranted. In aggravation, the board found a dishonest and selfish motive, and multiple offenses. BCGD Proc.Reg. 10(B)(1)(b) and (d). In mitigation, the board found no prior disciplinary record, some efforts by respondent rectify the consequences of his actions, cooperation with the disciplinary process, good character aside from the felony convictions, and that he has been penalized by the criminal justice system. BCGD Proc.Reg. 10(B)(2)(a), (c), (d), (e), and (f). The board also noted respondent's acceptance of responsibility and remorse, his diagnosis of leukemia, which occurred near the time of his misconduct, as mitigating factors. Citing *Kelly* (2009) and *Powers* (2008), the court noted that as the final arbiter, the court is not bound by the board's recommendations. The court noted that the cases cited by relator do not hold that permanent disbarment is the presumptive sanction for money laundering. Even when there is a presumption in favor of permanent disbarment, the presumption may be rebutted by mitigation evidence. Citations to *Smith* (2003) and *Hunter* (2005). The court noted that the cases cited by relator, *Cook* (2007), *Bein* (2004), *Banks* (2002) are factually distinguishable from this case, although *Jones* (1993) and *Williams*(1993) are more analogous. The court noted that it had recently imposed an indefinite suspension in *Gittinger* (2010) in which an attorney was convicted of money laundering and conspiracy to commit bank fraud, based in part upon a condition in the respondent's federal criminal sentence that prohibited him from practicing law during his five-year supervised release. The court observed that despite federal guidelines recommending a 19 to 24 year prison sentence, respondent served only ten and one-half months, seven and one half months in prison and three month in a halfway house and is currently surviving three years of supervised release. The court noted that if it adopted the board's recommended sanction, respondent could resume the practice of law more than two years before the end of the supervised release. The court concluded that indefinite suspension was appropriate and so ordered and that respondent is not allowed to apply for readmission until after he has completed his supervised release, but not before the two-year period that respondent must wait before petitioning pursuant to Gov.Bar R.V(10)(B). Two justices dissented and would have permanently disbarred, noting that despite mitigation the court's role is to "protect the public from lawyers who fail to adhere to the highest ethical standards, not coddle offending attorneys."

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**Rules Violated:** DR 1-102(A)(3), 1-102 (A)(4), 1-102 (A)(5), 7-102(A)(7), 7-102(A)(8), 7-109(A).

<b>Aggravation:</b> (b), (d)		<b>Mitigation:</b> (a), (c), (d), (e), (f)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

***Kellogg-Martin, Disciplinary Counsel v.***

124 Ohio St.3d 415, 2010-Ohio-282. Decided 2/4/2010.

Respondent, the chief assistant prosecuting attorney in Logan County, was assigned in 2002 to prosecute criminal charges against Joshua Giles based on allegations by a young girl that Giles forced her to have sex on two separate occasions. In June 2002, the young girl, then 14, was in counseling for behavioral problems and told her therapist that Giles twice pressured her into sex. The therapist reported the allegation. Jo Ann Dorsey, a social worker for the county children services, interviewed the girl on June 12, 2002 and wrote a narrative report (Dorsey report) stating that the victim stated the first rape had been committed in August 2001 and the second in September 2001. Since the victim's birth date was January 21, 1988, Dorsey's initial report implied that the victim was 13 years old when raped. But, on July 19, 2002, Dorsey filled out the "Family Risk Assessment Matrix" form stating on the form the victim "reported she was raped by a 21 year old man when she was 12 years old." Dorsey faxed a copy of her report to Detective Sergeant Jeff Cooper in the county sheriff's office on June 13, 2002. Sergeant Cooper interviewed Giles the same day and Giles said that the sex happened "a very long time ago, around the end of 2000." On July 3, 2002, Sergeant Cooper and another officer interviewed the victim. Cooper's narrative report (Cooper report) stated the victim told the officers "she had intercourse with [Giles] on two occasions \* \* \* when she was 12 years old" and "stated that she did not tell [Giles] to stop or try to fight him during the incidents of intercourse." The discrepancy between the June 12 Dorsey report indicating that the victim was 13 and information indicating that the victim was 12 prompted respondent to seek confirmation of her age before filing criminal charges. Respondent interviewed the victim who stated she told Giles before one of the rapes that she was 12. The victim also told respondent the rapes occurred the summer before a snowmobile accident. Respondent checked the hospital records which confirmed the snowmobile accident took place in December 2000. Respondent interviewed the victim's mother who told respondent the victim had been 12 when the victim told the mother about being raped. The victim told her therapist on August 28, 2002 that she was raped "when she was 12." After Giles was indicted, his attorney filed a discovery demand for all evidence favorable to defendant and material to guilt or innocence. Respondent did not provide copies of the Dorsey report or the Cooper report. Respondent believed she did not have a duty under Crim.R. 16 or *Brady v. Maryland*. Respondent filed a bill of particulars on September 23, 2002 stating that "The victim was interviewed by Joanie Dorsey of Logan County Children's Services on June 12, 2002. She reported that the Defendant raped her on two occasions over the summer of 2000." At the hearing on December 18, 2002, defendant entered a plea of guilty to a reduced charge of unlawful sexual conduct with a minor, R.C. 2907.04(A) and respondent delivered a statement of what "[t]he State's evidence in this case would show" and that "[t]he victim was interviewed by Joanie Dorsey of the Logan County Children's Services on June 12, 2002. She reported what had taken place over the year of 2000." Board adopted the panel's findings of violations of DR 7-103(B) and 7-102(A)(3) by failing to disclose the Dorsey and Cooper reports to the defense before Giles entered his guilty plea; a violation of DR 1-102(A)(5) because the non-disclosure of the reports was conduct prejudicial to the administration of justice; and a violation of DR 1-102(A)(4) because the statement in the bill of particulars and at the plea hearing were false. Board rejected the panel's recommendation of a six-month suspension all stayed. Board recommended a one-year suspension with six months stayed. Respondent filed objections to the board's report and recommendation, five challenging the findings of violations of DR 7-102(B), 7-102(A)(3), and 1-102(A)(5) by failing to disclose the reports; one challenging the violation of DR 1-102(A)(4) by making false statements to the trial court; and one objection to the recommended sanction. The court stated: "We decline to construe DR 7-103(B) as requiring a greater scope of disclosure than *Brady* and Crim.R. 16 require." The court held "that DR 7-103(B) imposes no requirement on a prosecutor to disclose information that he or she is not required to disclose by applicable law, such as *Brady v. Maryland* or Crim.R. 16." The court also agreed with respondent that she had no legal duty to disclose the Dorsey and Cooper reports to the defense and hence did not violate DR 7-103(B). The court found that the Dorsey and Cooper reports constituted impeachment evidence and that *United States v. Ruiz* "plainly holds that the state is not required to disclose impeachment evidence to a defendant before the

defendant pleads guilty.” Further, the court agreed with respondent that she did not violate DR 7-102(A)(3) because under *Ruiz*, respondent has no obligation to disclose the Dorsey and Cooper reports. The court also rejected the finding that her conduct was prejudicial to the administration of justice. The court noted that “[o]ur decision today should not be construed as an endorsement of respondent’s nondisclosure of the reports.” The court quoted *United State v. Agurs*: “Because we are dealing with an inevitably imprecise standard, and because the significance of an item of evidence can seldom be predicted accurately until the entire record is complete, the prudent prosecutor will resolve doubtful questions in favor of disclosure.” The court also agreed with respondent that she did not violate DR 1-102(A)(4) by her statement in the bill of particulars or in her statement in open court at the plea hearing. The court noted that respondent’s statements were not representations about what the Dorsey report said, but were representations about what the victim said to Dorsey on June 12, 2002. The court noted that the Dorsey report is not the only version of what the victim told Dorsey on that date, there was the “Family Risk Assessment Matrix” form and the victims other statements which point to her being 12 when she was raped. The court dismissed the disciplinary complaint. Chief Justice dissented and disagreed with the proposition that DR 7-103(B) is, or should be, limited by Crim.R. 16(B)(1)(f) and the corresponding constitutional analysis and disagreed with the reweight of the evidence to reject the finding of a violation of DR 1-102(A)(4) and would have adopted the board’s recommended sanction.

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**Rules Violated:** None

<b>Aggravation:</b> None		<b>Mitigation:</b> None	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> YES	<b>Sanction:</b> Case Dismissed		

*Kelly, Disciplinary Counsel. v.*

121 Ohio St.3d 39, 2009-Ohio-317. Decided 2/4/2009

Respondent, a full-time magistrate in the Greene County Common Pleas Court, Domestic Relations Division, impermissibly practiced law as a volunteer of the Greene County Humane Society (GCHS), where she embezzled over \$40,000. In Count I, respondent served in an unpaid position as treasurer for GCHS from late 2004 through August 2006. As treasurer, she maintained three banks accounts, was authorized to use a GCHS credit card, paid bills, made bank deposits, and prepared the annual IRS 990 tax form. Respondent transferred GCHS funds from Bank One to Countrywide Federal Credit Union, where she kept her personal bank accounts. She deposited the GCHS money into new accounts to which only she had access. Between January 2005 and August 2006, she misused her authority and misappropriated over \$40,000 from GCHS, using it to pay her family's living expenses. She concealed the theft by preparing 11 false reports to present at monthly GCHS board meetings. As to Count I, the board adopted the panel's findings of violations of DR 1-102(A)(4), DR 1-102(A)(6), and Canon 2 of the Code of Judicial Conduct. In Count II, respondent was a full-time magistrate, and eventually chief magistrate, in the Greene County Common Pleas Court from August 2000 through October 2006. During this time period, she regularly provided volunteer legal services to GCHS: providing advice, drafting animal-adoption contracts, filing pleadings in animal-cruelty cases, and appearing in court. The board adopted the panel's findings of a violation of Canon 4(F). In aggravation, respondent acted with a dishonest and selfish motive and engaged in a pattern of misconduct. BCGD Proc.Reg. 10(B)(1)(b) and (c). In mitigation, respondent has no prior disciplinary record, made restitution, made full disclosure and acknowledgement of her wrongdoing, showed good character, and claimed a mental disability of obsessive compulsive disorder. BCGD Proc.Reg. 10(B)(2)(a), (c), (d), (e), and (g). Respondent claims that she always intended to repay GCHS and she did voluntarily disclose her theft to the president of GCHS, but not until a GCHS investigation made discovery imminent and she deposited \$4,800 back into the GCHS account. She did report her misconduct to relator, but only after first entering into a confidential settlement agreement with GCHS in which she agreed to repay \$38,121.09 and the agency agreed not to press criminal charges. Further respondent minimized the extent of her wrongdoing in her initial report to relator by claiming she had made "unauthorized expenditure[s]" without mentioning the \$42,000 figure which had been determined through an investigation and audit. The panel recommended a two-year suspension, with the last six months stayed on the condition that respondent receive mental health treatment, but the board recommended an indefinite suspension "based on the positions of trust that she held and the seriousness of the repeated misconduct." Respondent challenged the board's recommendation, arguing in favor of the panel's recommended sanction based on her extensive mitigating evidence. Respondent urged the court to accept the panel's recommendation, citing cases as to deference to hearing panel's credibility, but the court noted that those cases were not applicable as the facts are not in dispute and no witness's testimony has been challenged as unreliable. The court also noted that although it ordinarily accepts panel's and board's conclusion as to propriety or conduct or the appropriate sanction, it need not defer—the court is free to exercise independent judgment as to evidentiary weight and applicable law. The Supreme Court examined respondent's history of laudable passions as a volunteer for GCHS since 1997 for animal protection and welfare and an adoptive and foster parent. However, these passions strained respondent's financial resources as well as her physical and mental wellbeing and have contributed in part to the misconduct at issue in this case. Respondent took advantage of a position of trust to subsidize her passions and at the same time live well beyond her means. Disbarment is the presumptive disciplinary measure for acts of misappropriation. The significant mitigating evidence presented in this case caused the Court to exercise leniency from the standard presumptive sanction. Therefore, the Supreme Court agreed with the board and so ordered an indefinite suspension with reinstatement conditioned on respondent's treatment for her asserted diagnosis of obsessive compulsive disorder, certification by a qualified health-care professional that she is able to competently and ethically practice law, and full restitution of the embezzled funds, in addition to fulfilling the requirements of Gov.Bar R. V(10)(C) through (E). One justice dissenting in favor of a two-year suspension.

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**Rules Violated:** DR 1-102(A)(4), 1-102(A)(6); Code of Judicial Conduct (former) Canons 2, 4(F)

<b>Aggravation:</b> (b), (c)		<b>Mitigation:</b> (a), (c), (d), (e), (g)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> YES	<b>Sanction:</b> Indefinite Suspension		

*Kiesling, Columbus Bar Assn. v.*

125 Ohio St.3d 36, 2010-Ohio-1555. Decided 4/12/2010.

Respondent neglected an estate, refused to return business records, failed to advise a client to file city taxes, was convicted of unlawful accounting practices, comingled, neglected and misused trust funds, defalcated company funds, failed to pay clients's business payrolls and taxes, abandoned his law practice, and failed to cooperate, including failing to answer relator's complaints. The Board adopted the master commissioner's findings, conclusions, and recommended sanction. In Count 1, client #1 was the administrator of her mother's estate and retained the respondent to represent the estate. Respondent filed the application to probate the will in November 2002, but failed to respond to the client inquiries over the next two years. In January 2005, he informed the client that the estate owed \$9817.97 to the state in estate taxes. The client promptly gave the respondent a check for the taxes and an additional \$950 for the lawyer's fee. Respondent waited six months to file the return. The Ohio Department of Taxation notified respondent of penalties and interest, and offered the opportunity for him to demonstrate reasonable cause for late filing, but he did not respond and he did not notify the client. The client eventually learned of the late fees and penalties in November 2006 and paid a \$2,45,49 penalty and \$3,785.72 interest charge. In December 2006, the client entrusted to respondent documents from the bank regarding the decedent's brokerage account, but respondent failed to respond to the bank or to client's phone calls about the tax and bank matters. Client filed a complaint in small claims against respondent and was awarded a default judgment of \$3000, which respondent never paid. Board found violations of DR 1-102(A)(6), 6-101(A)(3), 7-101(A)(1) and (3). In Count 2, respondent prepared tax returns for client # 1 and her late husband and for his business for several years and maintained the returns and worksheets. In 2007, despite numerous requests from the client and her attorneys for the tax records, respondent provided only several years of the most recent returns. Board found violations of DR 1-102(A)(6), 2-110(A)(2), 7-101(A)(3), 9-102(B)(4) and Prof.Cond.R. 1.4(a)(2), 1.4(a)(4) and 1.15(d). In Count 3, respondent prepared personal tax returns for client # 1 and her husband and advised them that they owed no city taxes in 1998 and 1999. In 2005, the city sued them for failing to pay taxes during those years. They owed incurred interest charges on the unpaid taxes. Board found violations of DR 6-101(A)(3) and 7-101(A)(3). In Count 4, the Accounting Board of Ohio revoked respondent's CPA certificate in 2004 for conducting an audit while his license was expired. In 2007, respondent was found guilty of unlawful accounting practices, in violation of R.C. 4701.14(G) a first degree misdemeanor for acquiring an unrelated public accounting firm and doing business under that name using an expired CPA license. Board found violations of DR 1-102(A)(3) and (6) and Prof.Cond.R. 8.4(b) and (h). The Court did not find clear and convincing evidence to support this finding. The court noted that the judgment entry of his conviction did not state the facts supporting his conviction or the facts leading to the revocation of his certificate. Respondent testified that after he lost his CPA certificate, he neglected to remove signage from a branch accounting office which resulted in the unlawful accounting practices charge to which he pleaded no contest. Although normally the Court would have remanded this count to the Board for further proceedings, they did not, since they were already imposing disbarment on respondent. In Count 5, respondent received \$80,000 in trust from a business deal of client #2 whom he represented for years and who engaged in business. In early 2008, respondent asked the client if he could borrow \$30,000 from the trust. When the client said he would think about it, the respondent told the client that he had already taken the money without authorization and used it for personal benefit. Respondent promised to pay it back by February but only repaid \$9,000 from May to August 2008. When the client pressed for the remainder, respondent wrote him a check for \$25,853.82 which was returned for insufficient funds. The client called the police after respondent ignored his letter demanding he make good on the check. Respondent provided client with no written evidence of the "loan" and failed to advise the client of the conflict of interest or to seek independent counsel. At the time of relator's filing of the complaint, respondent had not personally repaid any of the remaining balance, though an unknown associate of the respondent did repay a substantial portion of the money. Board found violations of Prof.Cond.R. 1.4(a)(2), 1.7(b), 1.8(a), 1.15(a) and (d), and 8.4(b), (c), and (h). In Count 6, respondent represented a trucking company owned by client #3's family and held payroll and

other assets in a trust account from which he was to disburse the assets to various taxing authorities. From 2005 to 2008, he failed to hold some of the funds in a trust account and failed to disburse funds to the proper tax authorities as directed by the clients, leading them to believe he had held and disbursed the funds. As a result, the company's worker's compensation premiums have increased, and the company had back taxes, penalties and fees in excess of \$100,000. Respondent did not account for the funds, purloined some for his own purposes without informing the client, did not respond to clients' numerous phone calls, and was not at the office when they attempted to retrieve their documents. They filed a criminal complaint with the police. Board found violations of DR 1-102(A)(3) and (6), 6-101(A)(3), 7-101(A)(3), 9-102(B)(4) and Prof.Cond.R. 1.4(a)(2), 1.15(a)(2) and (d), and 8.4(b), (c), and (h). In Count 7, respondent held payroll and other assets for a second business owned by Client #4, for the purpose of disbursing the assets to various taxing authorities. From 2004 to 2008, respondent failed to hold some of the funds in a trust account and failed to disburse funds to the proper tax authorities. Respondent also overstated the company's payroll obligations, and after making some legitimate payments from the inflated amount retained the excess money which totaled more than \$52,000. As a result of the respondent's actions, this client has liability for \$340,000 in back taxes, interest and penalties. The respondent ignored the client's attempts to contact him, made no accounting, and failed to return documents. The client filed a criminal complaint. Respondent violated DR 1-102(A)(3) and (6), 6-101(A)(3), 7-101(A)(3), and 9-102(B)(4), and Prof.Cond.R. 1.4(a)(2), 1.15(a)(2) and (d), and 8.4(b), (c), and (h). In Count 8, respondent abandoned his law practice prior to October 2008; he stopped checking his mail, returning phone calls, and left a massive number of files and pile of unfiled documents and correspondence, computers, copiers, law books, and personal effects. He gave his landlord a check for \$1300 in past-due rent, which was returned for insufficient funds, and he promised to make good on the check by October 2008, but did not. In January 2009, he paid the landlord to gain access to the office for a short period of time. When the time expired, he presented another check for access, but it was returned for insufficient funds. Respondent has been locked out of his office since then, leaving client files, unfiled court documents, correspondence, and office equipment. Respondent's registration address is the abandoned office. Board found violations of Prof.Cond.R. 1.4(a)(2), 1.15(d), 8.4(b) and (h) and Gov.Bar R. VI(1)(D). In Count 9, respondent failed to respond to the disciplinary complaints served against him. Board found violations of Prof.Cond.R. 8.1(b) and Gov.Bar R. V(4)(G). The following factors were found in aggravation, pursuant to BCGD Proc.Reg. 10(B)(1)(c), (d), (e), (g), (h), (i): a pattern of misconduct involving multiple offenses, harm to clients, a failure to make restitution, acknowledge the wrongful nature of the conduct, or to cooperate in the disciplinary process. There were no factors in mitigation. The primary purpose of discipline is to protect the public. *Agopian* (2006). The presumptive sanction for such repeated dishonesty and failure to cooperate is permanent disbarment. *Jones* (2006), *Fernandez* (2003), *Weaver* (2004), and *Wherry* (2000). Board recommended permanent disbarment. The Court agreed, and so ordered.

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**Rules Violated:** Prof.Cond.R. 1.4(a)(2), 1.4(a)(4), 1.7(b), 1.8(a), 1.15(a), 1.15(a)(2), 1.15(d), 8.1(b), 8.4(b), 8.4(c), 8.4(h); DR 1-102(A)(3), 1-102(A)(6), 6-101(A)(3), 7-101(A)(3), 2-110(A)(2), 9-102(B)(4); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> (c), (d), (e), (g), (h), (i)	<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> YES
<b>Public Official:</b> NO	<b>Sanction:</b> Disbarment	

*Kimmins, Disciplinary Counsel v.*

123 Ohio St.3d 207, 2009-Ohio-4943. Decided 9/24/2009.

Respondent advanced financial assistance to a client while representing him in pending litigation; retained the client's property without disclosing the fact; misused the client's confidential information; made misrepresentation to the client's family; and failed to maintain complete records and render appropriate accounts to the client regarding his property. Respondent was admitted to practice in 1968. He represented a client [Steiner] in a dispute related to the estate of his mother who died in August 2002. Steiner had lived over 40 years in a house owned by his mother. He stored on the premises automotive and commercial equipment and other items he intended to repair and sell to augment his income after retirement. The house was deteriorated. The roof in the house had leaked and damaged the kitchen. The plumbing had problems. He kept boxes of leftover chicken dinners and jars of applesauce in the refrigerator. He stored piles of paper, tools, and equipment throughout the house. In March 2004, Steiner told respondent that he had decided to retire from his job as a mechanic and he sought advice on his financial situation while waiting for his pension payments. He had not requested a loan from respondent, but he agreed to accept \$5,000 from respondent to be deposited into a power-of-attorney account for the purpose of paying bills and covering expenses of the pending case until the estate closed. He executed a durable power of attorney appointing respondent his attorney-in-fact. Respondent opened and paid Steiner's bills out of the power-of-attorney account that was jointly in respondent's and Steiner's names. A week later, the dispute about the mother's estate was settled for \$40,000, various bonds, and title to the mother's house. Respondent retained \$12,000 per contingent fee agreement. When respondent called a man [Hawk] to explain that he had a client with a bum leg who recently retired and to ask that Hawk pick up the tools, Steiner took the phone and said he did not need any help. In late March, respondent and Steiner met for breakfast at a restaurant and Steiner admitted being depressed over the settlement and the family discord and division. Respondent drove Steiner home, toured the house, and persuaded Steiner to go with him to a hospital to have his depression and varicose veins treated. The doctor diagnosed him with severe depression. Steiner voluntarily admitted himself to the hospital. Even though respondent knew Steiner would not approve and had not executed the power of attorney to remediate the property, respondent, who considered Steiner's property unfit for human habitation, began using the power of attorney to clean up inside and outside the house. He hired Hawk to sell the items collected outside the house. Respondent and others began sorting through items in the house to determine what was garbage, what to move a storage unit, and what to leave in the house. Respondent told Steiner's children of the father's hospitalization. He got their consent to the clean up by telling them the doctor said Steiner was a threat to himself and others, that Steiner had financial problems, that social services was involved, that the property was out of compliance with zoning; that Steiner would not be able to return home if they did not remedy problems at the house. Steiner was concerned that something was happening to his property and by April 2, 2004 asked his friend (Pappas) to check. Pappas told Steiner that Hawk was hauling items off the property and scraping items that could have been sold. Steiner now knew that respondent had begun using his power of attorney to clean up the property. Steiner did not protest, revoke the power of attorney, or check himself out of the hospital. He visited the property on April 5th. He said he feared that raising objections would result in his being committed to a mental hospital. He admitted agreeing with the plan to clean up the property to sell it. Steiner's son drafted a letter authorizing the clean-up, but reserved several items from the sale and required respondent to maintain an inventory. Steiner went to Georgia with his son to stay until the clean up was complete. The son became suspicious of respondent's description of his father's mental and legal problems. The son testified that when he confronted respondent, respondent threatened him. Steiner took the phone and questioned respondent about giving away so much of his property. Respondent terminated the relationship. Respondent distributed the funds he received in settlement of estate challenge and prepared two inventories accounting for much of the property. He had failed to keep an accurate inventory of the property sold or discarded. He did not know whether all of the household property from the inside either remained on the property or was in storage. He admitted that it was impossible to keep track of Steiner's possessions, that not all the property had been returned, and that

none of the money paid for the items removed had made its way to Steiner. The Supreme Court of Ohio adopted the board's findings that respondent violated DR 5-103(B) by making the \$5,000 loan to Steiner; DR 1-102(A)(4) his misrepresentations to Steiner's children regarding Steiner's mental health and whether the property complied with township code; DR 4-101(B)(2) and 1-102(A)(6) by misusing confidential information to Steiner's disadvantage to solicit support of his children for the cleanup which he knew Steiner would oppose; DR 1-102(A)(4) by the retention of decorative stone which was used in landscape at respondent's home; and DR 9-102(B)(3) and 1-102(A)(6) by failing to adequately and honestly account for the property. In aggravation, he refused to acknowledge the wrongful nature of the conduct, other than lending the client money; failed to make restitution or help the client retrieve his possession; and the client was vulnerable and suffered harm. In mitigation he practiced law for more than 45 years without a disciplinary record. He did not act with dishonest or selfish motive. He had an exemplary career and offered 40 letters of reference from people of all walks of life and presented character testimony of two current and one retired judges. He fully cooperated and made full disclosure and has suffered embarrassment resulting from local media. The court adopted the board's recommended sanction of a one-year suspension, stayed on conditions and the court so ordered. Three justices dissented in favor of an actual suspension of one year, with no stay.

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**Rules Violated:** DR 1-102(A)(4), 1-102(A)(6), 4-101(B)(2), 5-103(B), 9-102(B)(3)

<b>Aggravation:</b> (g), (h), (i)		<b>Mitigation:</b> (a)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">One-year suspension, stayed</a>		

*Kizer, Columbus Bar Assn. v.*

123 Ohio St.3d 188, 2009-Ohio-4763. Decided 9/17/2009.

Respondent neglected several legal matters to the prejudice of the clients' interests, accepted retainers that she did not deposit into a trust account, received fees for work she did not perform, and failed to return those unearned fees. Respondent was admitted to the Ohio bar in 2001, but registered inactive in September 2008. She graduated from law school in 2000 but did not begin practice until 2003. In addition to the pressure of being a young sole practitioner, she had a number of serious stress factors in her personal life. She used her home as her office as a cost saving measure. By early 2007, she had effectively abandoned her practice by failing to return telephone calls, check e-mail messages, retrieve mail, or attend court appearances. Relator tried unsuccessfully to serve grievances that it had received from three former clients in June, July, and August 2007, but respondent no longer had an office or received mail at the address she had registered with the court. In late August 2007, when respondent became aware of the grievances, she contacted OLAP. She met with relator's counsel in September 2007, but did not respond to the grievances in writing. She submitted an untimely written response to a fourth grievance. Relator deposed respondent in March 2008. Respondent was assessed by OLAP and diagnosed with drug and alcohol dependencies and mental disorders, but respondent abandoned her OLAP contract after 11 days citing a personality clash with an OLAP employee and her discomfort with OLAP's emphasis on chemical dependency, which she did not believe was her problem. In October 2007, respondent sought mental-health treatment without OLAP's supervision. Her initial assessment was by NetCare Access and she began to see a counselor. She had a brief hospitalization for psychiatric care and continued to receive outpatient psychiatric care. A letter from her treating psychiatrist stated that her diagnosis is major depression recurrent severe with no psychosis and that she was under treatment and her symptoms are under control. The psychiatrist opined that she will be able to return to work as a lawyer and practice ethically, competently, and professionally. Board adopted the panel's findings, conclusions, and recommendations. As to Count I, the Board found violations of Prof.Cond.R. 1.1, 1.3, 1.4(a)(3), 8.4(h) for her conduct in representing a client in a child-custody and dependency matters wherein she did not deposit the retainer in a trust account, she filed a motion for allocation of a dependency exemption but failed to notify the client of the hearing in the matter, and respondent failed to appear at the hearing. She abandoned her office and left no forwarding address, thus, the respondent was unable to locate respondent. After the client filed the grievance, respondent secured a hearing date for the child custody matter, but failed to appear and the matter was dismissed by the magistrate. Respondent obtained reinstatement of the case, but the client had difficulty contacting her and got new counsel. Respondent's conduct caused the client delay and expense. As to Count II, the Board found violations of Prof.Cond.R. 1.1, 1.3, 1.4(a)(3), 8.4(h) for accepting a retainer for representation in a visitation matter and then failing to file documentation to establish paternity and failing to appear at a hearing. The client and his new attorney could not reach respondent who has not returned the fees. Her misconduct substantially delayed the client securing visitation. As to Count III, the Board found violations of Prof.Cond.R. 1.1, 1.3, 1.4(a)(3), 1.15 (d), 8.4(h) for failing to appear at a hearing after accepting a retainer and filing a motion to modify parental rights. The client never heard from respondent again and did not receive a refund of the unearned retainer. The client was granted a pro se motion to obtain new counsel, but suffered delay and economic loss because of respondent's inaction. As to Count IV, the Board found violations of Prof.Cond.R. 1.1, 1.3, 1.4(a)(3), 1.15(c) and (d), 8.4(h), and DR 9-102(A)(2) for failing to deposit a retainer for divorce representation into a trust account and after making several court appearance, the client was unable to reach her so the client hired new counsel. She represented that she would send the client a statement and any balance due but she did not. In aggravation, there was a pattern of misconduct and multiple violations that harmed some of her clients; she failed to honor the OLAP contract; failed to fully cooperate in the investigation, although cooperative during later stages; and has not yet made restitution to the clients for her unearned fees. BCGD Proc.Reg. 10(B)(1)(c), (d), (e), (f). In mitigation, there is no prior discipline; there was cooperation of the hearing; there was remorse and acknowledgment of her duty to make restitution for unearned fees. BCGD Proc.Reg. 10(B)(2)(a), (b).

Although the unsworn letter from the psychiatrist did not fully satisfy BCGD Proc.Reg 10(B)(2)(g) there was clear inference that her major depression contributed to her misconduct. The Board expressed concern that no one presented medical testimony addressing a timetable for recovery and the record is unclear as to whether she has a substance abuse problem that need to be treated. The Supreme Court of Ohio adopted the board's findings, conclusions, and recommended sanction and so ordered a suspension for 18 months commencing on September 17, 2008 with reinstatement conditioned upon restitution of \$1,000 to the Count I client, \$800 to the Count II client, \$500 to the Count II client, and \$1,500 to the Count IV client; satisfaction of the (petition for reinstatement) requirements of Gov.Bar R. V(10)(C) through (G) and must (1) continue work with qualified mental- health professionals of her choice, (2) immediately submit to a substance-abuse assessment by OLAP or a comparable qualified agency, and (3) fully comply with any recommendations by OLAP or a comparable qualified agency.

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**Rules Violated:** Prof.Cond.R. [1.1](#), [1.3](#), [1.4\(a\)\(3\)](#), [1.15\(c\)](#), [1.15\(d\)](#), [8.4\(h\)](#); DR 9-102(A)(2)

<b>Aggravation:</b> (c), (d), (e), (f)		<b>Mitigation:</b> (a), (b)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> <a href="#">YES</a>		<b>Criminal Conduct:</b> NO
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">18-month suspension</a>		

***Kraemer, Disciplinary Counsel v.***

126 Ohio St.3d 163, 2010-Ohio-3300. Decided 7/21/2010.

Respondent received an interim felony suspension in *In re Kraemer*, 118 Ohio St.3d 1514, 2008-Ohio-3441 based upon his guilty pleas to one count of theft, a fifth-degree felony for which he was sentenced to three years of community control, fined \$1,000 and ordered to pay \$7,157.10 restitution to the law firm. Respondent improperly withheld his law firm's share of legal fees collected from a client. Respondent was employed by a law firm. Pursuant to an oral agreement, respondent was to receive 40% of the fees collected on cases he worked on and 60% was to go to the firm. In 2007, he failed to remit the firm's share of fees he collected totaling nearly \$12,000. Respondent was terminated from his employment. The board adopted the panel's findings that respondent violated, as stipulated by the parties, Prof.Cond.R. 8.4(b), (c), (d), and (h). The parties stipulated to a two-year suspension with the second year stayed on the conditions that respondent continue regular mental health treatment, submit to law practice monitoring, and refrain from further misconduct. Respondent requested credit for time served. In aggravation, there was a dishonest or selfish motive, and a pattern of misconduct involving multiple offenses. BCGD Proc.Reg. 10(B)(1)(b), (c), and (d). In mitigation, there was lack of prior disciplinary record, payment of restitution, cooperative attitude in the disciplinary process, other sanctions or penalties for the misconduct, otherwise good character, and a diagnosis of "adjustment disorder with mixed conduct and emotion." BCGD Proc.Reg. 10(B)(2)(a), (c), (d), (e), (f) and (g). Additionally, the board noted that respondent had ceased his criminal activity prior to being caught, admitted his conduct to the police, and expressed remorse at the hearing. Rejecting the parties' stipulated sanction, the board adopted the panel's recommended sanction of a two-year suspension, all stayed on conditions that 1) continue to make regular visits to his treating mental-health professional, at an interval to be determined by that professional, (2) upon his return to practice, submit to a law-practice monitor appointed by relator, (3) refrain from any further misconduct. The court disagreed with the board's recommended sanction. The court noted that the cases cited by the board, *Carter* (2007) and *Brenner* (2009), resulted in a two-year suspension with only one year stayed, for similar misconduct. The court noted that the board did not recommend credit for time served, although the board, citing *Margolis* (2007), noted that factors were present in the case that were relevant to such a determination: the presence of remorse and acceptance of responsibility, the length of time the conduct occurred and the amount of money involved, and whether the conduct was "a one-time, out-of-character mistake." The court noted it had consistently held that misappropriation of law firm funds warrants an actual suspension, *Brenner* (2009), *Crossmock* (2006), *Yajko* (1997), *Crowley* (1994), *Osipow* (1994), and that attorney have been required to serve actual suspension for conduct involving dishonesty, fraud, deceit, or misrepresentation, *Rohrer* (2009), *Fowerbaugh* (1995). The Court sustained the relator's objection and ordered a two-year suspension, with one year stayed on the conditions that he continue to participate in mental health counseling and complete a two- year term of probation monitored by relator following his return to the practice of law; with one year of credit for time served during this interim felony suspension. Thus, respondent could reapply for reinstatement immediately, provided he was in compliance with the conditions of the suspension.

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**Rules Violated:** Prof.Cond.R. 8.4(b), 8.4(c), 8.4(d), 8.4(h)

<b>Aggravation:</b> (b), (c), (d)		<b>Mitigation:</b> (a), (c), (d), (e), (f), (g)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> NO	<b>Sanction:</b> Two-year suspension, 18 months stayed		

*Kubyn, Lake Cty. Bar Assn. v.*

121 Ohio St.3d 321, 2009-Ohio-1154. Decided 3/19/09.

Respondent failed to promptly return unearned fees upon discharge of employment and to take reasonably practicable steps to protect his client's interests. The parties entered into a consent-to-discipline agreement based on relator's one count complaint. In late December 2006, Michael J. Butz hired respondent to represent him in his divorce and other matters by signing a fee agreement and paying respondent \$5,000. Butz became dissatisfied with respondent and discharged him on January 31, 2007. Butz advised respondent that he had retained new counsel and asked respondent for an itemized billing and to return any unearned fees. In February 2007, Butz's brother, another attorney, asked respondent again for an itemized billing and the return of unearned fees. Butz's brother wrote a second letter to the same effect early in March. Respondent did not comply. Butz's new attorney had to recreate the file. Respondent replied to a February 2007 request from Butz's new attorney for the Butz case file, but respondent claimed to have no duty to produce it because he sent Butz copies of all the paperwork as it was generated or received, thus Butz had the complete case file. Respondent offered the same justification during the investigation of Butz's grievance. In March 2007, respondent sent an itemized bill to his client and refunded \$1,032.50 in legal fees. Respondent later paid Butz an additional \$362.50 because the itemized statement assessed charges for work done after he was discharged. The panel and board accepted the consent to discipline agreement to a public reprimand for violations of Prof.Cond.R. 1.16(d) for failing to return his client's papers and property and Prof.Cond.R. 1.16(e) for failing to promptly return any unearned fees. According to the consent-to-discipline agreement, no aggravating factors were present. Mitigating factors included no prior disciplinary record, a lack of a dishonest or selfish motive, a timely and good faith effort to rectify the consequences of his misconduct, cooperation in the disciplinary proceedings, and respondent's good character and professional competence. BCGD Proc.Reg. 10(B)(2)(a), (b), (c), (d), and (e). The parties also agreed that a mental disability contributed to the cause of respondent's misconduct and has since been successfully treated. BCGD Proc.Reg. 10(B)(2)(g). The Supreme Court accepted the consent to discipline agreement and so ordered a public reprimand.

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**Rules Violated:** Prof.Cond.R. [1.16\(d\)](#), [1.16\(e\)](#)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (b), (c), (d), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Public Reprimand</a>		

**Laatsch, Disciplinary Counsel v.**

123 Ohio St.3d 140, 2009-Ohio-4204. Decided 8/27/2009.

Respondent advanced funds, personally and from his client trust account, to a personal injury client. An overdraft on his IOLTA triggered this disciplinary investigation. Respondent was a general practitioner who had extensive experience in bankruptcy. In 2004, he agreed to represent a client in a personal-injury claim against a fast-food restaurant. He had previously successfully represented the client and the client's sister who were injured in a traffic accident. He assisted the client in a variety of legal matters. The attorney-client relationship spanned approximately 15 years. The client was a single father who had filed for bankruptcy. His home was in foreclosure. The client prevailed upon respondent between August 2004 and May 2007 to advance funds for living expenses in anticipation of the damages the client hoped to recover from the restaurant. Respondent lent him \$5400. He lent approximately \$3400 from the IOLTA and approximately \$2000 from his personal bank account. Respondent kept track of each disbursement through ledger entries. There were 17 disbursements of up to \$300 each. In May 2007, they settled with the restaurant for \$5,500. The client repaid the loans with the settlement proceeds. Respondent deposited the funds in the IOLTA and withdrew the money to pay himself and gave the remaining \$100 to the client. He did not charge a legal fee. Board adopted the panel's findings of violations of DR 1-102(A)(6), 5-103(B), and 9-102(B)(3). There were no aggravating features. In mitigation, there was an absence of disciplinary record, absence of dishonest or selfish motive, and full and free disclosure or cooperation; and eight letters from attorneys including one judge attesting to his competence and integrity as a lawyer and his devotion to his family. Board adopted the panel's recommendation of a six-month suspension stayed on condition of no further misconduct. Board distinguished this case, in which respondent was a father-figure for the client for a number of years, cooperated with relator, and is no threat to the public, from *Freeman* (2008) who received an actual suspension and whose misconduct included disregard for the disciplinary system and a diagnosis of 'adjustment disorder with mixed anxiety and depressed mood' for which an actual suspension served the dual purpose of protecting the public and allowing respondent time to complete treatment and recovery. Supreme court adopted the Board's findings, conclusions of DR 1-102(A)(6), 5-103(B), and 9-102(B)(3) violations, and recommended sanction and so ordered a six-month suspension stayed on condition of no further misconduct.

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**Rules Violated:** DR 1-102(A)(6), 5-103(B), 9-102(B)(3)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (b), (d), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Six-month suspension, stayed		

*Landis, Disciplinary Counsel v.*

124 Ohio St.3d 508, 2010-Ohio-927. Decided 3/17/2010.

Respondent's license was suspended for failure to register on December 2, 2005 and for failure to comply with continuing legal education requirements on January 1, 2009. On June 2, 2009, respondent received an interim felony suspension based upon his conviction for operating a motor vehicle under the influence of alcohol, a fourth degree felony. Relator and respondent entered a consent-to-discipline agreement. The stipulated facts show that respondent voluntarily withdrew from the practice of law for personal and financial reasons in December 2005. In October 2008, respondent was indicted for two counts of operating a motor vehicle while under the influence of drugs or alcohol (OMVI) in violation of R.C. 4511.19(A)(1)(a) and 4511.19(A)(1)(h), fourth degree felonies based upon his previous conviction for three or more violations of R.C. 4511.19 or an equivalent statute, and one count of driving under suspension in violation of R.C. 4510.11(A), a first-degree misdemeanor. Respondent pled guilty to OMVI in violation of R.C. 4511.19(A)(1)(a) and the state dismissed the other charges. Respondent was sentenced to 60 days in jail, a \$500 fine, a 20-year suspension of his driver's license, and completion of an inpatient program arranged by the probation department, and completion of Community Corrections Center program. In February 2009, respondent voluntarily entered an outpatient program at Talbert House to receive treatment until his sentencing on April 22, 2009. As part of his sentence, respondent completed a four-month program focusing on the prevention of relapse at the Warren County Correctional Center. At the time the parties' consent to discipline was executed, he was participating in an aftercare program at Talbert House and was being monitored by the probation department. He remains under community control until April 2012. Respondent, in the consent to discipline agreement, admitted to violating Prof.Cond.R. 8.4(h) by pleading guilty to the fourth degree felony count of OMVI in violation of R.C. 4511.19(A)(1)(a). There are no aggravating factors. The mitigating factors are a lack of prior disciplinary record and cooperation and full and free disclosure. BCGD Proc.Reg. 10(B)(2)(a) and (d). The Board recommended acceptance of the consent to discipline agreement of a violation of Prof.Cond.R. 8.4(h) and a one-year suspension, stayed conditionally on respondent: 1) remaining drug and alcohol free, 2) entering and complying with a 3-year OLAP contract 3) attending at least one Alcoholics Anonymous meeting a week, and 4) complying with any terms of his criminal probation until the probation has been terminated. And, no credit for time served during his interim suspension. The Court accepted the consent-to-discipline agreement and so ordered.

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**Rules Violated:** Prof.Cond.R. 8.4(h)

<b>Aggravation:</b> (c), (d), (e)		<b>Mitigation:</b> (a), (d)	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> NO	<b>Sanction:</b> One-year suspension, stayed		

***Lape, Disciplinary Counsel v.***

130 Ohio St.3d 273, 2011-Ohio-5757. Decided 11/10/2011.

Respondent neglected a client's matter, failed to safe guard the client's property, and failed to cooperate in the ensuing disciplinary investigation. Respondent was hired to represent two clients in a bankruptcy matter. The clients' debt was discharged, but respondent failed to return the clients' phone calls about post discharge questions. Respondent also did not return the clients' papers to them upon request. Upon inquiry by relator, respondent did not initially respond to relator's letters. She eventually appeared at a deposition and said she had lost her clients' file. She agreed to help them, but never did. Respondent failed to file a timely answer and did no respond until she was served with a motion for default. This conduct violated Prof.Cond.R. 1.3 (reasonable diligence), 1.15 (safekeeping and delivery of client's property), 1.16(d) (protecting clients during withdraw), 8.1(b) (failing to respond in a disciplinary investigation), and Gov.Bar R. V(4)(G) (failure to cooperate). The Court adopted these findings. The parties stipulated that respondent had no prior discipline as a mitigating factor, however, she did have a previous attorney registration suspension, and thus her prior discipline is an aggravating factor. BCGD Proc.Reg. 10(B)(1)(a). The parties stipulated to, and the board recommended a six-month suspension, stayed on the condition of no further misconduct and 6 CLE hours in law office management. Citing *Zaffiro* (2010) and *Simon* (2011), the Court adopted the recommended sanction.

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**Rules Violated:** Prof.Cond.R. [1.3](#), [1.15](#), [1.16\(d\)](#), [8.1\(b\)](#), Gov.Bar R. [V\(4\)\(G\)](#)

<b>Aggravation:</b> (d), (e), (h)		<b>Mitigation:</b> (a), (g)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Six-month suspension, stayed</a>		

**Lapine, Disciplinary Counsel v.**

128 Ohio St.3d 87, 2010-Ohio-6151. Decided 12/21/2010.

Reciprocal Discipline on Certified Order of the US SEC, No. 3-13926

“This case concerns whether a suspension order entered by the United State Securities and Exchange Commission (“SEC”), in which an attorney licensed in Ohio has voluntarily agreed not to practice before the SEC for five years and which reflects neither an admission of wrongdoing by the attorney nor an affirmative finding professional misconduct by the SEC, is a disciplinary order by another jurisdiction that requires this court to impose reciprocal discipline pursuant to Gov.Bar R. V(11)(F).” The court noted that it had not before addressed the question of whether the SEC is a “jurisdiction for purposes of Gov.Bar R. V(11)(F), but, the court has recognized that a federal agency may be a considered a jurisdiction for purposes of the rule. See *Disciplinary Counsel v. Rayve*, 121 Ohio St.3d 1212, 2009-Ohio-3810; *Disciplinary Counsel v. Knuth*, 119 Ohio St.3d 1201, 2008-Ohio-3810; and *Disciplinary Counsel v. Colitz*, 99 Ohio St.3d 1216, 2003-Ohio-3308 in which the court imposed reciprocal discipline for suspensions from practice before the United States Patent and Trademark Office (USPTO). The court distinguished the considerations involved as to the USPTO cases from considerations raised herein as to the SEC cases. The court held that “the SEC is not a ‘jurisdiction’ for purposes of reciprocal discipline, it did not issue a disciplinary order within the meaning of Gov.Bar R. V(11)(F), and reciprocal discipline is not available in this case. Accordingly, the appropriate disposition is to dismiss this matter without imposing reciprocal discipline.”

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**Rules Violated:** NONE

<b>Aggravation:</b> NONE		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Dismissal		

**Large, Disciplinary Counsel v.**

122 Ohio St.3d 35, 2009-Ohio-2022. Decided 5/6/2009.

Respondent worked for a small law firm for nearly two years, then opened a solo practice in October 1999. For the tax year 1999, a certified public accountant prepared and filed a federal income tax return for respondent, but for the next five years, respondent did not pay state or federal personal income tax. In 2000 when respondent consulted the accountant about filing his taxes, the accountant estimated he would owe in excess of \$10,000. The accountant obtained extensions for respondent to supply additional information that was needed, but respondent did not provide the information and did not file a timely return for 2000, claiming an inability to pay. In 2002, respondent provided the accountant the information necessary for the 2000 federal return. By June 18, 2002, the accountant prepared the return, showing a tax liability of \$11,099 and had it ready for respondent's signature. By October 3, 2002, the accountant had completed a return for the 2001 tax year, showing a tax liability of \$24,096. Still claiming insufficient funds, respondent did not file either return. In 2002, respondent received approximately \$72,000 as his fee for settling a client's personal-injury claim, but about the same time he purchased a used Jaguar automobile and a used Chris Craft motor boat, rather than paying the taxes owed. For the tax years 2002, 2003, 2004, he failed to file his personal income tax, again claiming he did not have money. Respondent testified that due to embarrassment, he kept the default a secret and did not seek professional guidance. He ignored IRS delinquency notices and letters. In 2004, respondent and a partner formed a limited-liability company and then a legal professional association. The partner decided to leave the firm in 2006. The partner suspected respondent had tax delinquencies. At the partner's urging respondent went back to the accountant in early 2006. By March 7, 2006, the accountant completed the federal tax returns for 2002 (\$44,862 in taxes due), 2003 (\$22,923 in taxes due), and 2004 (\$5,221 in taxes due). In the Spring of 2006, respondent provided those returns and his 2000 and 2001 returns to the IRS, but by then he was already the target of an investigation. On June 14, 2007, respondent pleaded guilty to four counts of violating Section 7203, Title 26, U.S.Code (willfully failing to file personal income tax returns, misdemeanor offense, for the years 2001, 2002, 2003, and 2004. He was sentenced to four years probation, serving the first six month in a community confinement center, then serving six months of electronically monitored home confinement, continuing his legal practice in accordance with the conditions of confinement. He was ordered to pay \$88,077 in restitution to the IRS, but at the time of the panel hearing had paid less than \$1500. He has since offered \$7500 in compromise of the debt. While a solo practitioner, he paid wages to employees by check without withholding any amounts for their income taxes and Social Security contributions. He did not report the employees' wages to the IRS. In addition, when he filed tax returns for 200, 2001, 2002, 2003, and 2004, he did not claim business-expense deductions for the wages he paid the employees, but at the IRS's request he amended his federal tax returns for those years and reduced his tax liability from \$108,201 to \$76,739. Board adopted the panel's finding of violations of DR 1-102(A)(4) and (A)(6) based on the four convictions for willingly failing to file personal income tax returns for 1001, 2002, 2003, and 2004; a violation of DR 1-102(A)(6) for failure to timely file Ohio personal income tax returns for the tax years 2000 through 2004; and a violation of DR 1-102(A)(6) by failing to timely report to the IRS the wages paid to employees for tax years 2000-2004. In mitigation, respondent has no prior disciplinary record, established good character and reputation, pleaded guilty, acknowledged wrongful nature of misconduct and showed contrition, served that sanctions imposed by federal court with the exception of making restitution, reported his conviction to Disciplinary Counsel, fully cooperated, did not lie to a client or to a court. In aggravation, he engaged in a pattern over approximately five years, made a conscious decision not to file taxes and not to withhold from employees' wages, was motivated by selfish desire to delay collection of his taxes, and failed to diligently attempt to make restitution. Board adopted panel's recommendation of a one year suspension with six months stayed. The Supreme Court of Ohio agreed with the findings of violations, but disagreed with the recommended sanction. Citing *Stichter* (1985), *Litt* (1983), *Loha* (1983), and distinguishing *Abood* (2004), the Supreme Court ordered a one year suspension.

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**Rules Violated:** DR 1-102(A)(4), 1-102(A)(6)

<b>Aggravation:</b> (b), (c), (i)		<b>Mitigation:</b> (a), (d), (e), (f)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> NO	<b>Sanction:</b> One-year suspension		

*Larkin, Columbus Bar Assn. v.*

128 Ohio St.3d 368, 2011-Ohio-762. Decided 2/23/2011.

Respondent was indicted for possession of cocaine and heroin and she entered a diversion program that required drug and alcohol counseling, drug screening, and abstention from drug and alcohol use. She failed to comply with the diversion program and the trial judge returned her criminal case to the court's active docket. She also failed to cooperate in the disciplinary process after her deposition. In 2010, during the pendency of disciplinary action, respondent has been sanctioned for failing to comply with continuing legal education requirements. A master commissioner was appointed to make findings of fact, conclusions of law, and a recommended sanction on relator's default motion. The facts underlying respondent's indictment arose from respondent's automobile accident in 2009 in which she was seriously injured. While investigating the accident, police found a crack-cocaine pipe and used heroin syringes in respondent's car. At deposition, respondent admitted to longstanding problem with drugs and alcohol and unsuccessful treatment. She also admitted that at the time of the accident she possessed drug paraphernalia containing residue of heroin and cocaine and that she was travelling to see someone who encouraged her illegal drug use. Respondent has had no contact with OLAP since August 2007, despite relator's urging to contact OLAP. The master commissioner and the board found a violation of Prof.Cond.R. 8.4(b) and 8.4(h) and recommended an indefinite suspension. The court adopted the findings of fact and conclusions of law, and the recommended sanction. In aggravation, respondent engaged in a pattern of misconduct involving multiple offenses and failed to cooperate in the disciplinary process after the deposition. BCGD Proc.Reg. 10(B)(1)(c), (d), and (e). The court also found a prior disciplinary record for failure to comply with attorney- registration requirements as an aggravating factor, citing *Mitchell* (2010) and *Paulson* (2006) "(both holding that attorney-registration violations are prior disciplinary offenses pursuant to BCGD Proc.Reg. 10(B)(1)(a))." BCGD Proc.Reg. 10(B)(1)(a). The court rejected the board's finding of imposition of other penalties as a mitigating factor, since the court found no evidence of other penalties or sanctions. Relator requested an indefinite suspension, citing *Ridenbaugh* (2009), *Wolanin* (2009), and *Young* (2004), cases involving mental illness or substance abuse, but not qualifying as a mitigating factor under BCGD Proc.Reg. 10(B)(2)(g)(i) through (iv). The court, citing *Young* (2004) which cited *Johnson* (2002), noted that the court's duty to protect the public but also to not deprive the public of attorney who through rehabilitation may be able to ethically and competently serve. The court ordered that respondent be indefinitely suspended, with reinstatement conditioned upon proof that respondent successfully completed treatment for substance abuse and is capable of competent, ethical, and professional practice.

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**Rules Violated:** Prof.Cond.R. 8.4(b), 8.4(h)

<b>Aggravation:</b> (a), (c), (d), (e)		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Larson, Cincinnati Bar Assn. v.*

124 Ohio St.3d 249, 2009-Ohio-6766. Decided 12/30/2009.

Respondent misled one client, failed to perform duties for that client and two others, failed to return unearned fees to all three clients, and failed to cooperate in two ensuing disciplinary investigations. Board adopted the panel's findings and recommendations, but not the panel's recommendation of a two-year suspension all stayed with conditions. As to Count I, respondent was hired in July 2006 to file a divorce. The client paid \$1,000 and provided all the documentation, but respondent did not file the complaint. The client, in September 2006, filed her own CPO petition against her then-incarcerated husband, and asked for the exclusive use of her husband's truck which the court did not grant. After the husband was released from prison, the husband filed charges alleging his wife used the truck without authorization. The client attended two municipal court hearings and signed waiver of counsel. Respondent insisted he defended her. The client, after sending respondent a letter in January 2007 and demanding he proceed with the divorce or return the \$1,000 fee, filed a suit against him in small claims court. The court continued two hearing dates on his request, but he never appeared. A default judgment was granted against respondent awarding the client \$1,000 plus \$85 in court costs. He paid it only after a bailiff issued a writ of execution. Board found violations of DR 7-101(A)(1), (2), and (3), DR 9-102(B)(4) and its counterpart Prof.Cond.R. 1.15(d), and Gov.Bar R. V(4)(G) for failure to respond to relator's letters of inquiry and coming unprepared for a deposition. As to Count II, in January 2007, respondent was paid \$300 to defend a client in mayor's court on traffic citations. The client feared her driver's license would be suspended because she had failed to appear at one court date. He advised her that he would arrange for the court to forgive the failure to appear, drop a peeling tires citation, and reduce her speeding ticket to avoid adding points to record. In mid-February, the client received notice of her license suspension and of the required fee to reinstate it. She consulted respondent who advised her that the notice was a mistake and not to pay the reinstatement fee. When she continued to register concerns, he assured her he was working with a prosecutor and would resolve it. In mid-March 2007, she received a notice of a warrant for her arrest. She consulted respondent and he told her if she had to drive to "drive safely." In April 2007, the client contacted the mayor's court and paid the fee. In May, she wrote to respondent and asked for a \$300 refund, but he did not promptly return the unearned fee and he stopped returning the client's calls. Board found a violation of Prof.Cond.R. 1.1, 1.3, 1.4(a)(3), 1.15(d), 8.4(c), and Gov.Bar R. V(4)(G) for failing to respond to relator's inquiry and being unprepared for a deposition. As to Count III, respondent was paid \$250 to represent a client in a juvenile court proceeding. He said he would obtain a continuance of an October court date, but he failed to do so, and when the client failed to appear, the court issued a bench warrant for the client's arrest. He did nothing and failed to promptly refund unearned fees. Board found violations of Prof.Cond.R. 1.3, 1.4, and 1.15(d). In mitigation, there was no record of prior discipline; there was medical evidence to show he had a debilitating sleep disorder that compromised his energy level and focus and that with treatment his concentration and productivity has improved; and judges, pursuant to subpoena, provided favorable assessments of his character and competence, although they commented he was at times late for court. BCGD Proc.Reg. 10(B)(2)(a), (e). Respondent testified that he had started using new scheduling software and had been interviewing candidates for office assistant. He attributed his problems to expanding the number of cases and jurisdictions covered, but the board noted this does not explain his misrepresentation to the Count II client. Not until an exchange with a panel member did respondent acknowledge having misled his client. Even if his busy workload contributed to his misconduct, his hearing testimony showed that he had made few concrete changes. His goals to limit the number of cases, the counties in which he practiced, and his time out of the office remain largely aspirational. Also weighing as aggravating factors, there was a pattern of misconduct that caused all three clients harm, and put two at risk of arrest; he failed to respond to relator's investigation until compelled by relator, and the board doubted, given his evasive answers that he accepted responsibility for his misconduct. BCGD Proc.Reg. 10(B)(1)(c), (e), and (h). Board recommended a two-year suspension, with 18 months stayed on conditions of no further misconduct and completion of continuing legal education courses in managing his law office, his caseload, and his time. The court accepted the

Board’s findings and recommendations, but not the recommended sanction. The court ordered a two-year suspension, one year stayed under conditions of no further misconduct, and in addition to required CLE complete 12 hours of CLE training in law-office, caseload, and time management, and complete a one-year monitored probation under the auspices of a lawyer appointed by relator. In dissent, the Chief Justice would have imposed a two-year suspension, without stay.

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**Rules Violated:** Prof.Cond.R. 1.1, 1.3, 1.4, 1.4(a)(3), 1.15(d), 8.4(c); DR 7-101(A)(1), 7-101(A)(2), 7-101(A)(3), 9-102(B)(4); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> (c), (e), (h)		<b>Mitigation:</b> (a), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Two-year suspension, 12 months stayed		

***LaRue, Disciplinary Counsel v.***

122 Ohio St.3d 445, 2009-Ohio-3604. Decided 7/29/2009.

In 2006-2007, respondent deposited personal funds into his client trust account; used funds in his client trust account for various business and personal expenses; and failed to keep client ledgers during that period. Panel accepted in full the stipulations of respondent and relator as to findings, conclusions, mitigating factors, and recommended sanction. The mitigating factors are an absence of a prior disciplinary record, absence of a selfish or dishonest motive, and respondent's full cooperation in the disciplinary proceeding. BCGD Proc.Reg. 10(B)(2)(a), (b), and (d). Panel concluded there were violations of DR 1-102(A)(6), 9-102(A), and 9-102(B)(3) for the acts committed prior to February 1, 2007 and Prof.Cond.R. 1.15(a), 1.15(a)(2), and 8.4(h) for the acts committed after February 1, 2007 and recommended a suspension for one year stayed on conditions that his client trust account be monitored for a one-year probationary period by a relator-appointed attorney experienced in handling client funds and that respondent commit no further misconduct during the probationary period. Board adopted the panel's findings and conclusions, but recommended a suspension for six months, all stayed upon condition that for one year, respondent have a monitor appointed by relator to oversee the trust account. The Supreme Court of Ohio adopted the board's findings, conclusions, and recommended sanction and so ordered. One justice dissented and would have suspended the respondent for one-year.

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**Rules Violated:** Prof.Cond.R. [1.15\(a\)](#), [1.15\(a\)\(2\)](#), [8.4\(h\)](#); DR 1-102(A)(6), 9-102(A), 9-102(B)(3)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (b), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Six-month suspension, stayed</a>		

*Lawson, Cincinnati Bar Assn. v.*

119 Ohio St.3d 58, 2008-Ohio-3340. Decided 7/9/2008.

Respondent received a Gov.Bar R V(5a)(B) interim remedial suspension on May 17, 2007 upon evidence that he posed a substantial threat of serious harm in *Disciplinary Counsel v. Lawson*, 113 Ohio St.3d 1508, 2007-Ohio-2333. Respondent was charged with failure to cooperate and 16 counts of misconduct by relator Cincinnati Bar Association and four additional counts by relator Disciplinary Counsel, which were all heard during a two-day panel hearing. Prior to entering a rehabilitation facility in February 2007, respondent, a seven-year drug abuser, failed to respond to relator's inquiries and provide requested records; thus failing to cooperate in the disciplinary investigation. Four separate clients each paid respondent large sums of money totaling \$17,750 for their criminal defenses, but respondent did little to no work in each case, failed to communicate with the clients, failed to refund unearned fees, abandoned his clients' defenses, caused two of the clients to represent themselves, and either failed to or delayed return of the clients case files. Respondent filed criminal appeals for three clients, but after respondent missed deadlines, the appeals were all dismissed which he failed to fully communicate to his clients and did not account for or return the unearned fees. Respondent filed civil rights actions on behalf of two separate clients, but both were dismissed because he either failed to oppose a summary judgment motion or comply with discovery orders. Again he did not communicate with his clients or account for and return fees to the client. Respondent failed to follow the directives of his client to file a defamation suit and did not communicate this to the client or return any unearned fees. Respondent was hired on a contingent fee basis to file a wrongful-death action for which he did not file the complaint, did not communicate with the client, refused to return her case file, caused her statute of limitations to run, and then tried to collect an hourly fee instead of the contingency fee that was agreed upon. Respondent was supposed to handle a dispute with a client's former employer, but he did nothing he promised, leaving his client to try to resolve the dispute on her own and did not communicate or return the fees. Respondent canceled two meetings, failed to return any of ten phone calls from another client, and as of the date of the hearing had not returned the case file or fees per the client's request. Respondent allowed and ordered his employees to improperly withdraw funds from his IOLTA account to pay office expenses. Respondent misappropriated settlement funds of six clients in a civil rights action by using those funds to pay personal expenses including past-due amounts on his personal mortgage. He endorsed the settlement checks without the client's knowledge. Since at least 2005, respondent has used his client trust account for personal expenses, commingled funds, placed unearned fees in the firm's operating account, made cash withdrawals to purchase drugs, and avoid creditors, particularly the IRS. Respondent also lied during the disciplinary process blaming these withdrawals on employee theft, but eventually told the truth. In aggravation, respondent acted dishonestly and selfishly, BCGD Proc.Reg. 10(B)(1)(b), his pattern of misconduct and multiple offenses jeopardized numerous clients' interests and cost clients more than \$40,000, BCGD Proc.Reg. (10)(B)(1)(c),(d),(h), and (i), and he lied to investigators impeding the disciplinary process, BCGD Proc.Reg. 10(B)(1)(e). The significant mitigating evidence included testimonials and examples of respondent's excellent legal work prior to his drug addiction, especially pro bono work with the underprivileged and his work after the Cincinnati riots. Also in mitigation was the strong evidence of the effects of respondent's chemical dependence and how he was recovering, which included emotional testimony from respondent about his personal life and remorse for his actions, his five year OLAP contract, attendance at AA meetings, and his commitment to the 12-step program, BCGD Proc.Reg 10(B)(2)(g)(i)-(iv). Although the typical sanction for such pervasive and devastating misconduct is disbarment, based upon the mitigating evidence, the board adopted the panel's recommendation that respondent be indefinitely suspended from the practice of law for his violations of Gov.Bar R. V(4)(G), DR 1-102(A)(3),(4), (5), and (6), DR 2-106(B), 2-110(A)(2), DR 6-101 (A)(1),(2), and (3), DR 7-101(A)(2) and (3), DR 9-102 (A), 9-102(B)(1),(3),(4), and (E)(1), and Prof.Cond.R. 1.0(g), 1.15(a) (d), 1.16(d) and (e), 1.3, and 5.3 (a) and (b), with his readmittance conditioned upon the additional requirements (1) that he has been continuously sober during his suspension and has otherwise complied with his OLAP contract, (2) that he has maintained his active involvement in AA, (3) through the report of a qualified health-care

professional or substance abuse counselor, that he is capable of returning to the ethical and professional practice of law, and (4) that he has made restitution to all grievants. The Supreme Court agreed and so ordered the indefinite suspension. Three justices dissented in favor of disbarment.

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**Rules Violated:** Prof.Cond.R. [1.0\(g\)](#), [1.3](#), [1.15\(a\)](#), [1.15\(d\)](#), [1.16\(d\)](#), [1.16\(e\)](#), [5.3\(a\)](#), [5.3\(b\)](#); DR 1-102(A)(3), 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 2-106(B), 2-110(A)(2), 6-101(A)(1), 6-101(A)(2), 6-101(A)(3), 7-101(A)(2), 7-101(A)(3), 9-102(A), 9-102(B)(1), 9-102(B)(3), 9-102(B)(4), 9-102(E)(1); Gov.Bar R. [V\(4\)\(G\)](#)

<b>Aggravation:</b> (b), (c), (d), (e), (h), (i),		<b>Mitigation:</b> (e), (g)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Indefinite Suspension</a>		

*Lawson, Cincinnati Bar Assn. v.*  
130 Ohio St.3d 184, 2011-Ohio-4673. Decided 9/20/2011.

Respondent entered into a conspiracy to obtain prescription drugs by deception. Respondent was previously indefinitely suspended in 2008. Respondent engaged in an elaborate scheme with two co-conspirators whereby one, a doctor, would write prescriptions to the other two conspirators for Percodan, Percocet, and OxyContin. The doctor wrote approximately 700 to 800 prescriptions to the co-conspirators; respondent would frequently use the names of his current and former clients for the prescriptions, so that the authorities would not become suspicious of all the prescriptions. Respondent would further have some of his clients, who were facing charges of drug trafficking, redeem the prescriptions and then pay them for doing so. Respondent paid the doctor for the prescriptions with either money or legal services. At one point, respondent falsely told the doctor that his phone had been tapped and that law enforcement would arrest the doctor unless the doctor gave respondent \$50,000 to bribe state officials. Respondent was eventually indicted under 21 U.S.C. 843(a)(3) and pled guilty to the conspiracy. He was sentenced to 24 months of incarceration, 1 year of supervised release, and 1000 hours of community service. This conduct violated DR 1-102(A)(3), 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 5-101(A)(1), 7-102(A)(7), 7-102(A)(8). The Court agreed with these findings. In aggravation, respondent had a prior disciplinary record, engaged of a pattern of misconduct involving multiple offenses, and displayed a dishonest and selfish motive. In mitigation, respondent provided full and free disclosure, presented evidence of good character, had other penalties imposed upon him, had a qualifying chemical dependency, and was subject to other interim rehabilitation. Relator sought disbarment; the board recommended a second indefinite suspension, to run consecutively to the indefinite suspension imposed in 2008. The court overruled objections that the current disciplinary case was barred by res judicata; respondent's conviction and attempted bribery of his client were neither charged nor discussed in the 2008 action. The court also noted that respondent had failed to comply with his OLAP contract, as was ordered in the 2008 case, and that respondent's conduct had cost the Client Security Fund over \$300,000. Relying on the dissent in the 2008 case, as well as *Lieberman* (1955), *Marshall* (2009), *Farrell* (2011), *Deaton* (2004), *Bein* (2004), *Fatica* (1971), *Neller* (2003), and *Phillips* (2006), the court held disbarment to be most appropriate in this case.

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**Rules Violated:** DR 1-102(A)(3), 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 5-101(A)(1), 7-102(A)(7), 7-102(A)(8)

<b>Aggravation:</b> (a), (b), (c), (d)		<b>Mitigation:</b> (d), (e), (f), (g), (h)	
<b>Prior Discipline:</b> <a href="#">YES</a>	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> <a href="#">YES</a>	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Disbarment</a>		

*Leneghan, Cuyahoga Cty. Bar v.*

117 Ohio St.3d 103, 2008-Ohio-506. Decided 2/14/2008.

Respondent failed either to pursue a client's criminal appeal or to properly withdraw from the case. He was hired in March 2004 to defend a woman against three charges in municipal court. She paid \$500 in attorney fees and contributed \$50 to his campaign fund. The fee agreement was not in writing. He represented her at her June 23, 2004 jury trial. The jury returned a guilty verdict and the court ordered a \$500 fine and sentenced her to 180 days in jail, suspending both the fine and the jail sentence pending appeal. The couple authorized respondent to file an appeal. Respondent did not specify his fee or ask for payment at that time. He estimated the cost of \$1,000 to \$1,500 depending on the cost of the trial transcript and he promised to get back to her with an exact figure. He timely appealed the conviction, but after filling a notice of appeal, docketing statement, and praecipe, he did nothing more in the case, even after the court ordered verification of when the trial court journalized the entry of conviction. In September 2004, the court of appeal dismissed the appeal, citing appellant's failure to file a copy of a journalized sentencing order. Upon the dismissal of the appeal, the municipal court summoned the client to appear. She called respondent the day before her court date and learned for the first time of the dismissal of the appeal. Respondent advised the court he could not appear with the client due to a conflict in his schedule. When he failed to appear, the client decided to find another attorney. The court continued the case. Ultimately, she was ordered to serve 60 days in jail and paid nearly \$1,000 in fines and court costs. Board adopted panel's finding that respondent violated DR 6-101(A)(3). Supreme Court of Ohio adopted Board's finding of a violation of DR 6-101(A)(3) for not advising the court of appeals he was withdrawing as her attorney and not timely notifying the client when the court of appeals dismissed the case. His neglect cost the client the opportunity to challenge her conviction. In mitigation, he has no prior disciplinary record and he did not act from a selfish or dishonest motive. BCGD Proc.Reg. 10(B)(2)(a), (b). Weighing against the mitigating factors, are his failure to acknowledge wrongdoing and his lack of insight. BCGD Proc.Reg. 10(B)(1)(g). Relator asserted that respondent lied about whether he received timely notice of relator's complaint and whether he agreed to represent the client after her conviction. But, the court gave deference to the panel's assessment of respondent's credibility and overruled relator's objections that respondent should receive an actual suspension. The court accepted the Board's recommended sanction of a public reprimand. Two justices dissented in favor of stayed six-month suspension.

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**Rules Violated:** DR 6-101(A)(3)

<b>Aggravation:</b> (c), (d), (e)		<b>Mitigation:</b> (a), (b), (d), (e), (g)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Public Reprimand		

*Lentes, Disciplinary Counsel v.*

120 Ohio St.3d 431, 2008-Ohio-6355. Decided 12/11/2008.

Respondent systematically deceived three separate clients through lies about fictitious complaints, hearings, and other legal proceedings, including fabricating a judgment entry and forging a judge's signature. Respondent failed to answer the complaint. As a result, relator moved for default per Gov.Bar R. V(6)(F). A master commissioner, appointed by the board, granted the motion for default, made findings of fact, conclusions of law, and recommended permanent disbarment. The six-count complaint came from respondent's dealings with three individual clients. In Count I, respondent was hired by Greg Garretson in November 2004 in a dispute over repairs of a motorcycle with a Harley Davidson dealership. Respondent promised to file a lawsuit and advised he would recover his legal fees through litigation. Although he failed to settle the dispute, he never filed a complaint. In fact, respondent did little but lie to Garretson. Respondent had Garretson attend fictitious hearings, keeping Garretson waiting outside the courtroom. Respondent had Garretson hire an expert, who inspected the motorcycle and created a report to use at trial. Respondent held conferences with Garretson at least four times, once for the purpose of preparing him for trial. He lied about receiving a judgment in Garretson's favor, lied about delivery of the motorcycle and eventual monetary award, and fabricated a judgment entry, forging a judge's signature. Garretson learned of the fabrication and forgery in May 2007, when he checked with the common pleas court and was told that respondent had never even filed the complaint on his behalf. The board found respondent violated Prof.Cond.R. 8.4(c), 8.4(d), and 8.4(h) and their respective predecessors DR 1-102(A)(4), (5), and (6), as well as Prof.Cond.R. 1.1 and 1.3 and its predecessor DR 6-101(A)(3). In Count III, Jerry and Wanda Searles hired respondent in September 2005 to handle the adoption of their teenage grandson in the Meigs County Probate Court. They paid respondent \$500 in legal fees and \$250 for court costs. The Searles were told respondent filed their adoption petition in November 2005, but he did not actually file the petition until August 1, 2006. Respondent ignored the Searles despite numerous messages and phone calls. He had them attend a fictitious hearing on May 19, 2006, where he failed to appear. He then refused to refund their money after they demanded it, and remained on the case, finally filing the adoption petition, then having the probate court schedule a hearing which was canceled and then scheduling another hearing in August 2007 which did not proceed because he failed to serve the grandson's biological mother with notice of the proceedings despite the Searles providing him with the mother's address, and lied repeatedly about the status of the petition. In August 2007, the clients attended the hearing and were led by respondent to believe that the adoption was progressing. The Searles had filed a grievance in February 2007, against respondent. After the August hearing, respondent mailed the Searles refunds of their legal fees and court costs. The checks were dishonored costing the Searles \$235 in bank fees. The Searles were never able to complete the adoption of their grandson, who has since turned 18. The board found violations of Prof.Cond.R. 1.1, 1.3, 8.4(c), 8.4(d), 8.4(h), and their predecessors DR 6-101(A)(3), 1-102(A)(4), DR 1-102(A)(5), and 1-102(A)(6). In Count V, Ida Marcum hired respondent in October 2006 to obtain a court order allowing an easement to her land through an adjacent landowner's property. He told her he filed the suit, but he never did. He misled her through a series of untruths, including appearances at fictitious hearings. She learned from a court employee that no action had been filed, but respondent falsely told her the case had not gone forward because the defendant had filed an appeal. The board found violations of Prof.Cond.R. 1.1, 1.3, 8.4(c), 8.4(d), 8.4(h) and their predecessors DR 6-101(A)(3), 1-102(A)(4), 1-102(A)(5), and 1-102(A)(6). In Counts II, IV, and VI of the complaint, relator served multiple letters of inquiry about the three grievances discussed above at respondent's office. Respondent's secretary signed for at least one certified letter for each grievance. Respondent never replied to any of these letters and failed to answer the complaint against him. Further, he canceled his subpoenaed appearance at a deposition at the last minute and did not fulfill promises made to the investigators. His attitude toward the entire process was cavalier and dismissive. The board found violations of Gov.Bar R. V(4)(G) and Prof.Cond.R. 8.4(h). The Supreme Court agreed. The board recommended disbarment. After the board submitted its report, respondent began to participate. In his objections to the board's report respondent tried to introduce evidence of mitigating factors. He again

argued these factors at oral argument and requested to voluntarily resign. The Supreme Court overruled respondent's objections and denied the request. The court noted its holding in *Sterner* (1996) that Gov.Bar R. V "has no provision for the introduction of evidence in the brief filed in this court or in the oral argument to this court and "[o]ny in the most exceptional circumstances would we accept additional evidence at that late stage of the proceedings." Accord *Finneran* (1997). The court noted no exceptional circumstances are present here. The court stated that "[l]awyers resorting to resignation during disciplinary proceedings should therefore resign at the beginning of the proceedings. . . . Rarely will this court accept a resignation tendered at the end of the proceeding, when the benefit to the public and the disciplinary process no longer remains." See *Holder* (2006). The Supreme Court agreed with the board and ordered permanent disbarment. One justice in dissent would have accepted respondent's offer of resignation.

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**Rules Violated:** Prof.Cond.R. 1.1, 1.3, 8.4(c), 8.4(d), 8.4(h); DR 6-101(A)(3), 1-102(A)(4), 1-102(A)(5), 1-102(A)(6); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Disbarment		

*Lewis, Medina Cty. Bar Assn. v.*  
121 Ohio St.3d 596, 2009-Ohio-1765. Decided 4/21/2009.

Respondent forged a judge's signature on a previously time-stamped judgment entry. In 2007, he was retained by Danielle Burkhard to represent on traffic charges before a municipal court. It was of vital importance to Burkhard to retain occupational driving privileges. The court had a standard form, motions and entries, but usually accepted attorney drafted entries. Respondent drafted his own motion and judgment entry for driving privileges. The clerk began to time stamp the documents but then handed them back and told respondent to use the standard forms. Respondent left after scheduling a hearing. After attending a pretrial the client asked about the driving privilege process. Respondent claims the client asked "What does the driving privileges look like?" Respondent pulled out the rejected time-stamped judgment entry and in the client's presence, signed the judge's name to it and gave it to the client. The client later met with the probation officer, discussed driving privileges, and gave the driving privileges document to the probation officer. The probation officer recognized the signature as a forgery and informed the municipal court. At the disciplinary hearing, respondent could not explain his actions, but he testified that it was never his intent to make the client believe she had the driving privileges. He attributed his conduct as a "serious lapse of judgment." He expressed shame and remorse. In mitigation, respondent emphasized his full cooperation, his lack of prior discipline, the absence of any pattern, his admission and recognition of the wrongfulness, the lack of client harm, and his good reputation. BCGD Proc.Reg. 10(B)(2)(a), (b), (d), and (e). He insisted his actions lacked selfish or dishonest motive. He produced an affidavit from the clerk of courts stating that driving privileges are routinely granted in OVI cases like Burkhard's. The Board deferred to the panel's credibility determination that respondent was not truthful when he testified the only reason he forged the Judge's signature was because the client wanted to see what a Judgment Entry granting occupational driving privileges would look like. The panel found the explanation not believable. The board adopted the panel's findings of violations of Prof. Cond. Rules 8.4(b), 8.4(c), 8.4(d), and 8.4(h). The board recommended a two-year suspension, not the panel's recommendation of a one-year suspension. The Supreme Court of Ohio deferred to the panel's credibility determination as did the board. The court adopted the Board's finding of violations, but not the Board's recommended sanction. The court ordered a suspension for one year. Two justices dissented, finding respondent's explanation credible and warranting a lesser sanction.

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**Rules Violated:** Prof.Cond.R. [8.4\(b\)](#), [8.4\(c\)](#), [8.4\(d\)](#), [8.4\(h\)](#)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (b), (d), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">One-year suspension</a>		

*Lockshin, Cleveland Metro. Bar Assn. v.*  
125 Ohio St.3d 529, 2010-Ohio-2207. Decided 5/25/2010.

Respondent engaged in a pattern of inappropriate sexual communication and behavior with a number of women, including clients and failed to file a timely notice of appeal on behalf of a client. Counts 1 through 7 involve the inappropriate sexual communication and behavior. The misconduct included flirting with and inappropriately touching a 17 year-old client for whom he was a court appointed attorney, suggesting to a client that she and respondent get a hotel room on multiple occasions, requesting and displaying to another a sexual photo of a female client, suggesting inappropriate sexual contact with multiple clients, engaging in sensual touching with several clients and a defendant's girlfriend/witness, and making remarks about his genitals to a female sergeant from the county sheriff's department; and made an inappropriate question regarding her and her husband. Board adopted the panel's finding of a violation of DR 1-102(A)(6) on all seven counts. In Count 8, respondent was appointed to represent a defendant in a criminal appeal, but never filed the notice of appeal or took any action on the client's behalf. Board adopted the panel's finding of a violation of Prof.Cond.R. 1.3 and 8.4(d). The parties submitted evidence of his mental health. The OLAP clinical director made a tentative diagnosis of frotteurism, a type of sexual disorder, and narcissistic-personality disorder. She referred him to Behavioral Connections for further evaluation and counseling where he was initially diagnosed with depressive disorder not otherwise specified and was referred for further sexual-offender evaluation and treatment. It was recommended that respondent 1) participate in a sexual-offender treatment program, 2) not work with any minor clients, 3) not use any steroids or other supplements to enhance muscle mass or appearance. Respondent discontinued treatment through Behavioral Connections in violation of his OLAP contract; the discharging clinician testified that respondent poured energy into getting discharged rather than completing treatment, and that respondent's prognosis was "poor." Respondent subsequently sought counseling from a second licensed counselor who did not specialize in sex-offender counseling and who diagnosed him as having narcissistic personality disorder tendencies. That counselor learned at deposition that respondent omitted facts from him including the sexual nature of his inappropriateness. The hearing panel, at respondent's request, continued the hearing that was originally scheduled, to permit him to obtain a second sexual-offender assessment; but he did not complete the assessment until after the rescheduled hearing. He later submitted to the panel the assessment report in which the social worker stated that respondent discussed, without change of affect, the separation and dissolution of his marriage and the unexpected death of his mother in the calendar year. The social worker noted that respondent expresses realization that he needs treatment of some kind but asserts he does not need sex-offender treatment and not group treatment. The social worker noted that currently respondent appears to be keeping himself from inappropriate sexual behavior, however, that was attributed to the high level of supervision and scrutiny and threat of loss of his law license. The social worker recommended he participate in sexual offender treatment and that he not work with any minor clients. Respondent's conduct is comparable to the conduct for which term suspensions were imposed in *Moore* (2004), *Burkholder*, (2006), *Quatman* (2006), and *Freeman* (2005), but more serious because of his multiple offenses, false testimony in depositions and failure to follow Behavioral Connections recommendation that he receive sex-offender-specific treatment thereby violating the OLAP contract. Unlike *Sturgeon* (2006) who was disbarred, respondent did not actually engage in sexual acts with clients. In mitigation, the Board found that respondent had a lack of prior disciplinary record BCGD Proc.Reg. 10(B)(2)(a). Because respondent sought to delay the disciplinary process by seeking a continuance two weeks before the scheduled hearing date and engaged in a pattern of lying in depositions, the board rejected the parties' stipulation of cooperation. In aggravation, he had multiple counts of misconduct; gave false statements to investigators in depositions and court filings; engaged in conduct that had a negative impact on his clients; many of whom were young, vulnerable women, a disturbing pattern of professional misconduct; involving inappropriate sexual communications or conduct; and a selfish motive to advance his own sexual interests at his clients' expense. BCGD Proc.Reg. 10(B)(1)(b), (c), (d), (f), and (h). Respondent failed to take responsibility for his actions. He moved from an almost categorical denial to a partial admission, but he continues to minimize his actions

and blame the women he victimized. Moreover, the record demonstrates he has significant mental-health concerns that he has failed to address. He has not yet received the treatment necessary to decrease his risk of repeating inappropriate sexual behaviors. The board, instead, recommended an indefinite suspension. The court agreed with the board’s finding and recommended sanction and so ordered an indefinite suspension.

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**Rules Violated:** Prof.Cond.R. [1.3](#), [8.4\(d\)](#); DR 1-102(A)(6)

<b>Aggravation:</b> (b), (c), (d), (f), (h)		<b>Mitigation:</b> (a)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Indefinite Suspension</a>		

***LoDico, Disciplinary Counsel v.***

118 Ohio St.3d 316, 2008-Ohio-2465. Decided 5/29/2008.

Respondent committed a felony after he had already been suspended from the practice of law for 18 months with six months stayed based on findings that he had engaged in unprofessional, undignified, and discourteous conduct in separate incidents before two common pleas judges. *Disciplinary Counsel v. LoDico*, 106 Ohio St.3d 229, 2005-Ohio-4630, 833 N.E.2d 1235. Respondent stipulated to the following facts and misconduct. On January 9, 2005, respondent was leaving a Canton, Ohio strip club when he became involved in a physical altercation with six people in the parking lot. He pointed a .45-caliber Glock pistol with a laser sight at all six people, one at a time. He was indicted on six counts of felonious assault with a firearm specification, each a second-degree felony, and one count of carrying a concealed weapon, a fourth-degree felony. After a bench trial, respondent was found guilty of carrying a concealed weapon and six misdemeanor counts of aggravated menacing. He was sentenced to community control, including 180 days in the Stark County jail, five years of supervision with conditions, and a \$5,000 fine. Upon notice of his conviction, the Supreme Court ordered an interim suspension from the practice of law pursuant to Gov.Bar R. V(5)(A)(4). *In re LoDico*, 108 Ohio St.3d 1477, 2006-Ohio-788, 842 N.E.2d 1056. The board found respondent had violated DR 1-102(A)(3) prohibiting illegal conduct involving moral turpitude and DR 1-102(A)(6) prohibiting conduct that adversely reflects on the lawyer's fitness to practice law. The Supreme Court agreed with the board's findings. In aggravation, respondent had prior disciplinary offenses and refused to acknowledge the wrongful nature of his conduct. BCGD Proc.Reg. 10(B)(1)(a) and (g). In mitigation, respondent did not act with a selfish or dishonest motive, had a cooperative attitude in the disciplinary proceedings, his character and reputation, and the imposition of criminal sanctions. BCGD Proc.Reg. 10(B)(2)(b), (d), (e), and (f). The parties stipulated that Respondent should be indefinitely suspended from the practice of law and that reinstatement should be conditioned upon Respondent's compliance with his prior disciplinary order. Respondent, however, requested the suspension be retroactive to September 21, 2006 as he had not practice law since he was suspended previously by this court on September 21, 2005. The board recommended an indefinite suspension without credit for time served under his interim felony suspension, and with reinstatement conditioned upon his compliance with this court's order in his prior disciplinary case, his OLAP contract, and the terms of his community control sanctions. The Supreme Court agreed and so ordered.

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**Rules Violated:** DR 1-102(A)(3), 1-102(A)(6)

<b>Aggravation:</b> (a), (g)		<b>Mitigation:</b> (b), (d), (e), (f)	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Longino, Disciplinary Counsel v.*

128 Ohio St.3d 426, 2011-Ohio-1524. Decided 4/6/2011.

Respondent neglected client matters, failed to keep clients reasonably informed, improperly notarized unsigned affidavits, settled a matter without her client's consent, misappropriated settlement fund, mishandled her IOLTA account, and represented two clients with a conflict of interest. Relator dismissed counts 4 and 5 of the 15-count complaint at the end of the panel hearing. In Counts 3, 6, 7, 8, and 9, respondent improperly notarized affidavits for various clients. In one instance, someone in respondent's office completed a poverty affidavit with false information and signed the client's name; in other instances, affidavits were signed by someone without indicating it was done by permission and then notarized by respondent. In each of these counts, respondent violated Prof.Cond.R. 8.4(c), (d), and (h). In Count 1, respondent received \$750 to appeal the revocation of a client's childcare license. Respondent did not timely file the appeal, which was later dismissed for failure to comply with the requirements of perfecting an appeal. Respondent did not notify her client of the decision for several months, and the client eventually terminated respondent for failing to her apprised of the appeal. Respondent also filed two poverty affidavits on her client's behalf; one that contained false information, was unsigned, and was filed without the client's consent and a second that blank when the client signed it and then subsequently filled in. This conduct violated Prof.Cond.R. 1.3, 1.4(a)(1), 1.4(a)(3), and 8.4(c), (d), and (h). In Count 2, a client paid respondent \$825 in fees and costs to initiate divorce proceedings. The money was not deposited into her IOLTA. After three months, respondent filed the divorce, but failed to request service by publication as the client had requested. Instead, the complaint was joined by a poverty affidavit that contained false financial information, a forged signature, and a false notary jurat. The client made several attempts to reach respondent, with little success. When the client did reach respondent, the client was presented with documents falsely stating that the divorce was properly filed and notice had been given. When the client discovered this was not true, respondent dismissed the divorce and refunded the client's money. This conduct violated Prof.Cond.R. 1.4(a)(3), 1.15(c), and 8.4(c), (d), and (h). The complaint also alleged a violation of Prof.Cond.R. 1.4(a)(1), but the board made no finding of it, and the Court found it was not proven by clear and convincing evidence. In Count 10, respondent received a settlement offer, but failed to notify her client of the offer, failed to obtain the client's authorization to settle the case, and failed to advise him that the case had been dismissed with prejudice. Respondent continuously led her client to believe that the case was still pending, even after settlement. When the client learned that the case had been settled over a year ago, respondent offered to pay the client 66% of the \$8000 she received; respondent never paid her client any portion of the settlement. This conduct violated Prof.Cond.R. 1.2(a), 1.4(a)(1) and (3), 1.15(a) and (d), and 8.4(c), (d), and (h). In Count 11, respondent represented a client on his appeal of drug possession with intent to distribute. Respondent also represented the wife as she was investigated on charges including conspiracy to distribute cocaine with her husband. The prosecutor offered the husband a reduced sentence if he agreed to testify against his wife and also expressed concern about respondent's joint representation of both clients. Respondent refused to end representation, claiming that both clients had agreed to her joint representation despite the conflict. The court eventually ordered respondent to withdraw from representation of the wife. This conduct violated Prof.Cond.R. 1.7, 8.4(d) and (h). In Count 13, respondent mishandled her client trust account by depositing earned fees into it and using it as a personal account. Furthermore, respondent did not have an IOLTA account for approximately 14 months, although she received funds that should have been placed in such an account. This conduct was found to have violated Prof.Cond.R. 1.15(a), (b), and (c). Counts 12, 14, and 15 relate to respondent's handling of three separate bankruptcy proceedings. In one instance, respondent failed to file a couple's bankruptcy petition, failed to notify them when the bankruptcy court suspended her license, and failed to adequately communicate with them; she did refund their fee after they filed a grievance. In the other two bankruptcies, respondent did file the bankruptcies, but both were dismissed due to inadequate documentation, failure to comply with notices ordering the inadequacies be corrected, and later told one of her clients that it was his fault that his bankruptcy was dismissed. She did not refund either of these clients' fees. This conduct was found to violate Prof.Cond.R. 1.1, three violations of 1.3 and 1.4(a)(3),

and two violations of Prof.Cond.R. 8.4(c) and (d). Although respondent does not have a prior disciplinary record, the board noted that she had only been licensed for two years before relator's investigation began, and thus did not consider it a mitigating factor. BCGD Proc.Reg. 10(B)(2)(a). Furthermore, while respondent did participate in the disciplinary process, she failed to answer the original complaint, failed to claim or respond to mail, and failed to appear at a deposition; the board thus refused to use cooperation with the disciplinary investigation as a mitigating factor. BCGD Proc.Reg. 10(B)(2)(d). The board also did not allow respondent mental health mitigation under BCGD Proc.Reg. 10(B)(2)(g). The board did find most of the aggravating factors present, including a dishonest or selfish motive, engaging in a pattern of misconduct involving multiple offenses, lacking cooperation with and making false statements during the disciplinary investigation, causing harm to vulnerable clients, and failing to make restitution and acknowledge the wrongful nature of her conduct. BCGD Proc.Reg. 10(B)(1)(b), (c), (d), (e), (f), (g), (h), and (i). Relator recommended an indefinite suspension, but did not object to permanent disbarment. Respondent argued for no more than a two-year suspension with 18 months stayed on conditions. The panel recommended an indefinite suspension, but the board rejected this in favor of permanent disbarment. Relying on *Fernandez* (2003), *France* (2002), *Wherry* (2000), and *Gerren* (2004), the Court adopted the findings of fact, conclusions of law, and the board's recommended sanction. Respondent is hereby permanently disbarred.

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**Rules Violated:** Prof.Cond.R. 1.1, 1.2(a), 1.3, 1.4(a)(1), 1.4(a)(3), 1.7, 1.15(a), 1.15(b), 1.15(c), 1.15(d), 8.4(c), 8.4(d), 8.4(h)

<b>Aggravation:</b> (b), (c), (d), (e), (f), (g), (h), (i)		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Disbarment</a>		

**Lowden, Toledo Bar Assn. v.**

117 Ohio St.3d 396, 2008-Ohio-1199. Decided 3/20/2008.

Respondent was admitted in 1999 and has been suspended three times. In April 2003, he was suspended on an interim basis pursuant to Gov.Bar R. V(A)(4) for failure to pay child support in *In re Lowden*, 98 Ohio St.3d 1547, 2003-Ohio-2032 (*Lowden I*). Upon curing the default, he was reinstated in June 2003. In May 2005, he was suspended for two years, with two year stayed upon conditions including continuing his mental health treatment, for failing to finish representing two clients and improperly signing and notarizing one client's signature in *Toledo Bar Assn. v. Lowden*, 105 Ohio St.3d 377, 2005-Ohio-2162 (*Lowden II*). During the stay, he was again briefly suspended for failure to pay child support in *In re Lowden*, 106 Ohio St.3d 1473, 2005-Ohio-3914 (*Lowden III*). During the stay, he also failed to comply with at least one of the conditions, so in February 2006, the stay was lifted and he was placed on a two-year suspension in *Toledo Bar Assn. v. Lowden*, 108 Ohio St.3d 1211, 2006-Ohio-902 (*Lowden IV*). He was hired in October 2005, to defend a man against a petty-theft charge in municipal court. He agreed to take the case for a \$300 flat fee. He paid respondent \$150 that day, agreeing to pay the balance later. He appeared with the client at the arraignment and entered a plea of not guilty. The trial date was set for November. In November, the client paid the \$150 and they appeared in court, at which time the court continued the case and set a new December trial date. The client appeared for trial. Respondent did not appear. The client called him many times and left messages. Respondent did not return the calls or the money and did not complete the representation. The client had to pay another attorney \$300 to represent him. Panel and board found violations of DR 6-101(A)(3) and 9-102(B)(4). In mitigation, respondent testified he had been hospitalized and was attempting to close his practice when he failed to appear at the trial. The board did not find this testimony mitigation as there was no documentation to show he was incapacitated or he had made any efforts to close his office. In aggravation, he committed the misconduct while his license was under a stayed suspension. Also in aggravation, he had a significant record of discipline. Panel and board recommended a one-year suspension and no reinstatement until he returns the client's \$300 and fulfills the conditions ordered in his *Lowden IV* case that included he continue mental health treatment and provide quarterly reports to relator, make restitution to the clients neglected in *Lowden II* and file with the court a mental health evaluation showing he is capable of returning to the competent and ethical practice of law. In *Lowden II*, the court acknowledged respondent suffers from a debilitating mental illness, a bipolar disorder of the manic type and has experienced paranoid delusions. By staying the suspension in *Lowden II*, the court tried to help him manage this condition and protect clients from further improprieties. But respondent continues to violate the professional oath, apparently because his disability prevents competent and conscientious representation. The court agreed with the board findings of violations and the recommended sanction of suspension for one year, to be served consecutively with the *Lowden IV* sanction and no reinstatement until he has returned the \$300, continued in mental-health treatment and provided quarterly reports of his progress, has made restitution ordered in *Lowden II* and has been evaluated by a qualified mental-health professional as being capable of returning to the competent and ethical practice of law.

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**Rules Violated:** DR 6-101(A)(3), 9-102(B)(4)

<b>Aggravation:</b> (a)		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> YES (x2)	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> One-year suspension		

*Maheer, Akron Bar Assn. v.*

121 Ohio St.3d 45, 2009-Ohio-356. Decided 2/5/2009

Respondent failed to provide competent legal representation in three separate attorney-client relationships, acted dishonestly to hide his incompetence, failed to notify the clients about his lack of malpractice insurance, and then failed to return the clients' files and fees. The board adopted the panel's findings and recommendation. In the Ward Case, Gary and Susan Ward engaged respondent in April 2004 to pursue damages for their disabled son's death in a nursing home incident on March 22, 2004. Despite respondent's taking almost two years to file suit on the last day of the applicable two-year statute of limitations, respondent failed to investigate the claim, obtain an expert witness necessary to win the case, failed to respond to discovery requests and court orders, was not prepared to oppose the defendant's summary judgment motion or go to trial, and to conceal his lack of preparation dismissed the case voluntarily without telling the client the reason. Respondent did open an estate for the Ward's deceased son for the purpose of pursuing the wrongful death action, but did not dutifully proceed, disregarding orders from the probate court. During his representation of the Ward's he failed to carry malpractice insurance or notify his clients of his lack of coverage. After he was discharged in December 2006, he did not honor his client's or their new attorney's written requests to return their files until March 2007 after they filed a grievance and he initially did not cooperate with the disciplinary investigation. As to the Ward matter, the board found violations of 6-101(A)(1), 6-101(A)(3) for his neglect and incompetence; DR 1-104(A) for non disclosing his lack of professional liability insurance; DR 1-102(A)(4) by not truthfully disclosing his lack of expertise or the status of the lawsuit; 2-110(A)(2) and Prof.Cond.R. 1.16(d) by failing without justification to promptly deliver the clients' papers; and DR 1-102(A)(6) and 8.4(h) by his acts and omissions, including failure to respond during relator's investigation. In the Stoner Case, Terri D. Stoner engaged respondent in October 2006 to enforce a civil protection order that she obtained against an assailant. Stoner expected immediate action, but respondent failed to take any action on Stoner's behalf other than to prepare in mid-November an affidavit, which he never filed. When Stoner was able to communicate with respondent, he falsely advised her that he was ably attending to her case. Despite being discharged and requested to return Stoner's files and fees in January 2007, respondent did not return the files for over six months, did not refund Stoner's money, which he had not deposited as unearned fees into his client trust account, until the panel hearing in March 2008. He further did not carry malpractice insurance, failed to notify his client of such, and failed to respond to initial efforts to investigate Stoner's grievance. As to the Stoner matter, the board found violations of 6-101(A)(3) by his neglect; 1-104(A) and (B) by failing to disclose lack of insurance; 9-102(A) and Prof.Cond.R. 1.15(a) and (c) by failing to deposit unearned fees in a trust account; DR 1-102(A)(4) by not giving an honest account to the client as to the status of the case; DR 2-110(A)(2) and 9-102(B)(4) and Prof.Cond.R. 1.15 and 1.16(d) by not promptly returning property; and Gov.Bar R. V(4)(G) and Prof.Cond.R. 8.4(d) by disregarding relator's investigation; and DR 1-102(A)(6), and Prof.Cond.R. 8.4(h) by his acts and inactions. In the Hinkle case, Larry D. Hinkle engaged respondent in September or October 1997 to represent and assist in administering the uncomplicated estate of Hinkle's mother with assets worth approximately \$20,000. It remained open for ten years until the end of 2007, approximately five months after Hinkle retained new counsel because of respondent's inaction. Respondent defied directives of his client, the probate court, and a bankruptcy trustee. He failed to convey the property or to enforce a land contract, after determining that buyers who claimed to have paid in full, still owed the estate \$10,000 for the purchase of property on a land contract. Hinkle and his wife filed bankruptcy in 2005. In the interests of Hinkle's creditors, the bankruptcy trustee repeatedly attempted to communicate with respondent about completing the administration of the estate. The trustee had no success. Further respondent did not carry malpractice insurance, failed to notify his client of such, and failed to respond to initial efforts to investigate Hinkle's grievance. As to the Hinkle matter, the board found violations of DR 6-101(A)(3) and Prof.Cond.R. 1.3 by failing to administer the estate timely and competently which complicated the sale of property and delayed the client's discharge in bankruptcy; 1-104(A) and (B), for failing to disclose lack of insurance; Gov.Bar R. V(4)(G) and Prof.Cond.R. 8.4(d) for failing to respond to relator and the bankruptcy trustee; and DR 1-102(A)(6) and Prof.Cond.R.

8.4(h) by his acts and inaction. Respondent has a previous disciplinary case, where he was publicly reprimanded for neglecting two clients in their pursuits of personal injury claims. *Maher*, 110 Ohio St.3d 346, 2006-Ohio-4575, 853 N.E.2d 660. At the hearing of *Maher* (2006), while respondent was still representing the Wards in their civil suit and Hinkle in probate court, he told the panel that he had returned to practicing only criminal and domestic relations law. Respondent also falsely told the panel that he had acquired professional liability insurance. The board found a violation of DR 1-102(A)(4). The board recommended an indefinite suspension. In mitigation, respondent did ultimately respond with candor during the disciplinary process, has begun mental-health treatment, and has had difficulties in his personal life, but the mitigation did not warrant departure from the court's rule that neglect and failure to cooperate generally warrant an indefinite suspension. The Supreme Court agreed with the Board's findings and recommended sanction of indefinite suspension.

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**Rules Violated:** Prof.Cond.R. [1.3](#), [1.15](#), [1.15\(a\)](#), [1.15\(c\)](#), [1.16\(d\)](#), [8.4\(d\)](#), [8.4\(h\)](#); DR 1-102(A)(4), 1-102(A)(6), 1-104(A), 1-104(B), 2-110(A)(2), 6-101(A)(1), 6-101(A)(3), 9-102(A), 9-102(B)(4); [Gov.Bar R. V\(4\)\(G\)](#)

<b>Aggravation:</b> (a)		<b>Mitigation:</b> (d)	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Maley, Disciplinary Counsel v.*

119 Ohio St 216, 2008-Ohio-3923. Decided 8/13/2008.

Respondent gave his secretary broad authority to use the office and credit cards, collect client fee payments, manage the office checking account and meet with clients. The secretary developed a practice of preparing and filing bankruptcy petitions without respondent's knowledge. From July 2004 to August 2005 the secretary collected filing fees and agreed to file or filed at least 39 bankruptcy petitions—5 were never filed although payments were made and 34 were filed without respondent's knowledge. Over \$11,000 in expenses associated with the bankruptcy filings was paid with respondent's credit card or from his checking account. Respondent claims the secretary pocketed fees amounting to \$25,000 or \$30,000. Respondent learned she used his charge card to make over \$8,300 in personal charges in 2004. He terminated her in March 2005, but she continued to file 19 petitions under his name after being fired, continued to enter his office after business hours, and continued to use his credit cards, charging over \$5,000 to pay bankruptcy court filings. The bankruptcy charges and filings continued into August 2005. In September 2005 he reported her to the police, contacted the bankruptcy court to alert them and to terminate his account, and contacted the bar association. Board found violations of DR 1-102(A)(5), 1-102(A)(6), 3-101(A), 3-102(A), 6-101(A)(3), and 7-101(A)(3). As to Count II, respondent did not have a trust account during 2005 and part of 2004. He deposited unearned retainers and lawsuit settlement checks into his business checking account, commingling them with law firm funds. Board found violations of DR 1-102(A)(5), 1-102(A)(6), 9-102(A), and 9-102(B)(3). Supreme Court of Ohio adopted the findings. The court stated: "He either knew or should have known that she was taking money from clients and performing legal work for them. Further, once he had actual knowledge of her actions, he failed to promptly act to protect the clients' interests." The court also stated that "if respondent had properly separated his funds from those of his clients through a trust account and had reconciled the account and his client's records properly he could have discovered the secretary's activities and stopped them." Board recommended a suspension for 18 months with six months stayed on condition he takes office management and ethics training. In aggravation, he had selfish motive, a pattern of misconduct, multiple offenses, refusal to acknowledge wrongful nature of conduct, and vulnerability of harm to victims. BCGD Proc.Reg. 10(B)(1). In mitigation, there was an absence of prior discipline, cooperation, and character and reputation. BCGD Proc.Reg. 10(B)(2). The court stated: "Although we recognize an attorney's need to delegate, we have insisted on supervision to ensure that delegated legal duties are completed properly." Citations to *Ball* (1993), *Noll* (2004), *Akers* (2005), *Lavelle* (2005). The court ordered a suspension for 18 months with six months stayed on condition of compliance with Rule 1.15, completion of a CLE course on law-office management, and in addition to the required hours, complete an additional three-hour course on CLE course in ethics and professionalism.

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**Rules Violated:** DR 1-102(A)(5), 1-102(A)(6), 3-101(A), 3-102(A), 6-101(A)(3), 7-101(A)(3), 9-102(A), 9-102(B)(3)

<b>Aggravation:</b> (b), (c), (d), (g), (h)		<b>Mitigation:</b> (a), (d), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> 18-month suspension, 6 months stayed		

**Mamich, Disciplinary Counsel v.**  
125 Ohio St.3d 369, 2010-Ohio-1044. Decided 3/25/2010.

Respondent represented a client's daughter in a legal matter without the daughter's knowledge or consent. In November 2003, client of respondent applied for and was issued a bank credit card in his daughter's name without her knowledge or consent. Three years later, the bank sold the debt to John Soliday Financial Group, LLC (creditor). In February 2007, the creditor filed a lawsuit against the daughter, seeking \$1420 on the card and additional interest at a rate of 16% per year; the father was not named as a party to the lawsuit. The daughter never filed an answer and the creditor moved for default judgment. At this point, the client/father contacted respondent and asked him to enter an appearance for the daughter at the hearing on the default motion and to defend his daughter in this case. Client told respondent he got the card in his name and added his daughter as an authorized user; respondent did not learn that the card had been issued solely in the daughter's name until disciplinary proceedings had been brought against him. The father/client further told respondent that the debt was his, and that his daughter knew nothing about the card or the proceedings. Respondent advised the father to contact his daughter so that she could defend her case. The father falsely told respondent that his daughter was on a trip and he did not want to alarm her; in truth, she was living in Central Ohio during the entirety of these proceedings. Despite respondent knowing that the daughter was not aware of the card and that the father did not want to notify the daughter, he agreed to appear on daughter's behalf at the hearing and to defend her in the case. The father authorized him to offer \$300 to settle the case. Respondent offered the settlement, appeared at the default-judgment hearing and at a case management hearing, filed an answer to the complaint and a response to a motion for summary judgment. Respondent wrote a motion in opposition to the creditor's motion for summary judgment and attached an affidavit from the father, stating that the debt was his and not his daughter's. The father agreed to personally file the response, but unknown to respondent until the disciplinary proceedings commenced, he did so without the affidavit attached. In December 2007, the court granted summary judgment against the daughter. Respondent notified the father of this decision, but did not notify the daughter. The daughter soon received notice from her employer that her wages were being withheld to satisfy a judgment against her. The daughter, with the help of her own attorney, was able to get the previous judgment vacated and the garnishments removed, but only after more than \$1000 had been garnished. When respondent learned of the daughter's motion to vacate the judgment, he contacted her attorney and told her the entire story and agreed to testify as witness on her behalf. Respondent testified at the new trial to the entire story and the daughter's lack of knowledge or consent to his representation. The court ordered that all garnished wages be returned to the daughter. Respondent received no compensation from the father for the respondent's services. The respondent admitted to violating Prof.Cond.R. 1.7(a)(2), 1.16(a)(1), 5.4(c), and 8.4(d) and the board adopted the panel's findings of these violations and the Supreme Court of Ohio agreed. The respondent also admitted to violating Prof.Cond.R. 1.2(a), 1.4(a)(1), and 1.4(a)(3), but the Board did not find these charges and the court dismissed them. The court agreed with the board that these charges require the formation of an attorney-client relationship, which was not present between respondent and the daughter in this case. There was no implied relationship. Citation to *Hardiman* (2003). The Board found no factors in aggravation, but did find in mitigation that respondent: had no prior disciplinary record in his 35 year career, lacked a dishonest or selfish motive, and cooperated fully in the investigation. BCGD Proc.Reg. 10(B)(2)(a), (b), and (d). Respondent could have relied on his client's claimed power of attorney from the daughter, but he was concerned that his client had falsified, it. He admitted it was not the basis of his representation of the daughter. Additionally in mitigation, respondent testified on daughter's behalf after learning of the father's deception. The parties stipulated to a 12-month suspension, stayed on the condition of no further misconduct. But, in comparable cases, *Ita* (2008) and *Mangan* (2009), the court imposed a lesser sanction. Board adopted the panel's recommendation of a six-month stayed suspension. The Court adopted the board's findings of facts, conclusions of law and recommended sanction, and so ordered a six-month suspension, stayed on condition of no further misconduct.

**Rules Violated:** Prof.Cond.R. 1.7(a)(2), 1.16(a)(1), 5.4(c), 8.4(d)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (b), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Six-month suspension, stayed		

*Mangan, Columbus Bar Assn. v.*

123 Ohio St.3d 250, 2009-Ohio-5287. Decided 10/13/2009.

Respondent represented a father, son, and daughter-in-law without first advising them of the risks presented by their potentially conflicting interests and obtained each person's consent. In January 2005, a man belonging to a prepaid legal services plan contacted respondent about a pending foreclosure action filed by CIT Group/Consumer Finance Inc., ("CIT"). CIT was seeking to foreclose on a single-family dwelling the man and son inherited in June 2002. Despite the agreement to represent all the defendants (the man, the son, and the daughter-in-law) in the foreclosure action, respondent never communicated with the son or daughter-in-law. The son and daughter-in-law did not know of the foreclosure action and before the foreclosure proceeding began had been dissatisfied with the father's decisions regarding the property. In 2002, the father borrowed \$37,194 to upgrade the house so he could move into it or the father and son could sell it. The father and son signed the mortgage. The father made some improvements but gutted the kitchen. The son realized the state of disrepair and in 2005 he and his wife refused to allow the father to use the home for collateral to borrow more money, but by then, unbeknownst to them, the home was in foreclosure. The father had stopped making mortgage payments in 2004. When the father talked to respondent in early 2005, the balance on the mortgage was \$47,700, the cost to reinstate the loan was \$10,000, a \$20,000 loan was needed to make needed renovations. If the loan was reinstated, and the renovations were done, and the house sold at a new estimated fair market value of \$75,000, paying a six-percent realtor commission (\$4,500) and closing costs (\$2,000), the homeowners would realize only \$790 in profit. Respondent discussed the possibility of reinstating the loan, but the father did not have the money. Respondent filed an answer without input from the son or daughter. The house sold at sheriff sale for \$53,000, \$22,000 under the appraised value. In December 2004 a neighbor advised the son and daughter-in-law that the property was sold. Respondent realized his mistake when the daughter-in-law contacted respondent. The couple filed a grievance. They hired another attorney and recovered \$3,700 from proceeds from the foreclosure that had been held in escrow. Respondent was not compensated for the representation. He admits he "dropped the ball" by not contacting the son and daughter-in-law and by not sending them a copy of the answer. He expressed regret. To avoid repeating the mistake, he has redoubled efforts to keep each client informed. Board adopted the panel's findings conclusions, and recommended sanction. Board found respondent violated DR 5-105(C) and 6-101(A)(2) by failing to gain all the parties' consent to the multiple representation and by not communicating at all with two of them. In mitigation, there was no prior discipline, lack of dishonest or selfish motive, cooperation, and evidence of good character and reputation. He submitted 12 letters attesting to his honesty, integrity and competence from fellow lawyer, a judge, and clients who have had extensive contact with respondent before or after he began law practice in 1979. BCGD Proc.Reg. 10(B)(2)(a), (b), (d), and (e). The sole aggravation may be the vulnerability and harm to the victims, however the financial harm occurred prior to respondent's involvement. The damage to the victim's equity was the result of the father's actions. BCGD 10(B)(1)(h). Board recommended a public reprimand. The Supreme Court of Ohio accepted the Board's findings, conclusions, and recommended sanction and so ordered a public reprimand.

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**Rules Violated:** DR 5-105(C), 6-101(A)(2)

<b>Aggravation:</b> ((h))		<b>Mitigation:</b> (a), (b), (d), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Public Reprimand</a>		

**Manning, Disciplinary Counsel v.**

119 Ohio St.3d 52, 2008-Ohio-3319. Decided 7/8/2008.

In 2006, respondent was suspended for two years for misconduct including having falsely told clients he filed and settled their medical-malpractice claim in *Disciplinary Counsel v. Manning*, 111 Ohio St.3d 349, 2006-Ohio-5794. A new charge was filed against respondent for misleading another client about the availability of her settlement proceeds and using the funds to pay his business expenses. In April 2005, respondent was retained to pursue a claim for injuries sustained when a vehicle rear-ended the vehicle in which she was a passenger. Respondent explored settlement with the tortfeasor's insurer (Allstate) and the other driver's insurer (Hartford). In May 2006, Allstate disbursed a \$12,500 settlement check representing policy limits. After the client endorsed the check which was made payable to respondent and the client, respondent deposited the funds into his trust account, increasing the balance from \$116.05 to \$12,616.05. The next day, respondent paid himself \$4,166.66, his one-third share, leaving a balance of \$8,449.39 in the account. The client should have been paid \$8,071.37, two-thirds of the settlement, less advances expenses of \$261, 97. Instead of transmitting the client's share of the settlement proceeds, he transferred \$1,500 to cover an overdraft of his operating account. He wrote a check to the client for \$3,071.37, telling the client he retained \$5,000 from the distribution to pay subrogation claims for medical expenses. Respondent depleted the client's money and all of his trust account by paying for personal, business, and other clients' expenses. On June 2, 2006, the trust account contained \$362.38. One check written to the probate court for \$436 and one check written to his receptionist for \$280 were returned for insufficient funds. By June 6, 2006, the trust account had a negative balance. Respondent did not advise the client of what happened to the \$5,000, but he did eventually pay that amount to her. In October 2006, respondent settled for \$60,000 the claim against Hartford's insured. From his contingent fee he deducted \$5,000 and paid it to the client along with the other distribution. In the "Itemized Statement for Personal Injury Distribution, he represented: \$60,000 settlement received; waiver by Hartford of subrogation \$5,000; less 33 1/3% for attorney fees (\$20,000); total disbursement \$45,000. Board adopted panel's findings of violations of DR 1-102(A)(4), 1-102(A)(6), 9-102 (A); 9-102(B)(3), 9-102(B)(4). In mitigation, he cooperated and made restitution. In aggravation, he had a disciplinary record and selfish motivation. The Board rejected the panel's recommended sanction of a six-month suspension to run concurrently with his current sanction. The Board recommended a six-month suspension to run consecutively to his current suspension. The Supreme Court of Ohio agreed with the Board's findings, conclusions, and recommended sanction of a six-month suspension to commence at the conclusion of the current two-year suspension.

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**Rules Violated:** DR 1-102(A)(4), 1-102(A)(6), 9-102 (A), 9-102(B)(3), 9-102(B)(4)

<b>Aggravation:</b> (a), (b)		<b>Mitigation:</b> (c), (d)	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Six-month suspension		

**Markovich, Akron Bar Assn. v.**

117 Ohio St.3d 313, 2008-Ohio-862. Decided 3/6/2008.

Respondent's misconduct included neglecting two clients' cases, helping a client violate a civil protection order, filing an unapproved dismissal entry, borrowing money from a client, and misusing his client trust account. As to one client matter, he agreed to help a woman administer her husband's estate. He opened the estate. He was notified by the court that additional filings were due, but he misfiled the paperwork and the court issued a show-cause order against the client. The client learned respondent had not complied with the court's order. When the client filed a grievance, he offered to refund a \$200 filing fee if she would drop the grievance. Panel and board found violations of DR 6-101(A)(3) and 6-102. As to another matter, he represented a plaintiff in federal court. He got permission from opposing counsel for a voluntary dismissal of the complaint without prejudice with the provision that allegations against one of the defendants be dismissed with prejudice and the plaintiff's cost. In the entry, he wrongly represented that the allegations against the defendant had been dismissed with prejudice previously and he did not specify that the voluntary dismissal was at plaintiff's cost. With prompting from opposing counsel he corrected the entry but not for more than a year. Panel and board found violations of DR 1-102(A)(4), 1-102(A)(5), and 1-102(A)(6). As to a third matter, he represented a client against whom a civil protection order had been issued. The order prohibited contact with a woman or her babysitter or their residences. Five months later, respondent went to the woman's residence with the client. The client remained in the car, but respondent approached the front door to confront the babysitter. Respondent stipulated that he knew the mother was not home and he intended to intimidate the babysitter to gain advantage for his client and he stipulated that prior to the encounter, he looked inside the front door and/or window of the residence. Panel and board found violations of DR 1-102(A)(5) and 1-102(A)(6). As to a fourth matter, he was paid a flat fee of \$1,000, which included a filing fee, to represent a woman in a guardianship case. Respondent did nothing for six months and did not respond to the woman's inquiries. The woman eventually filed the paperwork and paid the filing fee. Respondent later refunds the client's money. Panel and board found violations of DR 6-101(A)(3). As to a fifth matter, he obtained \$15,000 in settlement of a persona' injury claim, and retained it as a loan from his client who was also his sister-in-law at the time. He transacted this business without disclosing the risks and obtaining consent. Panel and board found a violation of DR 5-104(A). As to a sixth matter, he used his client trust account to pay his administrative assistant. Panel and board found violations of DR 9-102(A). As to a seventh matter, in defending a client against criminal charges in common pleas court, he "was continually disruptive, ignored court rulings, was inappropriate in his questioning, and discourteous to the Court and opposing counsel." He was found in contempt, sentenced to ten days in jail, and the sentence was suspended upon conditions of him performing community service, paying a fine, obtaining remedial continuing legal education, and apologizing to the presiding judge. He did not perform the community service and a second judge put him in jail for two days. Panel and board found violations of DR 1-102(A)(5), 102(A)(6), 7-106(C)(2), and 7-106(C)(4). The court noted it did not tolerate lawyers who neglect interests of clients. Citation to *Peters* (1999). The court also that "[e]qually intolerable are lawyers who fail to advocate at trial within the rules of law and to act with civility and professionalism." Citation to *LoDico* (2005). In aggravation there are multiple offenses. BCGD Proc.Reg. 10(B)(1)(d). In mitigation, he had no prior discipline, made restitution, and submitted recommendations as to his good character and reputation. BCGD Proc.Reg 10(B)(2)(a), (c), (e). Supreme Court of Ohio adopted the Board's findings, conclusions, and recommended sanction and so ordered a one-year suspension with six months suspension stayed on the condition that he complete an 18-month monitored probation and commit no further misconduct during probation. "His failures to attend to his clients, defiance of court orders, and sometimes outrageous courtroom behavior, coupled with his misuse of his trust account and other improprieties, demand a period of actual suspension and subsequent monitoring to protect the public." Two justices dissented in favor of one-year suspension, with no time stayed.

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**Rules Violated:** DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 5-104(A), 6-101(A)(3), 6-102, 7-106(C)(2), 7-106(C)(4), 9-102(A)

<b>Aggravation:</b> (d)		<b>Mitigation:</b> (a), (c), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> One-year suspension, 6 months stayed		

*Marosan, Stark Cty. Bar Assn. v.*

119 Ohio St.3d 113, 2008-Ohio-3882. Decided 8/7/2008.

In 2005, respondent was suspended for two years with 18 months stayed for neglecting clients' legal matters, failing to maintain a client trust account, and failing to cooperate in disciplinary investigation in *Stark Cty. Bar Assn. v. Marosan*, 106 Ohio St.3d 430, 2005-Ohio-5412. He failed to comply with the suspension order and the stay was revoked and he was ordered to serve the entire two year suspension in *Stark Cty. Bar Assn. v. Marosan*, 108 Ohio St.3d 1220, 2006- Ohio-1505. In 2006, respondent was suspended for six months, to be served consecutively to the previously imposed two-year suspension for misconduct including neglect of a legal matter, failure to seek a client's lawful objectives, failure to carry out an employment contract, failure to maintain client funds in separate accounts, failure to promptly pay client funds, failure to notify a client of insufficient professional liability insurance, and failure to cooperate in *Cuyahoga Cty. Bar Assn. v. Marosan*, 109 Ohio St.3d 439, 2006-Ohio-2816. In 2007, additional charges were filed and were heard by a master commissioner upon granting relator's motion for default. Respondent represented a client (Martin) and Martin's two wholly owned companies. Respondent encouraged Martin to join a real estate trust respondent was creating. The real estate trust (3M Land Trust) had three partners or beneficiaries, respondent, Martin and another client Miller. Respondent was the trustee and the attorney for the trust. Respondent continued to act as Martin's attorney, but did not advise Martin of the risks attendant to the dual representation or suggest that Martin seek separate counsel regarding the trust. The purpose of the trust was to purchase and rehabilitate property and resell it at a profit with profits shared equally among the three. Martin was to provide the capital, respondent the legal services, and Miller was to contribute to property-management and building expertise. Martin transferred more than \$114,000 to respondent to buy property for the trust. One of the three parcels of the property was sold for \$90,000. Half of the proceeds went to debt reduction, and the remainder was divided equally among the three, with each receiving \$16,000. Martin applied his share toward reducing the debt, but the other didn't. Respondent characterized the payments to him and Miller as advance on future expected profits. An auction was held on two remaining parcels, but the offer was not enough to retire the debt. Martin was the only person making debt payments and he wanted to accept the offer, but respondent and Miller did not want to accept the proceeds of the auction so Martin reluctantly agreed the trust would retain the property. At a later time, the remaining parcels were sold. The sale of the three parcels resulted in a \$15,000 profit over Martin's initial investment and the expenses he advanced. Under the trust agreement respondent and Miller each should have returned \$11,000 of the \$16,000 received from the first parcel, but neither reimbursed Martin for the excess distributions they had taken. Martin was the only one of the three who lost money on the property. Board adopted panel's finding that he violated DR 5- 104(A) by the misconduct that allowed him to profit at the expense of his client Martin. Board also adopted panel's finding that he violated Gov.Bar.R. V(4)(G) and Prof.Cond.R.8.1(b) by his ignoring relator's inquiries other than signing a return receipt on a investigative letter and on a proposed complaint. In aggravation, respondent was twice disciplined and is under suspension; he acted with dishonest or selfish motive; failed to cooperate; and there was vulnerability and resulting harm to the victim and failure to make restitution. BCGD Proc.Reg. 10(B)(1)(a), (b), (e), (h) (i). There were no mitigating factors. BCGD Proc.Reg. 10(B)(2). Board adopted panel's recommended sanction of permanent disbarment. Supreme Court of Ohio agreed and so ordered. The court noted its primary purpose in imposing disciplinary sanctions is not to punish the offender but to protect the public. Respondent engaged in self-dealing, profited at the expense of a client, and failed to cooperate.

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**Rules Violated:** Prof.Cond.R. 8.1(b); DR 5- 104(A); Gov.Bar.R. V(4)(G)

<b>Aggravation:</b> (a), (b), (e), (h) (i)		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> YES (x2)	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Disbarment		

*Marshall, Warren Cty. Bar Assn. v.*

121 Ohio St.3d 197, 2009-Ohio-501. Decided 2/12/09.

Respondent neglected legal matters entrusted to him, intentionally failed to carry out a contract of employment, and knowingly failed to respond to a demand for information from a disciplinary authority. In the Smith Grievance, Jeremy and Janelle Smith hired respondent concerning their filing bankruptcy. They paid respondent a \$750 retainer and \$300 filing fees. Although the Smiths provided respondent with all necessary paperwork, respondent did not promptly file their petition. When filed, it failed to conform to the filing requirements. He failed to respond to the bankruptcy court's order and notice regarding the deficient filing. The bankruptcy court dismissed the petition. Respondent failed to inform his clients of the dismissal, failed to return his clients' repeated phone calls, and failed to return any of the retainer. He never responded to relator's two letters of inquiry. In the Binkley Grievance, respondent first represented Shaunda Neal through the Legal Aid Society in a child-custody dispute. J. Robert Binkley, Neal's fiancé, also retained respondent to represent Neal in some criminal matters, paying two retainers, one for \$500 and one for \$300., Respondent agreed to represent Neal in a renewed child-custody dispute and in possible civil and criminal actions regarding bad checks Neal had written. Binkley paid respondent \$3,000. Neal filed for bankruptcy protection and her bankruptcy lawyer discovered that respondent had done nothing to settle with the creditors to whom Neal had passed the bad checks. Binkley and to no avail, Neal repeatedly attempted to contact respondent. Neal died while the renewed child-custody dispute was pending. After her death, Binkley retained attorney Ted Gudorf to obtain an accounting from respondent of the fees paid for legal work undertaken but not performed. Respondent failed to respond until Gudorf called another attorney in respondent's office, and even then he did not provide an accounting. Further, respondent did not respond to the grievance committee. At a prehearing telephone conference with the hearing panel chair, the parties agreed to the time and place of the evidentiary hearing. The panel chair also ordered a set schedule for discovery and service of requests for admissions. Respondent failed to respond to relator's requests for admissions; so they were all deemed admitted. Despite the panel chair's order and notice of a second prehearing telephone conference, respondent failed to appear. Finally, respondent failed to appear at the evidentiary hearing. After recessing in order to wait for respondent, the panel conducted the evidentiary hearing in his absence. As to both grievances, the board found violations of DR 6-101(A)(3), DR 7-101(A)(2), and Prof.Cond.R. 8.1(b). The board found no mitigating factors. In aggravation, the board found that respondent had two prior disciplinary violations resulting in separate two-year suspensions from the practice of law. See *Warren Cty. Bar Assn. v. Marshall*, 105 Ohio St.3d, 2004-Ohio-7011 and *Warren Cty. Bar Assn. v. Marshall*, 113 Ohio St.3d 54, 2007-Ohio-980. Further, the board found respondent engaged in a pattern of misconduct, engaged in dishonest conduct, and failed to cooperate. The board recommended permanent disbarment. The Supreme Court with the findings and recommended sanction and so ordered. The court cited similar cases in which permanent disbarment was imposed, *Smith* (2007), *Moushey* (2004), *Weaver* (2004), *Fodal* (2003).

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**Rules Violated:** Prof.Cond.R. 8.1(b); DR 6-101(A)(3), 7-101(A)(2)

<b>Aggravation:</b> (a), (b), (c), (e)		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> YES (x2)	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Disbarment		

*Martin, Toledo Bar Assn. v.*

131 Ohio St.3d 134, 2011-Ohio-6396. Decided 12/15/2011.

Respondent failed to cooperate in the disciplinary process. Respondent was originally charged in a five-count complaint with violating the Rules of Professional Conduct. The parties entered into a consent-to-discipline agreement, and the underlying attorney-client charges were withdrawn. In all five counts, respondent was charged with various violations, but failed to respond to the relator's inquiries and requests for information. Upon respondent's eventual response, it was found that respondent did not commit any of the conduct alleged by his clients. In each count, the parties agreed that respondent violated Prof.Cond.R. 8.1(b) (failing to respond during a disciplinary investigation) and Gov.Bar R. V(4)(G) (failure to cooperate) by failing to timely respond to relator's inquiries. In aggravation, respondent initially failed to cooperate in the disciplinary process. BCGD Proc.Reg 10(B)(1)(e). In mitigation, respondent lacked a prior disciplinary record, made timely efforts to rectify the situation, and evidence good character. BCGD Proc.Reg 10(B)(2)(a), (c), (e). The board found that respondent's lack of cooperation was uncharacteristic and was due to his immersion in a large, complex piece of litigation that spanned nine years. The consent-to-discipline agreement called for a one-year suspension, stayed on the condition of one year of monitored probation. The board recommended the adoption of the agreement, and the Court so ordered its adoption.

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**Rules Violated:** Prof.Cond.R. [8.1\(b\)](#); Gov.Bar R. [V\(4\)\(G\)](#)

<b>Aggravation:</b> (e)		<b>Mitigation:</b> (a), (c), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">One-year suspension, stayed</a>		

*Mason, Disciplinary Counsel v.*

125 Ohio St.3d 29, 2010-Ohio-1467. Decided 4/7/2010.

Respondent paid another individual for client referrals. Relator and respondent entered a consent-to-discipline agreement. Respondent is the principal in Mason Law Firm Co., L.P.A., (Mason Law) which is a four-attorney firm that represents management and employers. Respondent is also the owner and general counsel for Midwest Management Consultants, Inc. (“Midwest Management”) which provides OSHA and employment- consulting services for employers. Midwest Management is a wholly owned subsidiary and ancillary business to Mason Law and the two entities share an office. Midwest Management employed a non-lawyer consultant, William Wheeler, whose employment agreement provided that he receive 40% of the fees Midwest Management billed and collected for work he actually performed and 15 percent of the fees billed and collected from any work he initiated, regardless of whether he performed the work. In 2007, Wheeler was paid \$112,484 when pursuant to his employment agreement he should have been entitled to \$42,901. This \$69,582 difference represents referral fees paid by Midwest Management for Wheeler’s referral to Mason Law of eight clients who paid \$486,894.02 in legal fees to the law firm. In 2008, Midwest Management began paying Wheeler a straight salary with no compensation for referrals. There were no aggravating factors; in mitigation, there were no prior disciplinary record, full and free disclosure during the disciplinary investigation and cooperative attitude, a timely effort to rectify the consequences of this misconduct, and good character and reputation. BCGD Proc.Reg. 10(B)(2)(a), (c), (d) and (e). The board accepted the parties’ consent-to-discipline agreement to a public reprimand for a violation of Prof.Cond.R. 7.2(b). A similar sanction was imposed in *Patterson* (1980) for a violation of DR 2-103(B). The court accepted the consent-to-discipline agreement and so ordered a public reprimand for respondent’s violation of Prof.Cond.R. 7.2(b).

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**Rules Violated:** Prof.Cond.R. [7.2\(b\)](#)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (c), (d), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Public Reprimand</a>		

**Mason, Toledo Bar Assn. v.**

118 Ohio St.3d 412, 2008-Ohio-2704. Decided 6/12/2008.

Upon relator's motion for default, the matter was referred to a master commissioner. As to the Mitchell grievance, respondent represented Mitchell in a personal injury claim. The client agreed to a one-third contingent fee on any settlement or verdict. Respondent agreed to protect the prior attorney's interest in attorney fees and expenses and to pay the client's outstanding medical bills with settlement proceeds. In April 2005, respondent notified the client of a settlement of \$13,750. The client signed the settlement check, but did not receive a check or accounting until December 2005, when she received a check for \$4,091.67. She deposited the check but it was returned because it was written against a bank account that did not exist. Respondent has never paid her any proceeds and did not pay her unpaid medical bills. She told him when she signed the settlement check that she was being sued for unpaid medical bills. He assured her he would pay the bills and he sent her a settlement statement showing a deduction of \$2,800 to pay the medical bills. Her wages were garnished. Further, he deducted the prior attorney's fees from the client's settlement, instead of deducting from his own contingent fee. As a result the fees to respondent and the successor attorney were almost 50% (\$6,608.33) of the total settlement. Board adopted the master commissioner's findings of violations of DR 1-102(A)(3), 1-102(A)(4), 1-102(A)(6), 2-107(A)(1), 2-107(A)(2), 2-107(A)(3) 6-101(A)(3), 7-101(A)(2), 7-101(A)(3), 9-102(B)(3), 9-102(B)(4). As to the Young grievance, respondent accepted a one-third contingent fee to represent Young in a civil-rights action against her employer. At a mediation conference in February 2006, the client agreed to a \$6,000 settlement. Respondent met with the client to sign the settlement and said he would overnight the agreement to expedite receipt of the proceeds. He informed the client she could revoke the settlement within 20 days. After a delay in receiving the money, the client told respondent to revoke the settlement. He failed to revoke the settlement within the 20 days. Respondent did not respond to the client's attempts to contact him. The client learned respondent did not send the settlement papers to opposing counsel. She fired respondent. Respondent did not refund a \$175 fee she paid him to meet with her employer. Board adopted the master commissioner's findings of violations of DR 6-101(A)(3), 7-101(A)(2) and 7-101(A)(3). As to the Graves grievance, Graves paid respondent \$900 to defend him against two felony charges and a misdemeanor. Respondent made some court appearance but failed to appear for a scheduled court date in common pleas court on 7/13/2006 and at a pretrial in municipal court on 8/2/2006, resulting in the municipal court issuing a bench warrant for Graves. Respondent did not return class and was not available at the office, Respondent did not return documents related to the felony charges that Graves believes are exculpatory. Board adopted master commissioner's finding of violations of DR 6-101(A)(3), 7-101(A)(2), and 7-101(A)(3). As to the Gardner grievance, Gardner paid respondent a retainer of \$800 to represent him on criminal domestic-violence charge. Respondent spoke to Gardner twice by phone, met once in his office, and appeared for a pretrial, but thereafter Garner was unable to contact him. He did not return phone calls. When Garner went to his office, it had been vacated. Board adopted master commissioner's findings of violations of DR 1-102(A)(6), 6-101(A)(3), and 7-101(A)(2). Respondent contacted relator once by phone and acknowledged receipt of the grievances and promised to respond. Relator's attempts to contact respondent were futile. Board adopted master commissioner's findings of a violation of Gov.Bar R. V(4)(g) by ignoring investigative inquiries and failing to answer the complaints. In aggravation, he acted with dishonest or selfish motive, engaged in a pattern of misconduct, multiple offenses, did not cooperate, harmed vulnerable victims, and failed to make restitution. BCGD Proc.Reg. 10(B)(1)(b), (c), (d), (e), (h), and (i). In mitigation, he had no prior discipline, but was briefly suspended in 2007 for failure to comply with registration requirements. Board adopted master commissioner's recommendation of an indefinite suspension. Supreme court agreed with the findings but not the sanction. The court ordered a permanent disbarment. "Disbarment is generally the sanction when a lawyer's neglect of a client's case is coupled with misappropriation of the client's money and other professional misconduct. Citation to *Glatki* (2000), *Lord* (2007), and *Ross* (2005). One justice dissented and would have ordered indefinite suspension.

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**Rules Violated:** DR 1-102(A)(3), 1-102(A)(4), 1-102(A)(6), 2-107(A)(1), 2-107(A)(2), 2-107(A)(3) 6-101(A)(3), 7-101(A)(2), 7-101(A)(3), 9-102(B)(3), 9-102(B)(4); Gov.Bar R. **V(4)(G)**

<b>Aggravation:</b> (b), (c), (d), (e), (h), (i)		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Disbarment		

*Matejkovic, Butler Cty. Bar Assn. v.*  
121 Ohio St.3d 266, 2009-Ohio-776. Decided 3/3/2009.

Respondent failed to maintain unearned fees in a client trust account and failed to disclose his lack of professional liability insurance. In Count I, Jeremy Ritter paid respondent \$1,500 to represent him in claims arising out of a failed investment venture. Respondent represented Ritter from December 2004 until January 2007. Respondent conceded that he did not deposit the unearned fees a client trust account or advise the client that he did not carry malpractice insurance. In Count II, Rebecca Burkhart consulted respondent in April 2005 about how to obtain a title for a car purchased from a used car dealer. Burkhart paid respondent's \$1,500 fee in June 2005. He represented her until December 2005, when she sought assistance from relator's fee-arbitration committee. Respondent conceded that he had not deposited Burkhart's unearned fees into a client trust account or advise her that he did not carry malpractice insurance. The board adopted the panel's findings of violations of DR 1-104 and DR 9-102 as to both counts and accepted the panel's dismissal of unfounded charges. In aggravation, the board found that respondent committed more than one offense. BCGD Proc.Reg. 10(B)(1)(d). In mitigation, the board found respondent had no prior disciplinary record in his 17 year career, did not act dishonestly or out of self-interest, and cooperated in the disciplinary process. BCGD Proc.Reg. 10(B)(2)(a), (b), and (d). Respondent has refunded \$1,250 to Ritter, \$1,500 to Burkhart, and set up a client trust account. The board adopted the panel's recommendation of a public reprimand. The Supreme Court agreed with the findings of violations and recommended sanction and so ordered.

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**Rules Violated:** DR 1-104, 9-102

<b>Aggravation:</b> (d)		<b>Mitigation:</b> (a), (b), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Public Reprimand</a>		

*McAuliffe, Disciplinary Counsel v.*

121 Ohio St.3d 315, 2009-Ohio-1151. Decided 3/19/2009.

Respondent, a municipal court judge, set fire to his house to collect the insurance money. In 2003, he was indicted and in February 2004 he was found guilty on two counts of mail fraud, one count of use of fire to commit mail fraud, one count of conspiracy to use fire to commit mail fraud, and two counts of money laundering and in December 2004 was sentenced. The Supreme Court of Ohio issued an interim suspension pursuant to Gov.Bar R. V(5)(A)(4) in January 2005. *In re McAuliffe*, 104 Ohio St.3d 1455, 2005-Ohio-235. Later in 2005, relator filed a complaint, but the proceedings were stayed by the board until the conclusion of respondent's criminal appeal pursuant to Gov.Bar R. V(5)(C). Respondent successfully appealed his sentence, was resentenced in December 2005, and as part of the sentence paid a \$150,000 fine and \$235,000 restitution to the insurance company. To no avail, he appealed the judgment of conviction. The Sixth Circuit Court of Appeals affirmed his convictions and sentence in June 2007. The U.S. Supreme Court denied respondent's petition for certiorari in October 2007, concluding the appellate review of his case. The board lifted the stay of the disciplinary proceeding and a hearing was held in April 2008. Respondent stipulated that he had been convicted of the crimes charged in the federal indictment, but maintained his innocence in those charges. He declined to present any mitigating evidence at the hearing, on the ground that presenting such evidence would be inconsistent with his protestations of innocence. He further informed the panel that he was going to file a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. 2255, which authorizes procedures and remedies for attacks on criminal sentences. Respondent did subsequently file this motion pro se in federal court. He asked the panel to stay the proceedings until the conclusion of this motion, and in the alternative asked the panel to "certify" questions of law to this court concerning whether a judge convicted of a felony could receive a punishment other than disbarment. The panel denied both requests and the hearing continued. The board found violations of DR 1-102(A)(3), 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), and Code of Judicial Conduct Canon 2 and Canon 4. Although respondent put on no mitigating evidence, the board found no prior disciplinary record, restitution made to victims, and cooperation in the disciplinary proceeding. BCGD Proc.Reg. 10(B)(2)(a), (c), and (d). Aggravating factors include acting with a dishonest and selfish motive, multiple offenses, refusal to acknowledge the wrongfulness of his conduct, and making restitution only when ordered to do so. BCGD Proc.Reg. 10(B)(1)(b), (d), and (g). Also, as a judge, respondent brought disrepute to the judicial system and breached the public trust. The board recommended disbarment. Respondent objected. First, respondent argued that the panel should have stayed the disciplinary hearing until the conclusion of his motion. The Supreme Court overruled this objection and found that respondent's argument was in direct contrast to the language of Gov.Bar R. V(5)(C), which states that a hearing in a disciplinary case should not be brought until "all appeals from the conviction . . . are concluded;" his motion was not part of an appeal, it was a collateral attack on his conviction. Second, respondent argued that the panel should have halted proceedings and certify his question as to whether pursuant to *Gallagher* (1998) disbarment is required when a judge is convicted of a felony involving moral turpitude. But the Court overruled this objection and found that the proper way to raise an issue of law in a disciplinary proceeding is to raise it to the panel, then the board, and then to the Supreme Court. Third, respondent argued for an indefinite suspension, but did so without any support for his reasoning. The court agreed with the Board's findings of violations. The court citing *Chvosta* (1980) noted that although respondent continues to deny committing the crimes, a disciplinary proceeding is not the forum to collaterally attack a criminal conviction. The court citing *Burkhart* (1996) also noted that proof of a criminal conviction is not conclusive of moral turpitude. Evidence at respondent's federal trial showed that respondent conspired with a business partner to burn down his house so that he could collect the insurance proceeds. He tried twice to have the house set on fire and succeeded on the second try. He then signed and submitted claim forms that contained false statements including that the house was not destroyed "because of any act on [his] part," that "nothing had been done to conceal or misrepresent any material facts concerning the claim, or to deceive the company," and that he did not know the cause or origin of the fire. He eventually settled with the insurance company for \$235,000, which he spent. Pursuant to this

settlement, respondent signed and submitted another form falsely stating that he did not know the origin of the fire. *United States v. McAuliffe* (C.A.6 2007), 490 F.3d 526. The court noted that mitigating factors have little relevance when a judge engages illegal conduct involving moral turpitude. The Supreme Court agreed with the board's recommended sanction of a permanent disbarment and so ordered.

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**Rules Violated:** DR 1-102(A)(3), 1-102(A)(4), 1-102 (A)(5), 1-102(A)(6); Code of Judicial Conduct Canons 2, 4

<b>Aggravation:</b> (b), (d), (g)		<b>Mitigation:</b> (a), (c), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> YES	<b>Sanction:</b> Disbarment		

*McCord, Disciplinary Counsel v.*

121 Ohio St.3d 497, 2009-Ohio-1517. Decided 4/7/2009.

Respondent failed to pay an expert witness, failed to pay court-ordered child support, used a misleading law firm name, and accepted and improperly shared legal fees while on interim suspension. In Count One, respondent agreed to pay an expert witness to prepare for and attend a deposition. He deposed the expert, received a bill, and gave the expert a check. Respondent stopped payment on the check the next day, causing the expert's employer to incur bank charges. He claimed that he stopped the check because he was dissatisfied with the expert's preparation and answers. The panel and board found relator lacked clear and convincing evidence of violations of DR 1-102(A)(4), 1-102(A)(5) and 1-102(A)(6), recommending dismissal of Count One. The Supreme Court rejected this recommendation, noting respondent induced the expert to attend the deposition with the promise of compensation and despite claims of dissatisfaction, used it to cross-examine the expert at trial. The Supreme Court reinstated Count One, finding violations of DR 1-102(A)(4), 1-102(A)(5) and 1-102(A)(6). In Count Two, as part of their divorce decree in 1999, respondent and his ex-wife split jointly held shares in a business. Respondent sold his shares back to the business for \$2 million. Thereafter, respondent's ex-wife moved for modification of the divorce decree to require child support, citing a change in circumstances. Respondent argued that selling some of his assets did not warrant a change in circumstances. The trial court ordered respondent to pay \$40,000 within 30 days, while the full amount of arrearage was being determined retroactively to 2000. He did not pay this amount and was held in contempt. After the arrearage was determined and two mistake-of-fact hearings were held, the court determined the total owed was \$118,789.40. Respondent began a three year appeals process, where he was held in contempt twice for his dilatory conduct, had his appeals dismissed multiple times, and was noted by the trial court to have drug the litigation out far beyond what it should have been. The Supreme Court ordered an interim child support suspension in September 2004. Eventually respondent settled for \$100,000 with his ex-wife. Shortly thereafter, the court terminated respondent's interim suspension, 31 months after it was imposed. Neither the panel nor the board found that respondent's conduct violated DR 1-102(A)(5) and 1-102(A)(6), recommending dismissal of Count Two. The Supreme Court rejected the recommendation, explaining that while he was entitled to appeal the child support determination, the contempt orders and findings of the trial court demonstrated respondent needlessly prolonged the litigation and made concerted efforts to avoid paying court-ordered support. The Court reinstated Count Two, finding violations of DR 1-102(A)(5) and 1-102(A)(6). In Count Three, respondent improperly held himself out as a member of "McCord, Pryor & Associates," "McCord, Pryor, & Associates Co., LPA," and "McCord & Associates." Respondent and David E. Pryor, who was killed in a plane crash in 2002, were never law partners, but owned a building together where each maintained his law practice. They never operated under any recognizable legal structure, kept their accounts, clients, fees, and expenses separate, and only shared fees when working as co-counsel. At the hearing, respondent admitted to forming McCord, Pryor & Associates Co., LPA, in 2005, while under interim suspension, solely to thwart his ex-wife's attempts to garnish his bank accounts. Lastly, the facts show respondent never had any associates under any entity. As to Count Three, the Supreme Court adopted the board's findings of violations of DR 1-102(A)(4), 2-102(B), 2-102(C), and Prof.Cond.R. 7.5.(a), 7.5(d), 8.4(b), 8.4(c), 8.4(d) and 8.4(h). The court noted that subjective intent was not relevant consideration as these violations. In Count Four, attorney Jackie Lewis-Greer took over Pryor's workers compensation clients after his death. Respondent maintained an IOLTA account where he deposited workers compensation checks sent to his office on behalf of these clients. He then wrote checks to disburse the payments: 2/3 to the respective client, 1/6 to Lewis-Greer, and 1/6 to himself. Over the course of his 31 month interim suspension, respondent paid himself a total of \$119,503.27. Respondent and Lewis-Greer were not associates in a firm and did not have a fee-sharing agreement. As to Count IV, the Supreme Court adopted the board's findings of violations of DR 1-102(A)(6), 2-102(B), 2-106(A), 2-107(A), and Prof.Cond.R. 1.5(e), 7.5(a), 7.5(d), and 8.4(h). In mitigation, the board afforded some weight to respondent's interim suspension as an imposition of other penalties or sanctions. But the Supreme Court gave this quasi-mitigating factor no weight. In aggravation, he has a

prior disciplinary case (*McCord* 2002), acted selfishly and dishonestly, engaged in a pattern of misconduct over years, was not completely honest during the disciplinary process and at one point provided materially false information to relator, and failed to acknowledge the wrongful nature of his conduct. BCGD Proc.Reg. 10(B)(1)(a) through (g). The panel recommended a six-month suspension with conditions for reinstatement. The board disagreed and recommended a two-year suspension with one year stayed. The Supreme Court did not adopt the board's recommendation, ordering instead an indefinite suspension. One justice dissented in favor of Board's recommended sanction.

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**Rules Violated:** Prof.Cond.R. 1.5(e), 7.5(a), 7.5(d), 8.4(b), 8.4(c), 8.4(d), 8.4(h); DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 2-102(B), 2-102(C), 2-106(A), 2-107(A)

<b>Aggravation:</b> (a), (b), (c), (d), (e), (f), (g)		<b>Mitigation:</b> (f)	
<b>Prior Discipline:</b> YES (x2)	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*McFaul, Cleveland Metro. Bar Assn. v.*  
120 Ohio St.3d 293, 2008-Ohio-6145. Decided 12/3/2008.

Respondent took liberties on sign-in sheets at a juvenile detention center to gain access for a client's girlfriend and was convicted of attempted drug possession after years of alcohol and cocaine addiction. Relator charged respondent with three counts, but later dismissed the allegations in Count II. In Count I, respondent allowed his client's girlfriend to pose as a legal assistant so that she could visit respondent's client in the county juvenile detention center during restricted hours. Respondent passed two check points during restricted hours, signing the girlfriend in as his "legal assistant" and then his "paralegal." The girlfriend was not technically in respondent's employ, although he did credit his client's account \$250, because of her help with his investigation. The board found respondent violated DR 1-102(A)(6). The Supreme Court agreed. The Supreme Court rejected the board's finding of a violation of DR 1-102(A)(4) because the board mistakenly stated that the parties had stipulated to the violation—the parties had stipulated that relator dismissed a charged violation of DR 1-102(A)(4). In Count III, respondent had been addicted to alcohol and cocaine for many years. He was indicted on two counts of possession of drugs in violation of R.C. 2925.11. In May 2007, respondent pleaded guilty to a reduced charge of attempted drug possession, a first-degree misdemeanor. He was sentenced to a jail term of six months, which the court suspended, and was placed on probation for five years. Respondent's probation includes 50 hours of community service, submission to random drug testing, successful completion of a substance-abuse treatment program, including a minimum of six months inpatient treatments, and attendance at aftercare and outpatient treatment as necessary for his recovery. He was also fined \$500 and ordered to pay a \$200 supervision fee and court costs. The board found respondent violated DR 1-102(A)(6). The Supreme Court agreed. In mitigation, respondent has been diagnosed with a chemical dependency problem meeting all criteria as specified under BCGD Proc.Reg. 10(B)(2)(g)(i) through (iv) for both alcohol and cocaine. He has complied with all requirements of his probation including six-month inpatient treatment for his addictions, random drug testing, and entered into a contract with the Ohio Lawyers Assistance Program (OLAP). Respondent has sustained a period of sobriety and treatment. His medical prognosis supports that he is able to return to the competent, ethical, professional practice of law. Further, respondent has no prior disciplinary record, did not act out of self-interest, has cooperated in the disciplinary process, and shown that with sobriety, he is considered of good character and reputation in the community. BCGD Proc.Reg. 10(B)(2)(a), (b), (d), and (e). He has also acknowledged his wrongdoing. Agreeing with a joint recommendation from respondent and relator, the board recommended a two-year stayed suspension on the conditions that respondent (1) complete a five-year monitored probation of his practice pursuant to Gov.Bar R. V(9) by an attorney appointed by relator, (2) complete any outpatient treatment as required by his treatment provider or by the court in his criminal case, (3) continue to comply with the terms of his OLAP contract during the entire five-year probation period, including submitting to random drug testing and with periodic OLAP updates to his monitoring attorney, (4) avoid a guilty or no-contest plea to, or conviction of, any drug or alcohol-related offense, (5) open and maintain a trust account, and (6) either obtain professional-liability insurance in the amount of at least \$100,000 per occurrence and \$300,000 in the aggregate or advise clients that he lacks insurance in accordance with Prof.Cond.R. 1.4. The Supreme Court agreed and so ordered a two year suspension, stayed upon the above conditions.

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**Rules Violated:** DR 1-102(A)(6)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (b), (d), (e), (g)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> NO	<b>Sanction:</b> Two-year suspension, stayed		

*McNamee, Disciplinary Counsel v.*

119 Ohio St.3d 269, 2008-Ohio-3883. Decided 8/7/2008.

Respondent entered into business transactions with clients and represented their competing interest in those transactions, creating conflicts of interest. Respondent and relator submitted a consent-to-discipline agreement for the two count complaint arising out of the real-estate development of 80 acres of land in Xenia Township, Ohio, owned by respondent and his siblings, into Summer Brooke, a single-family housing community. In Count One, respondent entered into the Arnold-McNamee Joint Venture (Arnold-McNamee) to develop the land, valued at \$3,125 an acre, with Robert S. Arnold, a local builder and long-time client of the firm respondent was an associate. Per this agreement, respondent was to “manage all of the legal affairs, review all contracts awarded for development of the premises, and assist Arnold as required with the operation of [Arnold-McNamee].” In January 1993, after transferring the McNamee property to Arnold-McNamee, respondent had the property annexed to the city of Xenia and rezoned, which unless a second entrance was constructed, restricted the number of lots to be developed to 100. To provide an area for a second entrance, respondent contacted John and Damaine Vonada, who owned 40 acres contiguous to the McNamee property. Against their accountant’s advice and relying on respondent as their counsel, the Vonadas committed to a joint venture with Arnold (Arnold-Vonada), which included the same property valuations as the McNamee property, allowed the Vonadas’ to purchase and develop some of the lots, and referenced the Arnold-McNamee agreement. Respondent did not advise the Vonadas of his dual representation or to get an appraisal of their land, but did recommend himself to do the legal work necessary to rezone and annex their land. He charged the Vonadas \$4500 for the annexation and \$900 for the preparation of the Arnold-Vonada agreement; they paid both fees. As to Count I, the board agreed that respondent violated DR 2-103(A), DR 5-101(A)(1), and DR 5-104(A). The Supreme Court agreed. In Count Two, while usually acting in his or Arnold’s interests and without disclosures or waivers of the conflict of interest, respondent represented Arnold-McNamee and Arnold-Vonada in a series of transactions: the sale of three lots at a profit to the Vonadas while charging them for the preparation of the purchase agreements in 1994 and 1995; filing incorporation papers for the Vonadas’ construction company, listing himself as statutory agent and afterward representing the company; and without the Vonadas’ knowledge, conveying 52.3 acres of undeveloped McNamee land owned by respondent to Arnold for \$7,000 an acre in 1996. Further in 1997, respondent contacted the Vonadas on Arnold’s behalf because Arnold owed the Vonadas \$13,493.19 for the sale of three Vonada lots, but wanted to pay back his capital account in Summer Brooke instead of the Vonadas. At this conversation, the Vonadas first learned respondent had been representing Arnold and Vonada simultaneously. After explaining that “he had worked with Bob Arnold since 1989,” informing the Vonadas of respondent’s simultaneous representation for the first time, respondent requested compromise, threatened the Vonadas with “dog lots” instead of premium lots if they refused, and admonished them for not being grateful for such a “damn good investment.” When questioned about conflicting interests, respondent explained that he saw no conflict and would withdraw or have waivers signed if one arose. In 1998, continuing to represent all sides, respondent, without the Vonadas’ knowledge, made Arnold the authorized partner and himself the statutory agent of a limited-liability partnership between the Vonadas and Arnold, for which he prepared the agreement and then filed before the Vonadas had signed it. In 2001, the Vonadas’ newly retained independent counsel expressed grave concerns about the Vonadas representation in Summer Brooke. Respondent claimed that he represented Arnold and the Vonadas with full disclosure and waiver of conflicts; again indicating he would withdraw should the parties not be able to resolve their misunderstandings. Respondent never withdrew his representation of Arnold or the joint ventures, despite accusations of wrongdoings and conflicts by the Vonadas, their attorneys, and their accountant. Arnold continued to commit to sell multiple Vonada lots to which they held title without their consent as required by their partnership and Arnold-Vonada. In February 2002, after sending the Vonadas a lot-sales proceeds check for \$79,903.69, respondent demanded the Vonadas convey title of their property into the joint venture’s name. To force the conveyance, respondent threatened litigation and then served the Vonadas with a demand for arbitration. The Vonadas responded to the arbitration demand and called for respondent’s

withdrawal. Respondent refused to withdraw, forcing the Vonadas' counsel to move to disqualify him. The arbitration panel eventually disqualified respondent because it was likely he would be a witness, but not before the Vonadas had incurred significant expense. The parties ultimately resolved their dispute with Arnold agreeing to purchase the Vonada property. As to Count II, the board agreed that respondent violated DR 1-102(A)(5), DR 5-101(A)(1), DR 5-101(B), DR 5-104(A), and DR 5-105(B). The Supreme Court agreed. In mitigation, a lack of a prior disciplinary record, cooperation in the disciplinary proceedings, good reputation and character, and acknowledgment of his wrongdoing was found. BCGD Proc.Reg.10(B)(2)(a), (d), and (e). The board adopted the consent-to-discipline recommendation of a one-year suspension, all stayed on the conditions that no further misconduct is committed. The Supreme Court adopted the consent-to discipline agreement and so ordered. Two justices dissented and would have remanded for further proceedings for consideration of increased sanction.

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**Rules Violated:** DR 1-102(A)(5), 2-103(A), 5-101(A)(1), 5-101(B), 5-104(A), 5-105(B)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (d), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> One-year suspension, stayed		

*McNerney, Akron Bar Assn. v.*

122 Ohio St.3d 40, 2009-Ohio-2374. Decided 5/28/2009.

Respondent failed to preserve the identity of clients' funds, failed to keep complete records of his client trust account, failed to give notice to clients that his malpractice insurance had lapsed, and failed to update his attorney registration record. Respondent entered the practice of law as a second career after working in banking, first for a regulatory agent, then for an accounting firm, and later for a bank. He maintained only a single bank account for his law practice from at least January 2006 until at least September 13, 2007 and he deposited both personal funds and client funds. He never reconciled the account, but kept the bank statements, a check book, canceled checks, and copies of clients' checks to distinguish his personal funds from those of his clients. Respondent claimed that before being deposed by relator he had no idea that ethical standards prohibited the use of the same bank account for client funds and personal funds or required the keeping of records to document activity in the client account. The Board doubted this professed ignorance because of his banking experience and because after the deposition he took no steps to open a separate personal bank account, to reconcile the trust account, or to inquire about appropriate accounting practices. He simply deposited all his receipts into one account and then withdrew what he believed he earned. He conceded that he may have withdrawn money still belonging to clients from the funds commingled in the solitary bank account, but he explained that his practice mostly involved small flat fees from criminal-defense cases. And he had only two or three clients whose money he had deposited in that account. Board adopted panel's findings of violations of DR 9-102(A), DR 9-102(B)(3), Prof.Cond.R. 1.15(a), Prof.Cond.R. 1.15(b). Respondent's malpractice insurance lapsed from January 2007 until reinstated in May 2007. Board adopted the panel's findings of violations of DR 1-104(A) and (B) and Prof.Cond.R. 1.4(c) for his failure to notify clients or obtain the clients' signed acknowledgement of the lack of coverage. At a second deposition by relator in mid-September 2007, relator identified to him that he had not updated his attorney-registration record in accordance with Gov.Bar R. VI(1)(D). He remained in default until October 23, 2007. Board adopted panel's findings as to violations of DR 1-102(A)(6) and Prof.Cond.R. 8.4(h) for respondent's failure to properly register, together with the misuse of the trust account and failure to disclose the lapse of malpractice insurance. The Board noted that evidence at the hearing clearly and convincingly showed the panel that respondent has untreated and unresolved substance abuse and medical issues that threaten his ability to practice law. His problems with alcohol are longstanding. As a condition for admission to the Ohio bar, he was required to participate in alcohol-abuse treatment with OLAP and he did so from 2001-2004. He completed the program successfully, but his alcohol problems have persisted. He conceded that at the time of the 2007 depositions, he had returned to drinking. He has been cited three times for driving under the influence, most recently in 2005. He produced a new OLAP contract at the October 8, 2008 hearing. Although the contract was signed by an OLAP representative in July, respondent did not sign and return the OLAP contract until a week before the hearing. He testified that he had not spoken to OLAP representatives since July, that he consumed alcohol, but only "rarely" since then, and that he attended two A.A. meetings the week before the hearing. He testified that he had begun treatment with a psychologist, who diagnosed him with depression, and with two physicians who both prescribed medications for his condition. Panel chair, granted respondent leave to file medical records documenting his mental-health treatment, but he has not done so. In mitigation, he has no prior discipline. BCGD Proc.Reg.10(B)(2)(a). Due to the lack of medical evidence, the Board attributed no mitigating effect to his alcohol dependence and his claimed depression. BCGD Proc.Reg.10(B)(2)(g)(i) and (ii). In aggravation, he engaged in a pattern of misconduct and had not been appropriately responsible during the disciplinary process. BCGD Proc.Reg.10(B)(1)(c) and (e). Board adopted panel's recommended sanction of a two-year suspension, with the second stayed upon conditions: that upon completion of the one-year suspension, his reinstatement be subject to the requirements of Gov.Bar R. VI(10)(C) through (G) for reinstatement from indefinite suspension; and that with any petition for reinstatement filed, he provide proof from treating medical professionals and OLAP that his alcohol and mental-health problems have been resolved, that he has followed all treatment recommendations, including compliance with his 2008 OLAP contract, and

that he is competent to return to competent, ethical, and professional practice of law; that upon reinstatement he complete one year of monitored probation pursuant to Gov.Bar R. V(9). The Supreme Court of Ohio adopted the Board’s findings, and recommended sanction and so ordered.

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**Rules Violated:** Prof.Cond.R. [1.4\(c\)](#), [1.15\(a\)](#), [1.15\(b\)](#), [8.4\(h\)](#); DR 1-102(A)(6), 1-104(A), 1-104(B), 9-102(A), 9-102(B)(3)

<b>Aggravation:</b> (c), (e)		<b>Mitigation:</b> (a)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> <a href="#">YES</a>	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Two-year suspension, 12 months stayed</a>		

*McShane, Disciplinary Counsel v.*

121 Ohio St.3d 169, 2009-Ohio-746. Decided 2/25/2009.

Respondent failed to provide promised legal services to two clients, return unearned portions of the clients' fees, and respond during an investigation of this misconduct. Respondent was charged with three counts of professional misconduct, but did not answer the complaint. Relator moved for default pursuant to Gov.Bar R. V(6)(F). A master commissioner appointed by the board granted the motion, made findings of fact, conclusions of law, and recommended an indefinite suspension. The board adopted the master commissioner's findings and recommended sanction. Respondent filed a motion for remand to the board, objections to the board's report, a motion to supplement the record, and a second motion for remand in response to the Supreme Court's order to show cause as to why it should not confirm the board's recommendation. The Supreme Court denied the motion to supplement, but remanded the case to the board for further proceedings as to appropriate sanction, because respondent proffered compelling evidence of mental disability in explanation for his failure to answer, as well as substantial evidence in mitigation of his misconduct. On remand, the parties stipulated to the master commissioner's findings of misconduct. The panel hearing focused on mitigating evidence. In Count I, Philip C. Roholt retained respondent in September 2004 to pursue an antitrust claim. Roholt paid respondent an initial fee of \$5,000 but respondent failed to maintain contact with Roholt, did no work on his case, and did not return any of the \$5,000 fee as unearned. As to Count I, the board found violations of DR 1-102(A)(5), 1-102(A)(6), 6-101(A)(3), 7-101(A)(1), 7-101(A)(2), 7-101(A)(3), and, because it was stipulated to, Gov.Bar R.V(4)(G). In Count II, Thomas G. Holowitz asked the Columbus Bar Association (CBA) to arbitrate his fee dispute with respondent, but respondent did not participate in the arbitration. In October 2006, a fee- arbitration committee determined that respondent had improperly withheld \$1,350 in fees and directed respondent to return the money. There is no evidence suggesting he ever did. As to Count II, the board found violations of DR 1-102(A)(6) and 9-102(B)(4). In Count III, respondent failed to respond to an investigation of his misconduct by the CBA, which inquired several times about issues raised during the arbitration proceeding, including whether respondent had deposited a \$500 refund from a court into his client trust account. Further, respondent failed to answer a certified letter from relator. As to Count III, the board found violations of DR 1-102(A)(5), 1-102(A)(6), and Gov.Bar R. V(4)(G). In aggravation, the board found a failure to cooperate with the disciplinary process and failure to make restitution before the case was remanded to the board. These aggravating factors were offset by respondent's mitigating factors including a 35-year career (including 10 years in the Office of the Ohio Attorney General) without disciplinary incident, good character and reputation, making full and complete restitution with interest, lack of a dishonest or selfish motive, and an established mental disability (diagnosed with dysthymia and major depressive disorder) that is now being treated. BCGD Proc.Reg. 10(B)(2)(a), (b), (c), (d) (e), and (g). Respondent also showed much remorse for his actions. The board recommended a two-year stayed suspension on conditions that respondent continue treatment with his psychologist and treating physician until released, provide quarterly reports to relator from his mental-health professional or treating physician, comply with his OLAP contract in all respects, and practice only in association with other lawyers and under auspices of a monitoring attorney to be appointed by relator. The Supreme Court agreed with the findings and recommended sanction and so ordered.

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**Rules Violated:** DR 1-102(A)(5), 1-102(A)(6), 6-101(A)(3), 7-101(A)(1), 7-101(A)(2), 7-101(A)(3), 9-102(B)(4); Gov.Bar R.V(4)(G)

<b>Aggravation:</b> (e), (i)		<b>Mitigation:</b> (a), (b), (c), (d) (e), (g)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> YES	<b>Sanction:</b> Two-year suspension, stayed		

*Meade, Disciplinary Counsel v.*

127 Ohio St.3d 393, 2010-Ohio-6209. Decided 12/22/2010.

Respondent failed to cooperate, failed to diligently represent a client which resulted in the dismissal of the client's appeal of a deportation ruling, and failed to return the client's files to a new attorney. A master commissioner considered relator's motion for default and made findings, conclusions, and a recommended sanction, all of which the Board adopted. In Counts One, Four, and Six, an attorney representing respondent's former client filed a grievance because respondent refused to turn over the client's file. Another attorney filed a grievance questioning respondent's competency because respondent had filed an action against the attorney's client listing the FBI, the CIA and Radio Martinique as third-party plaintiffs. Relator suggested that respondent contact OLAP. Respondent said that she would, but failed to do so. Relator tried to depose respondent on three separate occasions, but was unable. Respondent kept offering excuses, including that her vehicle was broken and that a federal court gag order prevented her from testifying about "Blackwater." Respondent was subpoenaed to answer questions about the grievances underlying Counts One through Five. On the morning of the scheduled deposition, respondent got the deposition continued because she wanted to obtain counsel. but then never contacted relator to reschedule the deposition. The board found violations of Prof.Cond.R. 8.4(h) and Gov.Bar R. V(4)(G). The court agreed. In Count Two, an attorney representing a landlord in an eviction proceeding against respondent filed a grievance because of concerns over respondent's mental competence when respondent included the FBI, CIA, and Radio Martinique as third-party plaintiffs, counterclaimed for \$650,000,000; asserted that she worked for the FBI and CIA; claimed that people were improperly entering her home and tampering with her locks and accessing her computer; and that she had FBI and CIA files in her basement that represented a national security issue. Respondent failed to respond to relator's investigatory letters. The board found violations of Prof.Cond.R. 8.4(h) and Gov.Bar R. V(4)(G). The court agreed. In Counts Three and Four, respondent failed to respond to a letter of investigation, despite being personally served. Although Count Three was dismissed, the Board found that respondent's conduct of not responding to the letter or attending a deposition on the matter violated Prof.Cond.R. 8.4(h) and Gov.Bar R. V(4)(G). The court agreed. In Counts Five and Six, respondent was paid \$2,500 to appeal an order of removal in an immigration case. Respondent missed the filing deadline by a day and the appeal was dismissed. The client's new counsel requested the client file, but respondent sent a letter saying the new attorney could not have it at that time. The new attorney was seeking relief from the judgment, alleging ineffective assistance of counsel. The immigration court refused the client's motion to reopen the case. None of the \$2,500 was returned and the file was not provided. The board found violations of Prof.Cond.R. 1.3, 1.16(d), 8.4(d), 8.4(h) and Gov.Bar R. V(4)(G). The Court agreed. In aggravation, respondent engaged in multiple offenses, failed to cooperate, refused to acknowledge the wrongfulness of her conduct and harmed vulnerable clients. BCGD Proc.Reg. 10(B)(1)(d), (e), (g) and (h). In mitigation, respondent lacked a prior disciplinary record. BCGD Proc.Reg. 10(B)(2)(a). The board recognized that respondent may have been a victim of child abuse and domestic violence, and claimed to have an alcoholic parent who committed suicide, but little mitigating effect was given due to the lack of medical evidence as required by BCGD Proc.Reg. 10(B)(2)(g). The board recommended an indefinite suspension, with the condition that reinstatement be permitted only upon proof from treating medical professionals that mental health issues have been resolved, that she follow all treatment recommendations, and that she is able to return to the competent, ethical, and professional practice of law; and that respondent complete one year of monitored probation upon reinstatement. The court noted that neglect of a legal matter coupled with failure to cooperate warrants and indefinite suspension, as for example in *Hoff* (2010) and *Davis* (2009). The court adopted the board's recommended sanction and so ordered.

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**Rules Violated:** Prof.Cond.R. 1.3, 1.16(d), 8.4(d), 8.4(h); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> (d), (e), (g), (h)		<b>Mitigation:</b> (a)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Medley, Disciplinary Counsel v.*

128 Ohio St.3d 317, 2011-Ohio-234. Decided 1/27/2011.

In 2001, respondent received a public reprimand in *Disciplinary Counsel v. Medley* (2001), 93 Ohio St.3d 474. In 2004, he received a suspension for 18 months with six months stayed and was currently suspended, without pay, from his position as judge of the probate court in Gallia County in *Disciplinary Counsel v. Medley*, 104 Ohio St.3d 251, 2004-Ohio-6402. In December 2005, he was reinstated to the practice of law. In 2010, relator filed this complaint. The parties stipulated to the findings of fact, conclusions of law and recommended sanction. Respondent cashed state payroll warrants totaling \$71,405 in gross wages and made false statements in 2009 claims for the reissuance of four expired payroll warrants. These payments were erroneously issued by the state in 2005 while respondent was suspended without pay. The board adopted the panel's findings of the stipulated violations of DR 1-102(A)(4) and Prof.Cond.R. 8.4(c), as well as DR 1-102(A)(6) and Prof.Cond.R. 8.4(h). In aggravation, the board found that respondent had a prior disciplinary record and acted with a dishonest or selfish motive. BCGD Proc.Reg. 10(B)(1)(a) and (b). In mitigation, the parties stipulated that respondent provided full and free disclosure during the investigation, was cooperative during the disciplinary proceedings, and had positive character evidence. BCGD Proc.Reg. 10(B)(2)(c), (d), and (e). The panel and board adopted the stipulated recommended sanction of an indefinite suspension, but further recommended that respondent not be permitted to petition the court for reinstatement until he has paid full restitution to the state of Ohio. The court observed that respondent failed to respond to the court's initial inquiries into respondent's receipt of the payroll warrants, and further noted that the two character letters submitted by colleagues attesting to good character and touting his work with the local high school mock trial program are of minimal value in light of respondent's actions. The court adopted the board's recommended sanction, and ordered an indefinite suspension and conditioned any future petition for reinstatement upon payment of full restitution to the state.

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**Rules Violated:** Prof.Cond.R. 8.4(c), 8.4(h); DR 1-102(A)(4), 1-102(A)(6)

<b>Aggravation:</b> (a), (b)		<b>Mitigation:</b> (c), (d), (e)	
<b>Prior Discipline:</b> YES (x2)	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> YES	<b>Sanction:</b> Indefinite Suspension		

*Miller, Disciplinary Counsel v.*

126 Ohio St.3d 221, 2010-Ohio-3287. Decided 7/20/2010.

Respondent improperly put funds to be held in trust into his personal account, failed to submit a bill for services rendered, failed to inform a client that he lacked professional liability insurance, and failed to cooperate in the disciplinary process. Upon relator's motion for default, a master commissioner made findings and a recommendation that the board adopted. Grievant hired respondent to help in a civil case. He endorsed to respondent a check for \$41,000 and told respondent to give \$18,000 to his girlfriend, to keep \$5,000 as a retainer, and to hold the remaining \$18,000 in trust. Respondent did not advise the grievant that he lacked professional liability insurance. Grievant eventually fired respondent and requested an accounting of the attorney fees and a return of the \$18,000 held in trust. Respondent did not comply. Respondent admitted that he did not maintain a client trust account, he did not execute a written fee agreement, and that he deposited all of the \$41,000 in his personal account and retained \$23,000 in his personal account because he considered it "virtually earned." He acknowledged that he was only entitled to receive \$5,000 upfront. Respondent told relator during the disciplinary investigation that he would provide information, but the summary he provided did not itemize billable activity by date or reflect the daily hours spent on each task. The information showed that respondent charged grievant \$6,750 on two separate occasions to review the same documents. Relator subpoenaed him for a second deposition. Respondent did show up relator's office, but left before the deposition began. Board found that respondent violated DR 1-102(A)(4), 1-102(A)(6), 1-104(A), 2-106(A), 9-102(A), and 9-102(B)(4); Prof.Cond.R. 1.4(a)(4), 1.4(c), 1.5(a), 1.15(a), 1.15(d), 8.4(c), and 8.4(h); and Gov.Bar R. V(4)(G). The board recommended an indefinite suspension. In aggravation, respondent had a dishonest or selfish motive, failed to cooperate with the disciplinary investigation, submitted false evidence, false statements, or deceptive practices during the disciplinary process, refused to acknowledge the wrongfulness of his conduct, and failed to make restitution. BCGD Proc.Reg. 10(B)(1)(b), (e), (f), (g), and (i). The only mitigation was respondent's lack of disciplinary record since his admission to the bar in 1992. BCGD Proc.Reg. 10(B)(2)(a). Citing *Gottelher* (2010) and *Wagner* (2007), the court noted it had imposed an indefinite suspension for similar misconduct. The court adopted the board's findings and recommended sanction, and so ordered that respondent be indefinitely suspended from the practice of law.

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**Rules Violated:** Prof.Cond.R. 1.4(a)(4), 1.4(c), 1.5(a), 1.15(a), 1.15(d), 8.4(c), 8.4(h); DR 1-102(A)(4), 1-102(A)(6), 1-104(A), 2-106(A), 9-102(A), 9-102(B)(4); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> (b), (e), (f), (g), (i)		<b>Mitigation:</b> (a)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Miller, Akron Bar Assn. v.*

130 Ohio St.3d 1, 2011-Ohio-4412. Decided 9/7/2011.

Respondent made unprofessional sexual statements to his client over the telephone. Respondent was appointed to represent a client in a domestic relations matter. During the course of the representation, respondent called the client and made sexual comments to her, including inquiring about her breast size, requesting to see the client's breasts, and request the client perform oral sex on him. The client taped the conversation and gave the tape to relator. Respondent claimed the comments were not meant to be sexual, but instead, were meant to harm and degrade the client. This conduct violated Prof.Cond.R. 8.4(h) (adversely reflects on fitness to practice law). The Court adopted the findings. In aggravation, respondent displayed a selfish motive and harmed a vulnerable client. BCGD Proc.Reg. 10(B)(1)(b), (h). In mitigation, respondent has no prior discipline, cooperated in the disciplinary investigation, presented evidence of good character, and had a mental illness. BCGD Proc.Reg. 10(B)(2)(a), (d), (e), (g). The parties stipulated to a public reprimand; the board recommended a six-month suspension, stayed on the conditions of one year of probation and respondent's continued treatment for his mental illness. The Court noted that this case was not akin to a consensual sexual relationship with a client cases, such as *Williamson* (2008), *Kodish* (2006), *Sturgeon* (2006), *Detweiler* (2010), and *Bartels* (2010), but instead was a deliberate attempt by respondent to demean and exploit his client's vulnerabilities. The Court adopted the board's recommendation of a six-month suspension, stayed on the mentioned conditions.

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**Rules Violated:** Prof.Cond.R. [8.4\(h\)](#)

<b>Aggravation:</b> (b), (h)		<b>Mitigation:</b> (a), (d), (e), (g)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Six-month suspension, stayed</a>		

*Minamyer, Butler Cty. Bar Assn. v.*  
129 Ohio St.3d 433, 2011-Ohio-3642. Decided 7/28/2011.

Respondent failed to notify his client that he lacked malpractice insurance, neglected a legal matter, failed to communicate with his client, and led a client to believe that her case was still pending when in fact it had been dismissed. Respondent initially cooperated, but then failed to file an answer. A master commissioner made findings of fact, conclusions of law, and recommended a two-year suspension with 12 months stayed. Respondent appeared at oral argument and objected to the findings of fact and sought to introduce mental health mitigation. The case was remanded to the board to consider evidence on respondent's post traumatic stress disorder (PTSD). The board then recommended a two-year suspension with 18 months stayed, to which respondent again objected. Respondent filed a complaint for his client and did some pretrial work, but failed to submit a pretrial statement or attend a pretrial. The case was dismissed for failure to prosecute. Respondent led grievant that her case was still pending. The client later discovered that the case had been dismissed and that respondent lacked liability insurance. This conduct violated DR 1-104/ Prof.Cond.R. 1.4(c) (notifying a client about a lack of liability insurance), DR 6-101(A)(3)/ Prof.Cond.R. 1.3 (reasonable diligence), DR 1-102(A)(4)/ Prof.Cond.R. 8.4(c) (dishonest, fraud, deceit, or misrepresentation), Prof.Cond.R. 1.4(a)(3) (reasonably informed about the status of the matter), 1.4(a)(4) (respond to requests for information). The Court adopted these findings. In aggravation, respondent committed multiple offenses, harmed a vulnerable client, and failed to cooperate in the disciplinary process. BCGD Proc.Reg. 10(B)(1)(d), (e), (h). On remand, the respondent showed he suffered from PTSD in mitigation and lacked a prior disciplinary record. BCGD Proc.Reg. 10(B)(2)(a), (g). The panel reluctantly accepted this, stating that they believed respondent's attitude was to deny all wrong-doing, but if there is wrong-doing, then it was because of the mental illness. Respondent sought a second remand of this case, which the Court denied due to a lack of exceptional circumstances (*See Stephan* (2006)). The Court, citing *Lowden* (2005) and respondent's extensive mental health problems which were outlined in the psychiatrists report, modified the board's recommended sanction, instead imposing a one-year suspension, stayed on the conditions that respondent serve one year of probation, limit his practice to certain areas, continue to obtain treatment, and commit no further misconduct. Justice Lundberg Stratton, in an 11-page concurrence, wrote separately to admonish the examining psychiatrist's evaluation of respondent.

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**Rules Violated:** Prof.Cond.R. 1.3, 1.4(a)(3), 1.4(a)(4), 1.4(c), 8.4(c); DR 1-104, 1-102(A)(4), 6-101(A)(3)

<b>Aggravation:</b> (d), (e), (h)		<b>Mitigation:</b> (a), (g)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> One-year suspension, stayed		

*Mishler, Cleveland Bar Assn. v.*

118 Ohio St.3d 109, 2008-Ohio-1810. Decided 4/10/2008.

As to Count I, respondent settled and dismissed a client's state and federal claims without the client's authority. The client made payments to respondent in installments totaling \$17,600. The settlement was \$7,500. Respondent oversaw the process by which the client's signature was affixed without the client's permission in executing the settlement agreement. He allowed the unauthorized endorsement of the client's signature on the settlement check and paid none of the proceeds to the client. He did not refund any unexpended funds. The Court adopted the Board's findings of violations of DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 7-101(A)(1), 7-101(A)(3), 9-102(B)(1) and 9-102(B)(4). As to Count II, the client requested fees and expenses charged in pursuing the client's federal and state discrimination suits but respondent did not account until asked for the information during relator's investigation. He did not keep track of the time spent and tried to reconstruct the charges. He reconstructed for the client a "Breakdown of Expenses and Fees." For the panel hearing, he listed his receipts and disbursements in a document, "Final Account [for] Franco J. Dellipoala" which he presented in evidence that he fully reimbursed the client. This after-the-fact summary contained inaccuracies—in particular the receipts did not minus disbursements do not produce a zero balance. Inconsistencies also existed between the final account and other documents. The court shared the board's skepticism toward the amount fees and expenses generally first, because he kept no contemporaneous financial records to substantiate them and second, by his own account he spent only \$6,972.75 of the \$17,600 he ostensibly collected to pay expenses. He did not attempt to refund any of the costs owed the client until the week before the panel hearing and he gave up on paying the client's share of the settlement proceeds. His statements as to the cost of his services and expenses differed dramatically. Respondent was unable to reliably account for the fees and expenses charged to the client. The court adopted the Board's findings of violations of DR 2-106(A) and 9-102(B)(3). As to Count III, respondent was hired to represent a client in an employment discrimination claim. The client testified he paid \$5,000 for depositions with the understanding that respondent would refund this money upon obtaining one-third of any recovery. Respondent testified that after the client agreed to be a witness for another client, he lowered his fee to \$1,000 and retained the \$4,000 to pay expenses for filing in federal court. Respondent filed the complaint in federal court, but without the client's consent he had an attorney who was not a member of his firm appear for him during the client's deposition and had him appear at a mediation conference. Respondent paid him \$20 per hour. The federal court granted summary judgment for the employer on the federal-law claims and dismissed the remaining state-law claims without prejudice. Respondent appealed, but stipulated to a voluntary dismissal of the appeal in exchange for the employer's agreement not to pursue costs. The client resignedly consented to the dismissal. There were no written fee agreement and no records of time spend. He was not able to reliably account for how he earned or spent the \$5,000. He wrote a refund check to the client in the amount of \$653.75 a week before the panel hearing. The court adopted the Board's findings of a violation of DR 1-102(A)(5), 1-102(A)(6), 2-106(A), and 9-102(B)(3) but did not adopt the Board's finding of a violation of DR 2-107(A)(1). The court noted that neither the CPR or the RPC define "division of fees" but the court is guided by Rule 1.5, Comment [7] describing a "division of fees" as "a single billing to a client covering the fee of two or more lawyers who are not in the same firm." The court distinguished the instant case from two other cases in which attorneys were found to violate DR 2-107(A), *King v. Housel* (1990), 52 Ohio St.3d 228 and *Disciplinary Counsel v. Zingarelli* (2000), 89 Ohio St.3d 210. In neither of those cases did the lawyers deny charging the client in a single billing for another unaffiliated lawyer's work. Respondent did not charge the client for the work of the "per diem" attorney. The court had no clear and convincing evidence upon which to rely on a "single billing" covering the "fee of two or more lawyers who are not in the same firm" in accordance with Rule 1.5 Comment [7]. But, the court admonished that his enlistment of, reliance on, and payment to a second lawyer to represent the lawyer are not without ethical difficulty. Lawyers are cautioned against engaging unaffiliated counsel without client's consent because it implicates a violation of an attorney's duty to preserve client secrets and confidences and may impinge on standards demanding an attorney's undivided loyalty. The court found that respondent flagrantly breached duties to his clients and failed to

represent his clients with honesty and integrity. In mitigation, he has no prior discipline, submitted character letters from colleagues, refunded money to both clients although the mitigating effect is diminished by his delay in waiting just before the panel hearing to do so. BCGD Proc.Reg. 10(B)(2) (a), (c), (e). He acted out of self-interest, committed multiple offenses, engaged in a pattern of misconduct, and could not explain his misdeeds. BCGD Proc.Reg. 10(B)(1)(b), (c) and (d). Board recommended a suspension for one year with six months stayed on conditions of no other ethical violations and full accounting to the clients for fees and expenses and refunds of any funds still owed and probation for one year upon reinstatement and establishment of an office accounting system to accurately track receipts and disbursements of client funds. The court ordered a suspension for two years with the last year stayed on conditions of no ethical violations and fully accounting and refunding any unverified fees and expenses owed to the client with interest at the statutory rate for judgments and upon reinstatement probation for one year and in addition to meeting requirements for Gov.Bar R. V(9), establish an office accounting system to accurately track receipts and disbursement of clients' funds.

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**Rules Violated:** DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 2-106(A), 7-101(A)(1), 7-101(A)(3), 9-102(B)(1), 9-102(B)(3), 9-102(B)(4)

<b>Aggravation:</b> (b), (c), (d)		<b>Mitigation:</b> (a), (c), (e)	
<b>Prior Discipline:</b> YES (x2)	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Two-year suspension, 12 months stayed		

*Mishler, Cleveland Bar Assn. v.*

127 Ohio St.3d 336, 2010-Ohio-5987. Decided 12/14/2010.

On October 21, 2010, respondent received an interim felony suspension in *In re Mishler*, 126 Ohio St.3d1611, 2010-Ohio-5111. In 2008, he was suspended for two years, with one year conditionally stayed, and in 2009, he was suspended for failing to resister. As to Count I, in 2003, a wife and husband hired respondent to perform legal services for the estate of the wife's deceased father involving the probate estate, an inter vivos trust, and two joint and survivorship bank accounts. There was no written fee agreement. Respondent received over \$60,000 in fees and other money not accounted for. He received \$17,000 in fees from the couple, then 2 months later \$15,000, and then \$7,100 to pay taxes but there is no evidence that a tax return was prepared. He received a check for \$4,135 bond but never explained why it was needed. Despite requests, he never provided a complete accounting to the heirs. Decedent had executed a will, but respondent filed an application to administer the estate that asserted the decedent died intestate. The probate court approved an additional \$3,000 in fees. The inter vivos trust clearly instructed that the trust assets were to be distributed to the siblings upon notification to the bank of the death, but there is no evidence of such notification to the bank by respondent. Respondent decided to allow the bank "to continue to perpetuate waste" on the trust so that the clients could force a dissolution through a lawsuit. Three years after the death, respondent filed a complaint against the bank. He did not advise the clients of his settlement negotiations with the bank until after he made an agreement with bank for the release of the money. He received \$160,687.74 in late 2006, but despite requests to do so he did not distribute the settlement funds for over eight months until one of the heirs filed a grievance against him in July 2007. He first took \$15,000 out of the settlement proceeds for attorney fees, then he sent checks for one third of the net to two of the heirs. One of checks bounced, but he later reimbursed the heir. The third heir did not receive her distribution from the trust until October 2007. As to the joint and survivorship bank accounts, containing approximately \$114,000, respondent convinced the daughter to give him the money to place in escrow to keep it separate from the estate and the trust, advising her she would go to jail if she disbursed it to her siblings. Despite requests to do so, he failed to return all the money until November 2008. After the filing of the grievances, he sent the daughter three checks totaling \$117,702.74 starting in September 2008. He added language above the endorsement line on the last check stating that the check was a full and final settlement of all claims. The daughter had died in early 2008, so he reissued the last check in the husband's name, but again added the full-and-final-settlement language. The court agreed with the board that the conduct violated DR 1-102(A)(4) and Prof.Cond.R. 8.4(c); DR 1-102(A)(5) and Prof.Cond.R. 8.4(d); DR 1-102(A)(6) and Prof.Cond.R. 8.4(h); DR 2-106(A) and Prof.Cond.R. 1.5(a); DR 6-101(A)(3); 7-101(A)(1); 7-101(A)(3); 7-102(A)(3); 7-102(A)(5); 9-102(A)(1); 9-102(B)(3); 9-102(B)(4); Prof.Cond.R. 1.8(h)(1) and 1.8(h)(2). The court, also agreed with the board's recommendation to dismissed the alleged violations of DR 5-101(A)(1), 7-102(A)(4), and 7-102(A)(7) because not proven by clear and convincing evidence; to dismiss the alleged violations of Prof.Cond.R. 1.1, 1.3, 1.4(a)(3), 1.7, 1.15(d) because, as in *Freeman* 2008, the conduct for these violations was part of continuing misconduct already punished under the Code of Professional Responsibility; and to dismiss the allegations of violations of DR 1-102(A)(1) and Prof.Cond.R. 8.4(a) because redundant. As to Count Two, respondent was retained in April 2005 by a client with an employment discrimination matter. Respondent was unable to produce a copy of a written fee agreement at the hearing, although the client testified she had signed one and that respondent had never given her a copy despite multiple requests. The client paid respondent \$8,500 for fees and costs. Respondent filed the case in July 2005, settled the case for \$12,000 in June 2006, and received settlement proceeds in May 2007. He claimed \$5,000 in additional fees and did not send the rest to the client. After the client repeatedly asked, he sent three checks totaling \$10,200. The last check had the full-and-final settlement language above the endorsement line. There is no evidence that he advised the client to retain independent counsel review this proposed settlement. She tried several time to ask for an accounting but never received one. The court agreed with the board that the conduct violated Prof.Cond.R. 1.8(h)(1) and (2) and 1.15(d). The court also agreed with the board's recommendation to dismiss the alleged violation of DR 6-102 because all of the misconduct occurred after the Rules of Professional Conduct

became effective. As to Count Three, the court agreed with the board's recommendation to dismiss allegations of violating DR 9-102(B)(3) and 9-102(E) because not proven by clear and convincing evidence. Count Four involved respondent's misconduct when hired to handle litigation on behalf of a client whose pension benefits were decreased after the Pension Benefit Guaranty Corporation took over after the client's former employer went bankrupt. There was no written fee agreement. Respondent told the client that an administrative appeal would be a "waste of time" and encouraged him to file a lawsuit. The bankruptcy court granted respondent a relief from the bankruptcy stay to proceed with a lawsuit. The guaranty corporation, without explanation, increased the client's pension checks. Respondent convinced the client that if he accepted the increase he would forfeit to the right to file a lawsuit. Respondent had the client endorse the checks to respondent and then he would write a check to the client for the lower amount. He told the client he would put the difference into his IOLTA pending resolution of the lawsuit. This occurred every month from July 2003 to September 2008. Respondent filed the lawsuit in 2006 and included other plaintiffs without disclosing this to the client. The federal court dismissed the case without prejudice for failure to exhaust administrative remedies, but the respondent did not inform the client. Respondent appealed the case. When the client learned of the appeal he told respondent to not pursue any further appeal because he could not afford it. Respondent continued the appeal which was later dismissed by the court as bordering on "the frivolous and sanctionable" and the brief was "largely nonsensical." He never informed the client of the decision and he did not tell the client his license to practice law had been suspended effective April 23, 2008. The client later discovered these facts. The client has not received the estimated \$36,783.01 from the check-exchange scheme. In Count IV, the court accepted the board's findings of violations of DR 1-102(A)(4), (5), and (6); 6-101(A)(3); 7-101(A)(3), 9-102(B)(3) and (4) and Prof.Cond.R. 1.1, 1.3, 1.4(a)(3), 1.5(a) and (b), and 8.4(c), (d), (h). The court accepted the recommendation to dismiss DR 1-102(A)(1) and Prof.Cond.R. 8.4(a) because redundant and not proven by clear and convincing evidence; to dismiss the alleged violation of Prof.Cond.R. 1.15(a)(2) because the violation was a continuation of misconduct already punished under the Code of Professional Responsibility; and to dismiss the alleged violations of DR 1-102(A)(1) and Prof.Cond.R. 8.4(a) and 1.15(a)(2). As to Count Five, the court adopted the panel's and board's conclusion that the conduct violated Prof.Cond.R. 1.5(a) and (b), 1.15(a)(2), and 8.4(a), (c), (d), and (h) and the recommendation to dismiss 1.4(a)(3) and Gov.Bar R. V(9) as not proven by clear and convincing evidence. Respondent was hired by a client and paid what the client understood to be a flat fee of \$2,500, but which respondent later characterized as a retainer. After the suit was filed, the client paid an additional \$5,500 related to depositions. Respondent never performed the services. Respondent notified the client he had been suspended and would send an itemized statement and account with the case file. He did not provide the account and did not return the \$5,500. In Count Six, respondent was retained to pursue a medical malpractice action. There was no written fee agreement and the client assumed it would be one-third. He filed the suit and settled it and the clients signed a settlement agreement. They later learned he falsely represented to the probate court in an application to settle the minor's claim that part of the money was to pay for unpaid medical expenses. He did not forward to them the \$5000 approved by the court as payment for the unpaid medical expenses and he did not advise the clients about \$1,000 the court ordered to be set aside until the child reached the age of majority. He withdrew the money and the interest. He claimed attorney fees of \$3,500 from the settlement and the client only received \$1,000 of \$10,500 settlement. He has not returned any of the \$6,000 to the client. As to Count Six, the court agree with the board the conduct violated DR 1-102(A)(4), (A)(5), and (6), 6-101(A)(3), 7-102(A)(3), (A)(5), 9-102(B)(1), (3), (4), and Prof.Cond.R. 1.1, 1.3, 1.4(a)(3), and 8.4(c), (d), and (h). The court agreed with the board's recommendation to dismiss alleged violations of DR 7-102(A)(4) and (7) and Prof.Cond.R. 8.4(a) because redundant and not proven by clear and convincing evidence, and to dismiss the allegation of a violation of Prof.Cond.R. 1.15(a)(2) because a continuation of misconduct already punished. As to Count Seven, the court adopted the board's findings of Prof.Cond.R.1.5(b) and (c), and the recommendations to dismiss the allegations of 1.5(a), 8.1(a), 8.4(c) and 8.4(h) because not proven by clear and convincing evidence. Respondent in 2007, filed an employment-discrimination suit in federal court for a husband and wife. In 2008, the wife called the presiding judge to express concerns about case and that respondent might settle for less than the \$15,000 they paid him. After the judge

held a status conference and respondent told the judge he did not have a written fee agreement, the judge wrote a letter to relator. In aggravation, there is prior discipline, a dishonest or selfish motive, a pattern of misconduct, multiple offenses, lack of cooperation, submission of false evidence, false statement or other deceptive practices during the disciplinary process, refusal to acknowledge wrongful conduct, vulnerability and harm to victim, and flaunt to make restitution. BCGD Proc.Reg. 10(B)(1)(a), (b), (c), (d), (e), (f), (g), (h), and (i). No mitigating factors are present. The pattern of neglect and dishonest behavior, along with misappropriation of client funds, failure to account for client funds, and failure to return clients funds properly creates a presumption of disbarment as the proper sanction. No evidence was presented to rebut the presumption. Respondent had over 50 ethical violations and caused substantial financial harm to multiple clients. The court adopted the board's recommended sanction and so ordered permanent disbarment.

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**Rules Violated:** Prof.Cond.R. 1.1, 1.3, 1.4(a)(3), 1.5(a), 1.5(b), 1.5(c), 1.8(h)(1), 1.8(h)(2), 1.15(a)(2), 1.15(d), 8.4(c), 8.4(d), 8.4(h); DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 2-106(A), 6-101(A)(3), 7-101(A)(1), 7-101(A)(3), 7-102(A)(3), 7-102(A)(5), 9-102(A)(1), 9-102(B)(1), 9-102(B)(3), 9-102(B)(4)

<b>Aggravation:</b> (a), (b), (c), (d), (e), (f), (g), (h), (i)		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> YES (x2)	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> NO	<b>Sanction:</b> Disbarment		

*Mitchell, Disciplinary Counsel v.*

124 Ohio St.3d 266, 2010-Ohio-135. Decided 1/26/2010.

Respondent attempted to represent a juvenile in a proceeding while under a suspended license and provided false information to the magistrate during the proceeding to conceal the suspension. Respondent was admitted to the practice of law in Ohio in 1988, but abandoned the practice in 1992. Respondent had not renewed his license since 1995 and had been suspended since December 2, 2005 for failing to register. In January 2008, Respondent attempted to represent a co-worker's daughter before the Greene County Juvenile Court. During a pretrial conversation between the assistant prosecutor and respondent, the assistant prosecutor began to doubt whether Respondent was an attorney and alerted the magistrate. The magistrate checked the attorney-registration records and could not find the respondent. In response to a question from the magistrate, respondent provided a false middle name to avoid detection of his suspended license. When the magistrate informed respondent she found no attorney under the name respondent provided, respondent then falsely stated that he was licensed in Kentucky. The magistrate excused the respondent from her courtroom for being unlicensed to practice in Ohio. Respondent admitted these facts during a deposition taken as part of this investigation. He said that prior to the court appearance the woman and child did not know of his suspension. He characterized his conduct as "stupid." He said he understood the gravity of the misconduct and that he had not provided legal representation to anyone else since his suspension. He did not answer the disciplinary complaint.. A master commissioner granted relator's motion for default and made findings, conclusions, and a recommended sanction which the Board adopted. The Board found respondent violated Prof.Cond.R. 3.3(a)(1), 5.5(b)(2), 8.4(c), 8.4(d), and 8.4(h). The Board observed that respondent remained in violation of his duties under Gov.Bar R. VI(1)(A) and (D). In aggravation, the Board found the respondent's past registration suspension. BCGD Proc.Reg. 10(B)(1)(a). In a footnote, the court stated that the Board noted respondent had also been under a CLE suspension since December 4, 2003, but a sanction under that rule is not to be considered in the imposition of a disciplinary sanction. In mitigation, the Board cited respondent's cooperation in attending the deposition and making admissions. BCGD Proc.Reg. 10(B)(2)(d). The Board recommended an indefinite suspension. The Supreme Court agreed with the Board's findings and recommended sanction, and so ordered.

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**Rules Violated:** Prof.Cond.R. [3.3\(a\)\(1\)](#), [5.5\(b\)\(2\)](#), [8.4\(c\)](#), [8.4\(d\)](#), [8.4\(h\)](#)

<b>Aggravation:</b> (a)		<b>Mitigation:</b> (d)	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

**Mitchell, Cleveland Bar Assn.**

118 Ohio St.3d.98, 2008-Ohio-1822. Decided 4/23/2008.

Counts I and II involve respondent's conduct as court appointed guardian of the person and estate of an elderly lady who was a housebound Medicaid recipient enrolled in Ohio's PASSPORT program which according to the Western Reserve Area Agency on Aging (WRAAA) afforded health-care benefits only until she became confined to a nursing home. The ward (Washington) was hospitalized in October 1999 and in early November 1999 was transferred to a rehabilitation facility with discharge anticipated in mid-December 1999. WRAAA terminated Washington's PASSPORT enrollment in mid-December 1999 as a result of her rehabilitative enrollment. Respondent appealed the decision to the Ohio Department of Human Services (ODHS). The finding of lawful termination was affirmed twice on appeals, but WRAAA was cautioned that once a PASSPORT recipient filed an appeal, regulations precluded WRAAA from terminating benefits until the state hearing officer's decision. Respondent initiated a new administrative appeal to obtain the reimbursement that the hearing officer implied the client was entitled and addressed her client had been refused reenrollment. In June 2000, a hearing officer upheld the refusal of reenrollment but ordered WRAAA to reimburse Washington for the health care expenses she paid from February 5, 2000 the date she was discharged to from rehabilitative care, until March 28, 2000, the date of the first hearing officer's appeal. WRAAA attempted to comply with the reimbursement order but respondent did not cooperate. Respondent repeatedly ignored WRAAA's attempts to verify the health-care expenses and impeded the reimbursement process by filing a series of legal actions. Five lawsuits were filed. Respondent was unable to justify her litigious refusal to substantiate the expenses for which she claimed reimbursement for the client. The total of the receipts and canceled checks coinciding with the relevant reimbursement period did not come close to substantiating the figures that respondent intermittently claimed. Her unsubstantiated claim that she had paid health-care workers contractors with counter checks rather than checks printed for debits from the guardianship bank was suspect as was the validity of her cash receipts. Her account of the events defied rational belief and had gaping lapses in corroborative proof. For deceptively claiming reimbursement for expenditures that she could not substantiate, panel and board found violations of DR 1-102(A)(4), (5), (6), and for trying to conceal the discrepancy through illegitimate lawsuits and falsified evidence violations of DR 7-102(A)(1), (2), (4), (5), (6). As to Count III, respondent violated Gov.Bar R. VI(1)(D) and 1-102(A)(5) by providing only a post office box number for her attorney registration record. The court noted that it rarely was called upon to sanction an attorney for advancing frivolous law suits. Citation to *Pollock* (2003). In mitigation, respondent had no prior discipline and had a reputation for dedication to the elderly under her care, and Washington's health and living conditions improved dramatically under her supervision. BCGD Proc.Reg. 10(B)(2)(a), (e). In aggravation, she engaged in a pattern of misconduct and multiple offenses, was recalcitrant in acknowledging wrongdoing, remained indignant that WRAAA did not pay the expenses based on little more than her say-so, promised to continue any other mission with equal zeal, has not provided an address to attorney registration, and has not paid the sanction ordered by the probate court. BCGD Proc.Reg. 10(B)(1)(c), (d). The court adopted the Board's recommended sanction (which were the panel's recommended sanction with the addition of compliance with a n underlying court order to pay sanctions and properly register as an attorney)of a suspension for 18 months with the last 12 months stayed on condition of no further misconduct; completion during the actual suspension of three hours of CLE in ethics and professionalism and three hours in probate and guardianship law, in addition to Gov.Bar R.X requirements; complete a 12-month monitored probation pursuant to Gov.Bar R. V(9) to commence upon reinstatement; comply with Gov.Bar R. VI(1)(D) within 30 days of the this order; and pay any sanction ordered by the probate court during the initial six months of suspension or within 90 days of the probate court final order.

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**Rules Violated:** DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 7-102(A)(1), 7-102(A)(2), 7-102(A)(4), 7-102(A)(5), 7-102(A)(6)

<b>Aggravation:</b> (c), (d)		<b>Mitigation:</b> (a), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> 18-month suspension, 12 months stayed		

*Mullaney, Brooking, and Moeves, Cincinnati Bar Assn. v.*  
119 Ohio St.3d 412, 2008-Ohio-4541. Decided 9/16/2008.

Respondents aided in the unauthorized practice of law, improperly shared fees with non-lawyers, and failed to seek objectives of clients by failing to assess their individual needs. Respondents worked with Foreclosure Solutions, LLC. (Foreclosure), to represent Foreclosure's customers for a flat fee of up to \$150, where the clients had no knowledge of who the lawyers were, when they were hired, or how much the legal fees were. Foreclosure, which is not a licensed or accredited consumer-credit-counseling agency, hired respondents to respond in court using standardized pleadings, giving Foreclosure agents, none of which were licensed to practice law in any jurisdiction, time to negotiate a settlement with mortgage lenders on behalf of its customers. Foreclosure solicited customers from court foreclosure dockets and charged them \$700 to \$1,100 to hire a lawyer for the customer through a limited power of attorney, design a savings plan for the customer to follow, act as the customer's attorney-in-fact, and use the money in the savings to negotiate a settlement with the mortgage lenders. If negotiations failed, the trial court granted judgment for the lenders. Foreclosure's agents meet the customers, collect the fees, hire the attorneys, and represent the clients in the negotiations. Respondent, Patrick F. Moeves first agreed to represent Foreclosure's Kentucky customers in 2003 with his law firm, Moeves & Associates, of which respondent, Darren Joseph Mullaney was an associate. The deal continued and grew into Ohio after the formation of Brooking, Moeves, & Hollaran, P.L.L.C., (the firm), in 2004, with John S. Brooking and Moeves as principals, and Mullaney as an associate. Mullaney and Brooking are both licensed to practice law in Ohio, but Moeves is only admitted to practice pro hac vice in a number of Ohio courts. The firm defended over 2,000 clients in 21 Ohio counties. Respondents often received multiple client files containing the Foreclosure Work Agreement with the customer, the limited power of attorney, an intake sheet completed by a Foreclosure agent, and a copy of the foreclosure complaint at one time with a single check for all the fees. The firm's legal services to each client included sending boilerplate correspondence like "The Nuts and Bolts of Ohio Foreclosure" brochure that Moeves and Mullaney had prepared, responding in court with standardized pleadings and other filings meant to delay judgment creating time for Foreclosure's negotiations, sending copies of these filings to the clients, and if a settlement could not be negotiated, sending notice of the sale date by standardized letter to the clients with a recommendation to contact a bankruptcy attorney. As a rule, respondents never met with these clients to determine their particular objectives, complete financial situation, or to discover facts that could be defenses to foreclosures. Respondents relied on Foreclosure's "savings plan" and failed to determine what action, including filing for bankruptcy, was in any one particular client's best interest. Respondents knew the clients did not actually hire them or know how much of Foreclosure's fee went to legal fees. Respondents knew and allowed Foreclosure to continue to negotiate on behalf of these clients while the firm represented them. The board found Mullaney violated DR 2-103(C), DR 3-101(A), DR 3-102(A), DR 6-101(A)(2), and DR 7-101(A)(1) and that Brooking and Moeves violated DR 2-103(C), 3-101(A), 3-102(A), 3-103(A), 6-101(A)(2), 7-101(A)(1). The Supreme Court agreed. In aggravation, all respondents engaged in a pattern of misconduct, committed multiple offences, and the vulnerability of the clients, people in desperate financial circumstances about to lose their home, weighs against them. BCGD Proc.Reg. 10(B)(1)(c), (d), and (h). In mitigation, all respondents lack a prior disciplinary record, stopped representing Foreclosure's customers shortly after relator filed the formal complaint, cooperated with the disciplinary process, and established their good character and reputation. BCGD Proc.Reg. 10(B)(2)(a), (b), (d), and (e). The board recommended that Mullaney receive a public reprimand, Brooking be suspended for one year, stayed on conditions, and Moeves be enjoined from practice in Ohio, pro hac vice or in any other respect for two years. The Supreme Court compared this case as analogous to cases where lawyers were sanctioned for providing legal services in affiliation with non-lawyers marketing living trusts to consumers. In those cases sanctions ranged from a public reprimand to a one year suspension, which is inline with the board's recommendations. The Supreme Court also considered the individual circumstances surrounding each respondent: Mullaney was an inexperienced lawyer who made hard-working attempts to assist his clients, but was confined by the firm's practices; Brookings was a seasoned attorney; and Moeves, also a seasoned attorney, made the

initial agreement and put into place the practices that led to all charges against him and the other respondents. The Supreme Court found the board’s recommendations appropriate and so ordered. See UPL case *Cincinnati Bar Assn. v. Foreclosure Solutions LLC*, 123 Ohio St.3d 107, 2009-Ohio-4174.

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**Rules Violated:** (Mullaney) DR 2-103(C), 3-101(A), 3-102(A), 6-101(A)(2), 7-101(A)(1);  
 (Brooking & Moeves) DR 2-103(C), 3-101(A), 3-102(A), 3-103(A), 6-101(A)(2), 7-101(A)(1)

<b>Aggravation:</b> (All) (c), (d), (h)		<b>Mitigation:</b> (All) (a), (b), (d), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <b>Public Reprimand</b> (Mullaney); <b>One-year suspension, stayed</b> (Brooking); Enjoined from practicing for two years pro hac vice (Moeves)		

***Murraine, Disciplinary Counsel v.***

130 Ohio St.3d 397, 2011-Ohio-5795. Decided 11/17/2011.

Respondent used his client trust account as his personal account. Respondent received a CLE suspension in 2009 and is currently listed as inactive. The parties entered into a consent to discipline agreement for a one-year, stayed suspension, which was accepted by the panel and the board. After filing for bankruptcy, respondent stopped using his personal account and started using his trust account as his personal account; he deposited his own funds into the account and wrote personal checks from it. There is no evidence that he used client money to pay for his own expenses, nor that he used it to defraud his creditors. This conduct violated Prof.Cond.R. 1.15(a) (prohibiting comingling of funds), 1.15(b) (allowing a lawyer to put funds into a trust account only to avoid fees or charges), and 8.4(h) (adversely reflect on fitness to practice law). The Court agreed with these findings. There were no factors in aggravation. In mitigation, respondent lacked a prior disciplinary record, cooperated with the disciplinary process, and presented evidence of good character. BCGD Proc.Reg. 10(B)(2)(a), (e). Additionally, none of respondent's clients were harmed by this misconduct. He has closed his trust account, relocated to Texas, and is no longer practicing law. Citing *Johnson* (2009), the Court accepted the consent-to-discipline agreement and ordered a one-year suspension, stayed.

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**Rules Violated:** Prof.Cond.R. 1.15(a), 1.15(b), 8.4(h)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">One-year suspension, stayed</a>		

*Muntean, Disciplinary Counsel v.*

127 Ohio St.3d 427, 2010-Ohio-6133. Decided 12/20/2010.

Respondent stole money from accounts he managed as the treasurer of the Summit County Court Appointed Special Advocates (CASA) board. Respondent self-reported his misconduct after meeting in May 2009 with law enforcement officers who were investigating the disappearance of money from the CASA bank accounts that respondent maintained. In October 2009, respondent plead guilty to grand theft, a fourth degree felony, received a six-month suspended jail sentence, which was contingent on restitution to CASA. He received an interim felony suspension from the practice of law on January 1, 2010. In January 2008, respondent became treasurer of the CASA board. Only respondent could sign CASA checks and use the CASA board's debit card. In September 2008, respondent began converting funds from these accounts for personal expenses. In a few months he converted nearly \$50,000. To hide this behavior, respondent ignored CASA board members' requests for financial information. The records were obtained by other means and his thefts were discovered. Board found violations of Prof.Cond.R. 8.4(b), (c), and (h). In aggravation, there was a dishonest and selfish motive, a pattern of misconduct, and multiple offenses. BCGD Proc.Reg. 10(B)(1)(b), (c), and (d). In mitigation, respondent made full restitution, had no prior disciplinary record, and cooperated. BCGD Proc.Reg. 10(B)(2)(a), (c), and (d). At the hearing, respondent admitted that he declared bankruptcy in 2004 and had always had difficulty managing money. His law practice was never lucrative. He used CASA funds to buy personal goods and impress his family and friends and mislead them into thinking he was doing better than he actually was financially. Respondent accepted full responsibility for his actions, appreciated the wrongfulness, and expressed remorse. The board report commented on his "self-awareness and commitment to move forward." Respondent was diagnosed with mild depression and adhered to his counseling and medication regime. He was employed. He was released early from community control and was no longer under a court-ordered sanction. The board recommended an indefinite suspension. The court noted that "[u]nquestionably, respondent violated the public trust by stealing funds from an organization that provides services for the most vulnerable members of the community." In imposing a sanction, the court was guided by *Kelly* (2009), a case in which an attorney received an indefinite suspension for misappropriating a large amount of money from a charity on whose board she served. As in *Kelly*, the court, "believe[s] that respondent may eventually be able to establish the ability to practice law both competently and ethically, and we decline to permanently foreclose that opportunity." The Court adopted the board's findings of fact, conclusions of law and recommended sanction and so ordered respondent be indefinitely suspended, with credit for time served under his interim felony suspension. One justice concurred but would not give credit for time served.

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**Rules Violated:** Prof.Cond.R. [8.4\(b\)](#), [8.4\(c\)](#), [8.4\(h\)](#)

<b>Aggravation:</b> (b), (c), (d)		<b>Mitigation:</b> (a), (c), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Nance, Cleveland Metropolitan Bar Assn. v.*  
124 Ohio St.3d 57, 2009-Ohio-5957. Decided 11/19/2009.

Respondent repeatedly failed to comply with bankruptcy court filing requirements, failed to appear as ordered, and failed to comply with orders to disgorge fees and pay assesses fines. Board adopted the panel's findings and recommendation. As to Count I, the board found violations of DR 1-102(A)(6) and its successor, Prof.Cond.R. 8.4(h) for the following misconduct. Respondent began taking bankruptcy cases in 1981, but in April 2005 he filed a Chapter 13 bankruptcy petition and in an electronically filed fee- disclosure statement he mistakenly represented to the court he had paid the requisite filing fee, when, in fact his payment had not been accepted. The court granted the bankruptcy trustee's motion and ordered respondent to disgorge \$200 paid in attorney fees. Respondent paid the missing filing fee in April, but failed for months to comply with the disgorgement order. In December 2005, the court granted the trustee's motion and held respondent in civil contempt for failing to appear and show cause why he should not be held in contempt. He was allowed 10 ten days to purge the contempt, but then a \$10 per day fee was assesses. He has since complied with the order to disgorge fees, and On December 5, 2008, the court the \$7,000 in outstanding fines and costs be held in abeyance. As to Counts II and III, the board found violations of DR 1-102(A)(6) and its successor Prof.Cond.R. 8.4(h) for the mishandling of two Chapter 13 bankruptcy cases filed in 2006. He failed to file the required form "Rights and Responsibilities of Chapter 13 Debtors and Attorneys" which reports the preliminary attorney-fee payment by the debtor and the fees anticipated upon confirmation of the reorganization plan. The failure to file this form precludes the allowance of attorney fees other than by formal itemized application to the court. The bankruptcy trustee filed a motion in both the Count II and III cases to order the respondent to disgorge attorney fees. The court ordered respondent in August 2006 to disgorge \$500 attorney fees to the Count II debtor; and in January 2007 to disgorge \$400 attorney fees to the debtor in Count III. He failed to disgorge and the trustee moved to cite him for civil contempt. He again failed without explanation to appear at the hearings on the motions. The court granted motion granted both motions. In March 2007, the court assessed \$25 fine per day that he failed to remit fees to the debtor's estate in Count II and in October 2007, assessed a \$25 fine per day that he failed to remit fees to the debtor's estate in Count III. He eventually paid \$500 and \$400 to the debtors' estates. He moved to reinstate his filing privileges on December 2, 2008 and the court ordered the fines and costs in the Count II case which exceeded \$12,000 to be held in abeyance. The record does not show if a similar order was issued as to the \$6,500 in fees and costs in the Count III debtor's case, which through the efforts of successor counsel resulted in a Chapter 7 discharge. In aggravation, he committed multiple offenses, and in 2008 he had prior discipline in which he received a six-month suspension, stayed on conditions, for misusing a client trust account. BCGD Proc.Reg. 10(B)(1)(a), (d). In aggravation, he did not appreciate the professional irresponsibility in failing to appear at his contempt hearings, thus the board found that he refused to acknowledge the wrongful nature of his conduct. BCGD 10(B)(1)(g). The board expressed misgivings about his inability to reconcile events to which he stipulated, but could not clearly recall at hearing. The board did not find him untruthful, but inferred that he was ill prepared for the hearing. In mitigation, the bankruptcy court had revoked his electronic-filing privileges and ordered sanctions for his misfilings and contempt, and the client were not prejudiced by his misconduct. BCGD Proc.Reg.10(B)(2)(f). Respondent referred to health problems and a mental disability but did not establish that either condition contributed to his misconduct. Cf. BCGD Proc.Reg. 10(B)(2)(g)(i) and (ii). As to his failure to comply with the bankruptcy court orders, respondent cited his declining practice and lack of financial resources to pay. As to sanction the Board found *Heisler* (2007) on point and the court found *Heisler* as authority for imposing a sanction of less than a one-year actual suspension when a lawyer's financial distress is a major factor in the lawyer's failure to pay funds under court order. Board recommended a suspension for one year, stayed for six months on conditions. Supreme court agreed with the findings and violations and the recommended sanction and so ordered a suspension for one year, with the last six months stayed on conditions of no further misconduct; completion of six hours of CLE in bankruptcy practice and law-practice management, in addition to the general CLE requirements; and remit or resolve the payment of all fines an costs assessed by the bankruptcy court. One justice concurred but would stay the entire suspension.

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**Rules Violated:** Prof.Cond.R. 8.4(h); DR 1-102(A)(6)

<b>Aggravation:</b> (a), (d), (g)		<b>Mitigation:</b> (f)	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> One-year suspension, 6 months stayed		

*Nance, Cuyahoga Cty. Bar Assn. v.*  
119 Ohio St.3d 55, 2008-Ohio-3333. Decided 7/9/2008.

Respondent misused his client trust account. In May 2006, he impermissibly paid an employee with a check drawn from his trust account and without sufficient funds to cover the check. Board adopted panel's findings of violations of DR 1-102(A)(6) and 9-102(A). During the first four months of 2006, he impermissibly drew checks on or made transfers from his trust account 121 times to pay for personal and business expenses, even overdrawing his account on one occasion. Board adopted panel's findings of a violation of DR 9-102(A). In mitigation, there is no prior record of disciplinary rule violations, but respondent's license was briefly suspended in December 2005 for failure to register in *In re Attorney Registration Suspension of Nance*, 107 Ohio St.3d 1231, 2005-Ohio-6408 and he registered late for the 2007 biennium. BCGD Proc.Reg. 10(B)(2)(a). In mitigation, he acknowledged his wrong doing and he made restitution to the person who cashed the employee's bad check, including paying bank charges. BCGD Proc.Reg. 10(B)(2)(c). Relator assured panel it believed he misused his trust account out of ignorance rather than intentional dishonesty. Board adopted panel's recommended sanction of a six-month suspension stayed on conditions of no further violations, properly maintaining his trust account, and complying with registration requirements. The Board cited to *Halliburton- Cohen* (2002) as a case in which a one-year suspension was stayed to improve the lawyer's accounting practices, but because that case involved failure to return funds to which three clients were entitled it warranted the longer suspension period. Supreme Court of Ohio accepted the Board's findings and recommendations and so ordered a six- month suspension stayed upon conditions of no further violations, properly maintaining his trust account, and complying with registration requirements.

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**Rules Violated:** DR 1-102(A)(6), 9-102(A)

<b>Aggravation:</b> (a)		<b>Mitigation:</b> (a), (c)	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Six-month suspension, stayed		

*Newcomer, Disciplinary Counsel v.*

119 Ohio St.3d 351, 2008-Ohio-4492. Decided 9/11/2008.

Respondent commingled his own funds with his clients' funds. Panel and board accepted the consent to discipline agreement entered into by relator and respondent, finding violations of DR 1-102(A)(6) and 9-102(A) and recommending a sanction of a six-month stayed suspension. Prior to June 2006 he maintained a trust account with a bank. In June 2006, the bank notified him he had overdrawn his account by \$132.60 on one occasion and \$258.48 on another occasion. Respondent admitted he used the account for his personal finances. He explained he had done so because the bank closed his personal bank account related to his poor financial condition. The Supreme Court of Ohio accepted the consent to discipline agreement and so ordered a suspension of six-months stayed on condition of no further misconduct.

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**Rules Violated:** DR 1-102(A)(6), 9-102(A)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Six-month suspension, stayed		

*Newman, Cincinnati Bar Assn. v.*

127 Ohio St.3d 123, 2010-Ohio-5034. Decided 10/21/2010.

Respondent plead guilty to three counts of felony theft and failed to report the felonies to the Ohio attorney disciplinary authorities. This case was originally remanded by the court back to the board for lack of sworn or certified evidence necessary to support the findings of fact and conclusions of law and recommended sanction of an indefinite suspension. See *Cincinnati Bar Assn. v. Newman*, 124 Ohio St.3d 505, 2010-Ohio-928. On remand, relator amended its motion for default and submitted certified copies of the indictment, bill of particulars, plea agreement, and judgment entry of sentencing, and the investigator's affidavit. Respondent was indicted on 7 counts of passing bad checks in violation of R.C. 2913.11(B) and 3 counts of theft in violation of R.C. 2913.02(A)(3). In the bill of particulars it was alleged that he deposited checks drawn on closed accounts or accounts with insufficient funds and then withdraw cash. This caused losses of \$5,809.67 to Fifth Third Bank, \$11,804 to U.S. Bank, and \$4,459.99 to Huntington. He pleaded guilty to the three counts of theft, felonies of the 5th degree in September 2007, was sentenced to three years community control and restitution in the amount of \$4,454.59 to Huntington Bank and \$5,804.57 to Fifth Third Bank. He did not notify the disciplinary authority in Ohio of his conviction. When the board brought it to the court's attention, it imposed a interim felony suspension on February 2, 2009 and referred it to relator for investigation. Respondent did not respond to the disciplinary investigation inquiries, did not file an answer to the complaint, and did not submit an affidavit confirming compliance with the interim suspension order. The board adopted the master commissioner's findings of violations of Prof.Cond.R. 8.1(b), 8.3(a), and 8.4(b). In aggravation, he failed to cooperate with the disciplinary process. BCGD Proc.Reg. 10(B)(1)(e). In mitigation, he had no prior disciplinary history in over 45 years of practice. The board adopted the master commissioners recommended sanction of an indefinite suspension. The court quoted *Blankemeyer* (2006): "An attorney who has been convicted of felony theft offenses has violated the basic professional duty to act with honesty and integrity." The court also quoted *Stein* (1972), stating among other things: "The integrity of the profession can be maintained only if the conduct of the individual attorney is above reproach." The court adopted the board's findings, conclusions, and recommended sanction and so ordered an indefinite suspension with a condition of reinstatement that he pay \$4,454.59 in restitution to Huntington Bank and \$5,804.57 in restitution to Fifth Third Bank.

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**Rules Violated:** Prof.Cond.R. 8.1(b), 8.3(a), 8.4(b)

<b>Aggravation:</b> (e)		<b>Mitigation:</b> (a)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Newman, Cincinnati Bar Assn. v.*

124 Ohio St.3d 505, 2010-Ohio-928. Decided 3/17/2010.

The Supreme Court of Ohio found that the record lacks sufficient sworn or certified evidence to support the allegations of misconduct and remanded the case to the board. Relator alleged that in September 2007, respondent entered guilty pleas and was convicted of three counts of theft in violation of R.C. 2913.02, fifth-degree felonies. Relator stated that respondent engaged in a scheme of depositing checks drawn on closed accounts or accounts with insufficient funds into other bank accounts and then withdrew cash from the artificially inflated accounts, causing losses to Fifth Third Bank (\$5,809.67), U.S. Bank (\$11,804), and Huntington Bank (\$4,459.99). The Supreme Court of Ohio imposed an interim felony suspension on February 2, 2009, in *In re Newman*, 120 Ohio St.3d 1500, 2009-Ohio-381. Relator alleged that respondent received notice of the disciplinary investigation but failed to respond or otherwise participate in the disciplinary process and that he violated his oath of office, Prof.Cond.R. 8.1(b), 8.3(a), and 8.4(b). Relator moved for default judgment and the board referred the case to a master commissioner, who granted the motion, made findings of the alleged violations and recommended an indefinite suspension. The board adopted the master commissioner's findings, conclusions, and recommendation. The court stated that relator supported the motion for default judgment with a copy of documents purporting to be the respondent's indictment, bill of particulars, guilty plea, judgment entry, the interim suspension order, three letters addressed to respondent, and two certified mail return receipts appearing to have been signed by the respondent. And relator submitted the affidavit of the attorney investigator. The court noted "Gov.Bar R. V(6)(F)(1) provides: 'A motion for default shall contain all the following: \* \* \* (b) Sworn or certified documentary prima facie evidence in support of the allegations made.' Additionally, Gov.Bar R. V(6)(J) specifies that findings of misconduct must be supported by clear and convincing evidence." Since the rules do not define "sworn or certified documentary \* \* \* evidence" the court used the common, ordinary, and accepted meaning from Black's Dictionary (9th Ed.2009), 385 which "defines 'certified copy' as '[a] duplicate of an original (usu. official) document, certified as an exact reproduction usu. by the officer responsible for issuing or keeping the original.'" Citing *State ex rel. Corrigan v. Seminatore* (1981), 66 Ohio St.2d 459, "[T]he court noted that in the context of documents submitted in support of a motion for summary judgment, we have stated, 'The requirement of Civ.R. 56(E) that sworn or certified copies of all papers referred to in the affidavit be attached is satisfied by attaching the papers to the affidavit, coupled with a statement therein that such copies are true copies and reproductions.'" "Likewise, we conclude that a party may satisfy the Gov.Bar R. V(6)(F)(1) requirement by submitting copies of documents attached to an affidavit containing a statement that they are true copies and reproductions." The court noted "[h]ere, however, the documents submitted by relator in support of its motion for default were neither certified nor sworn. None of the documents bears any certification by the officer responsible for issuing or keeping the original that the copy is a true or exact reproduction. And although relator submitted an affidavit from its investigative attorney, that affidavit refers only to the letters addressed to respondent and the two certified-mail return receipts that appear to have been signed by respondent. It contains no statement that the copies referred to in the affidavit are true copies or reproductions of the originals. Nor does it mention the submitted copies of the indictment bill of particulars, guilty plea, judgment entry, or our interim-suspension order, let alone contain a sworn statement that they are true copies." The court rejected the findings of fact, conclusions of law and recommended sanction and remanded the case to the Board for further proceedings consistent with this decision, including submission and consideration of sworn or certified evidence establishing the charges. Citation to *Sebree* (2004).

**Rules Violated:** NONE

<b>Aggravation:</b> NONE		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Cause Remanded		

*Nicks, Disciplinary Counsel v.*

124 Ohio St.3d 460, 2010-Ohio-600. Decided 2/25/2010.

Respondent failed to request approval of fees from a probate court, failed to forward a client's estate tax payment, and failed to respond to numerous court requests in multiple actions. In Count 1, in November 2006, respondent was retained to help client, Seibel, in the administration of an estate. The fee agreement was that respondent would receive 3% of the estate value and that probate court was required prior to payment. In February 2007, respondent requested a check for one half of his attorney's fees without the required prior approval of the probate court. Client gave respondent a check for \$7428.32, which respondent immediately cashed. Respondent then retroactively asked for probate court approval of the fee, but the probate court approved only a \$5000 fee. The respondent did not inform his client of this, nor did he return any of the money to him. In June 2007, respondent failed to file the estate tax return and failed to forward an estate tax payment, which cost Seibel approximately \$2834.75 in late fees and \$657.04 in interest. Also in June, respondent again requested an advance on his attorney's fees without probate court approval. Respondent was given a \$3714.16 check, which he immediately deposited. During the representation of Seibel, respondent several times failed to respond to numerous client phone calls, received two reminders from the probate court to provide an accounting, and at one point, respondent failed to inform his client that his license to practice law was suspended for failing to comply with the attorney-registration requirements of the 2007-2009 biennium, instead he advised the client on how to obtain an extension to file his overdue account. At the time of the disciplinary hearing, respondent admitted he had not repaid the estate fees taken without court approval or the interest and the late fee penalties. As to Count I, the Board adopted the panel's findings that respondent violated Prof.Cond.R. 1.3, 3.4(c), 8.4(c), 8.4(d), and 8.4(h). Although respondent stipulated to violating Prof.Cond.R. 1.1, the Board found no such violation. The Board, quoting *Lawson* (2008) stated that "[c]ompetent representation' under the rule requires 'the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.'" The board also noted that the court stated in *Lentes* (2008) that "competent representation' means that 'the lawyer must apply the knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.'" In Count II, in July 2006, respondent was hired by client, Graham, to represent him in the administration of his wife's estate. The probate court issued a citation requesting the respondent file a report of distribution and evidence of the recording of a certificate of transfer, and also scheduled a status conference. Respondent failed to respond to the citation and also failed to appear at the status conference. Respondent was found in contempt by the probate court. The court found the contempt cured after respondent in January 2009 filed a motion to reopen the estate and the court's approved the filing of the report of distribution. As to Count II, the board adopted the panel's findings that respondent violated Prof.Cond.R. 1.3, 8.4(d), and 8.4(h). Again, respondent stipulated to violating Prof.Cond.R. 1.1, but the board found no such violation for the same reasons as above. In aggravation, the board found that the respondent committed multiple offenses and failed to make restitution. BCGD Proc.Reg. 10(B)(1)(d) and (i). In mitigation, the board found that respondent had no prior record, fully cooperated with the disciplinary investigation, and had a documented chemical dependency. BCGD Proc.Reg. 10(B)(2)(a), (d) and (g). Respondent was diagnosed as suffering from chemical dependence based on addiction to marijuana, alcohol, and cocaine. The board also noted that respondent had acknowledged his wrongful conduct and accepted responsibility for his actions. The board adopted a 24-month suspension, with 18 months stayed on the condition that respondent: 1) remain in compliance with his OLAP contract, 2) make restitution to the Seibel estate, 3) not engage in any further misconduct during the 24-month suspension, 4) pay the costs of the prosecution of this action and 5) that respondent's practice be monitored in accordance with Gov.Bar R. V(9). This recommended sanction was based on a similar case *Greco* (2005). The Supreme Court agreed with the board's findings and recommended sanction and so ordered.

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**Rules Violated:** Prof.Cond.R. 1.3, 3.4(c), 8.4(c), 8.4(d), 8.4(h)

<b>Aggravation:</b> (d), (i)		<b>Mitigation:</b> (a), (d), (g)	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Two-year suspension, 18 months stayed		

*Niermeyer, Disciplinary Counsel v.*  
119 Ohio St.3d 99, 2008-Ohio-3824. Decided 8/5/2008.

After filing a workers' compensation claim for a client against a university, respondent determined the claim lacked sufficient medical documentation. Respondent asked and received the client's permission to withdraw the claim. After withdrawing the claim, he forgot about it until one of the client's doctors contacted him and by then it was two days beyond the time to refile the claim. To remedy the situation, respondent photocopied a document from an unrelated case and superimposed the date stamp onto a document from the client's case, thereby fabricating a new, purportedly timely filed, document which he filed with the Bureau of Workers' Compensation. After filing the document he was struck with regret and overwhelmed with guilt. He disclosed his actions to his cousin, a fellow attorney, and they decided he should consult with legal counsel. After consulting with legal counsel, he made full disclosure to relator and he withdrew the claim. He has made several attempts to inform the client, but has been unable to make contact. Panel found and Board adopted findings of violations of DR 1-102(A)(4) and 7-102(A)(6). In aggravation, he acted with a dishonest or selfish motive. BCGD Proc.Reg 10(B)(1)(b). In mitigation, he had no prior disciplinary record, he made efforts to rectify the consequences of the misconduct, he cooperated fully, he self-reported, and there was favorable character testimony from several of his colleagues and friends as to his skill, professionalism and that he is a devoted husband and father actively involved in the community and church. BCGD Proc.Reg. 10(B)(2)(a), (c), (d), (e). Panel recommended suspension for twelve months all stayed on condition of good behavior. Board adopted. Supreme Court of Ohio so ordered, noting that the mitigating evidence warranted the stay of the suspension. Citations to *Beeler* (2005), *Fowerbaugh* (1997), *Gottesman* (2007) and *Stubbs* (2006).

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**Rules Violated:** DR 1-102(A)(4), 7-102(A)(6)

<b>Aggravation:</b> (b)		<b>Mitigation:</b> (a), (c), (d), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">One-year suspension, stayed</a>		

*Niles, Disciplinary Counsel v.*

126 Ohio St.3d 23, 2010-Ohio-2517. Decided 6/10/2010.

Respondent, as Champaign County Municipal Court Clerk, engaged in theft in office and tampering with records. On August 13, 2008, respondent received an interim felony suspension in *In re Niles*, 119 Ohio St.3d 1420, 2008-Ohio-4071. Respondent accepted and kept for herself fines from defendants. She was appointed clerk of the Champaign County Municipal Court in 2006, by a judge who was aware of her work on behalf of her clients and her health and financial difficulties. After graduating from law school, she developed a general law practice, but after a series of health problems, she closed her practice as a result of her poor health. Respondent had surgery for a broken ankle in 1997 and was given painkillers, including Vicodin for the pain. Later, she developed depression and anxiety, for which she was prescribed Xanax and Zoloft. In 2005, respondent had quadruple-bypass surgery. She was sworn in as clerk on January 6, 2006. In April 2007, on two days, respondent accepted cash payments of fines paid by defendants to the court. Respondent concealed the thefts by providing paper receipts, instead of computerized receipts, for the payments, and then later destroyed the paper receipts. She retained the cash, which totaled \$365.50 according to an audit. Respondent denied the allegations of theft; she was terminated and later pled guilty to the theft. She was sentenced to 10 days in jail, a \$400 fine, three years community control, and 100 hours community service. Respondent was also ordered to pay \$5483.60 in restitution, for the stolen \$365.50 and the cost of the audit. According to her testimony, she was drinking daily and taking Vicodin, Zoloft, and Xanax at the time of the thefts and that an “alcoholic bottom” had caused her to steal the money. The panel and the board found violations of Prof.Cond.R. 8.4(c), (d), and (h). The court adopted the findings of fact and conclusions of law, but also found a violation of Prof.Cond.R. 8.4(b) which had been stipulated to and for which there was clear and convincing evidence. The Board found respondent’s initial denial of the theft as an aggravating factor; but that “her remorseful and courageous admissions recounted at the hearing more than compensate for this single aggravating element.” In mitigation, the Board found a lack of prior disciplinary record, a cooperative attitude by respondent in the disciplinary process, a timely good-faith effort to make restitution, imposition of other sanctions/penalties, and her chemical dependency. BCGD Proc.Reg. 10(B)(2)(a), (c), (d), (f) and (g). The clinical director of OLAP testified that she had fully complied with her OLAP contract; that she had completed a treatment program for drug and alcohol addiction at a drug and alcohol treatment center; that she voluntarily remains in an aftercare program, that she continues to participate in A.A.; that she has been selected to handle money for two separate 12- step programs; and that she can return to ethical and competent practice of law. The court agreed that the factors of BCGD Proc.Reg. 10(B)(2)(g) were met, and allowed the chemical dependency to qualify as a mitigating factor. The Board recommended a two-year suspension, all stayed in light of the time served by respondent during her interim suspension, but on the conditions that respondent continue to abide by the terms of her OLAP contract including the treatment recommendations of any treating physician or counselor and agree to the appointment of a law practice monitor when she resumes her practice and continue to report to her monitor until the expiration of OLAP contract on approximately March 3, 2013. The recommended sanction is consistent with the two-year suspensions with the second year stayed for similar misconduct in *Carter* (2007), *Brenner* (2009), and *Lockhart* (1998). The Court adopted the Board’s recommended sanction, and so ordered.

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**Rules Violated:** Prof.Cond.R. 8.4(b), 8.4(c), 8.4(d), 8.4(h)

<b>Aggravation:</b> (g)		<b>Mitigation:</b> (a), (c), (d), (f), (g)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> NO	<b>Sanction:</b> Two-year suspension, stayed		

*Nittskoff, Disciplinary Counsel. v.*

130 Ohio St.3d 433, 2011-Ohio-5758. Decided 11/10/2011.

Respondent neglected a legal matter entrusted to him, failed to notify a client that he lacked professional liability insurance, failed to act with diligence and promptness, did not keep his client reasonably informed or respond to requests for information, engaged in conduct that adversely reflected on his fitness to practice law and that was prejudicial to the administration of justice, and failed to cooperate in the disciplinary process. Respondent failed to file an answer to the relator's complaint. A master commissioner was appointed and made findings of fact, conclusions of law and recommended a one-year suspension with 6 months stayed. Respondent represented a client who died, and respondent was charged with administering the client's trust. Respondent poorly prepared probate and tax paperwork, which lead to a \$451,504 tax/ penalty owed to the IRS. He did not have liability insurance to cover a judgment rendered against him for the amount, and has not returned any of the beneficiary's paperwork to him. Respondent also allowed his IOLTA account to be overdrawn and failed to cooperate with relator or respond to letters of inquiry. This conduct violated DR 1-102(A)(5)/ Prof.Cond.R. 8.4(d) (conduct prejudicial to the administration of justice), DR 1-102(A)(6)/ Prof.Cond.R. 8.4(h) (conduct adversely reflecting on fitness to practice law), DR 6-101(A)(1) (handling matter incompetent to handle), 6-101(A)(3) (neglecting a legal matter), Prof.Cond.R. 1.1 (competent representation), 1.3 (reasonable diligence), 1.4(a)(2) (consulting with client about objectives), 1.4(a)(3) (reasonably informing the client), 1.4(a)(4) (not responding to requests for information), 1.4(b) (not explaining the matter adequately to the client), a second count of DR 1-102(A)(6), 1-104(A) (lack of liability insurance), Prof.Cond.R. 8.1(b) (failing to respond in an investigation), and a second count of 8.4(h). The Court agreed with the above findings. In aggravation, respondent failed to cooperate in the disciplinary process and harmed a vulnerable client. BCGD Proc.Reg. 10(B)(1)(e), (i). In mitigation, respondent lacked a prior disciplinary record, lacked a dishonest or selfish motive, and had other penalties imposed against him. BCGD Proc.Reg. 10(B)(2)(a), (b), (f). Although the board found that respondent fully and freely disclosed information to the board by replying to a subpoena, the Court said that was outweighed by his failures to appear and did not find it as a mitigating factor. The board recommended a six-month suspension. Relator objected, claiming the board erroneously relied on irrelevant facts and hearsay evidence, and sought disbarment. The Court, reviewing *Meade* (2010), *Hoff* (2010), *Davis* (2009), *Mathewson* (2007), and *Harris* (2006), rejected both the board's recommendation and the relator's recommendation. Instead the Court ordered respondent be indefinitely suspended, that he satisfy the default judgment against him, and that he make quarterly reports to the relator on his repayment. Justice Pfeifer dissented on the ground that this was a simple malpractice case that got out of hand. He would have imposed the board's recommended sanction.

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**Rules Violated:** Prof.Cond.R. 1.1, 1.3, 1.4(a)(2), 1.4(a)(3), 1.4(a)(4), 1.4(b), 8.1(b), 8.4(d), 8.4(h); DR 1-102(A)(5), 1-102(A)(6), 1-104(A), 6-101(A)(1), 6-101(A)(3)

<b>Aggravation:</b> (e), (i)		<b>Mitigation:</b> (a), (b), (f)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Noel, Disciplinary Counsel v.*

126 Ohio St.3d 56, 2010-Ohio-2714. Decided 6/17/2010.

Respondent neglected the legal matters of two clients which resulted in the dismissal of a criminal appeal and the dismissal with prejudice of a civil case, failed to timely deliver a client's file, and failed to cooperate in the disciplinary investigation. Respondent gave testimony by deposition, but did not file an answer to relator's complaint; a master commissioner made findings of fact and conclusions of law, which the board adopted. The Court noted that because some of the documents submitted in support of the motion for default were neither sworn nor certified as required by Gov.Bar R. V(6)(F)(b) they are not proper evidence in support of the default motion. The court did not consider seven purported affidavits that are photocopies, not the original, signed and notarized documents, and 65 additional exhibits that relator had not provided an investigator's affidavit to authenticate. The court considered only the transcripts of respondent's deposition testimony and the exhibits admitted during deposition. In Count I, respondent represented a client at trial in a criminal matter, but did not take the steps necessary to perfect an appeal of a criminal conviction in the Sixth Circuit, resulting in the court dismissing the appeal for want of prosecution. At the sentencing hearing, respondent informed the court that his client wanted to appeal; he said that the client was indigent and needed court-appointed counsel. Respondent, unfamiliar with the Sixth Circuit's local rules, was unaware that he was bound to be the appellate counsel unless the court specifically relieved him from the representation. Respondent, believing that that the trial court granted his motion to withdraw, failed to file the appeals filing fee, form of appearance, or a transcript purchase order. Respondent was sent letters from the appeals court, but claims that he did not see them until preparing for his deposition in the disciplinary investigation when he found them in the file and he assumed that his secretary thought the case was closed and filed the correspondent without showing him. Respondent admitted that he received calls from the appellate court and agreed to provide documentation of his withdrawal, but failed to provide the requested information. He admitted to receiving two letters from relator about the grievance and failing to respond to them. As to Count I, the board found that respondent violated Prof.Cond.R. 1.3, 8.4(d), 8.1(b), and Gov.Bar R. V(4)(G). In Count II, respondent filed a lawsuit on behalf of a woman who was involved in an accident with a COTA bus. He met her at the courthouse and learned her previous attorney dismissed the case. After talking with her at his office, he took the case and refiled the complaint. Respondent failed to provide materials requested by COTA during discovery; but he blamed his client because she failed to submit to an independent medical examination and failed to submit complete answers to interrogatories. COTA was awarded attorney's fees as a sanction for respondent's conduct in discovery, but the court never fixed the amount of the sanction. Respondent also failed to respond to COTA's motion to dismiss, and the case was dismissed with prejudice for failure to prosecute. Respondent admitted to ignoring the client's phone calls, and that his voicemail was often full. He sometimes missed scheduled appointment due to obligations in court. The client asked for her file so that she could re-file the lawsuit with another attorney; respondent told her that he didn't think another attorney would take the case because three attorneys had already represented her and that was "a big red flag" that something was wrong, he failed to mention that the case had already been dismissed with prejudice and could not be refiled. Respondent failed to respond to relator's letters, claiming that he believed the letters were duplicates from the first grievance. Respondent denied that he missed an appointment to return the client's file, claiming he left the file out for the client's arrival, but the receptionist had not seen it. He claimed that he had not responded to relator's letter because he thought it was a duplicate notice of the grievance underlying Count I. As to Count II, the board found violations of DR 6-101(A)(3), Prof.Cond.R. 1.3, 1.15(d), 3.4(c), 8.1(a), 8.1(b), 8.4(d), and Gov.Bar R. V(4)(G). The Court dismissed Prof.Cond.R. 3.4(c) and 8.1(a) as not supported by sufficient sworn or certified evidence. Furthermore, while the Court agreed with the finding of a violation of Prof.Cond.R. 1.15(d), the Court noted in footnote 1 that Prof.Cond.R. 1.16(d) was more apt under these facts. The multiple offenses, lack of cooperation in the disciplinary process, a refusal to acknowledge the wrongfulness of his conduct, and the vulnerability and resulting harm to the client are aggravating factors. BCGD Proc.Reg. 10(B)(1)(d), (e), (g), and (h). No prior disciplinary record is a mitigating factor. BCGD Proc.Reg. 10(B)(2)(a). The

Master Commissioner recommended a two-year suspension with six months stayed. The Board agreed with a two-year suspension, but instead recommended 18 months stayed on the conditions of no further misconduct and an additional six hours of CLE training in office management. The court concluded that the misconduct was not as egregious as *Kaplan* (2010), but that the resulting harm to the clients render the misconduct more serious than *Mulbach* (1999), and *Marosan* (2005). The Court, adopted a two-year suspension with six months stayed on the conditions recommended by the board. Justices Pfeifer and O'Donnell dissented, and would have suspended respondent for two years with 18 months stayed.

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**Rules Violated:** Prof.Cond.R. [1.3](#), [1.15\(d\)](#), [8.1\(b\)](#), [8.4\(d\)](#); DR 6-101(A)(3); Gov.Bar R. [V\(4\)\(G\)](#)

<b>Aggravation:</b> (d), (e), (g), (h)		<b>Mitigation:</b> (a)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> <a href="#">YES</a>	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Two-year suspension, 6 months stayed</a>		

*O'Brien, Disciplinary Counsel v.*

120 Ohio St.3d 334, 2008-Ohio-6198. Decided 12/4/2008.

Respondent failed to inform a bankruptcy trustee about home-sale proceeds respondent was holding in his trust account on behalf of a client and then disbursed monies from that account per his client's instructions. Respondent represented Stefan A. Unger in the sale of Unger's home. Respondent deposited \$81,000 of sale proceeds into his client trust account per Unger's request on November 1, 2004. Seven days later, Unger filed for bankruptcy through attorney Robert Bardwell who rented office space from respondent and to whom respondent referred Unger. Unger did not disclose the proceeds from the sale of his house to his bankruptcy attorney nor include the asset in his bankruptcy petition. The trustee relied on this petition and filed a no asset report with the court. The court discharged Unger's debts in March 2005. Respondent became aware of the bankruptcy a week after it was filed. Unger told respondent, "Don't worry about it," when respondent inquired if Unger included the funds in his petition. Respondent discussed his proper course of action with two attorneys. One of these attorneys, now deceased at the time of the hearing, advised that consistent with legal ethics respondent should not disclose the existence of the funds to the bankruptcy court, the trustee, or Unger's bankruptcy attorney. Respondent did not disclose, but subsequently disbursed monies out of the account at Unger's direction eight times, with the largest disbursement going to a title company. A week after Unger's debts were discharged, a former associate of respondent informed the trustee that respondent was holding house-sale proceeds in his client trust account for Unger. The trustee withdrew his no asset report and faxed respondent, claiming the funds belonged to the trustee and demanding the immediate remittance of the funds along with an accounting and documentation of the real estate sale. Respondent sought advice from two experienced attorneys whom confirmed the earlier advice from the attorney. Respondent contacted Unger, alerting him to the trustee's actions. He insisted that Unger turn the funds over to the trustee and account for the misrepresentation. Unger refused. Respondent then disclosed the asset to Unger's bankruptcy attorney, but refused to turn over the funds remaining in the account to Unger. He also answered the trustee's demands with a fax explaining that he was unable to answer the questions because of attorney-client privilege. The trustee made another request for the funds and reminded respondent that the trustee stood "in the shoes of the debtor" with respect to attorney-client privilege. The trustee threatened to file a motion to compel and seek sanctions, if her demands for remittal of the funds and tender of the documents were not met within 10 days. Respondent tried to resolve matter by having Unger pay the amounts owed the creditors plus an amount as fee to the trustee, but the trustee rejected the offer and renewed her demands. Eventually she filed a motion to compel in the bankruptcy court. The court granted the motion on September 19, 2005. Respondent failed to comply, claiming the first order had been misfiled by his staff. So the trustee filed an additional motion on October 26, 2005. Respondent finally conveyed the remaining funds and documents to the trustee on November 29, 2005. By then only \$13,513.97 of the original \$81,000 remained in the client trust account. The trustee testified that creditors who filed proofs of claim had received only 97 percent of the amounts owed. Respondent by motion requested relief from paying attorney fees and costs. Subsequently, respondent paid attorney fees and costs and the matter was resolved between the respondent and the trustee. The board viewed respondent's disbursement of house-sale proceeds at Unger's direction as assisting Unger in conduct that the lawyer knows to be illegal or fraudulent. The board found violations of DR 1-102(A)(5) and (6) and DR 7-102(A)(7). The Supreme Court agreed. In mitigation, there was absence of any selfish motive and general good reputation and character. BCGD Proc.Reg. 10(B)(2)(c) and (e). Respondent's refusal to admit wrongdoing was offset by the fact that respondent relied on legal advice with respect to the assertion of the attorney-client privilege. No mitigating effect was given to the improper disbursement of the house-sale proceeds, because respondent did not seek advice regarding the disbursement issue. The board recommended a six-month stayed suspension on the condition that respondent commit no further misconduct. The Supreme Court agreed and so ordered.

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**Rules Violated:** DR 1-102(A)(5) 1-102(A)(6), DR 7-102(A)(7)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (c), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Six-month suspension, stayed		

*Ohlin, Disciplinary Counsel v.*

126 Ohio St.3d 384, 2010-Ohio-3826. Decided 8/24/2010.

Respondent failed to provide competent representation, neglected a legal matter, failed to notify a client that he lacked liability insurance, failed to seek a client's lawful objectives, failed to promptly pay settlement proceeds to a client, failed to cooperate in the disciplinary investigation, and failed to update his attorney registration information. In 2009, during the pendency of the disciplinary action, respondent's license was suspended for failure to register for the 2009-2011 attorney-registration biennium and he was sanctioned and suspended for failing to comply with continuing legal education requirements. Relator conducted a deposition of respondent. When respondent failed to respond to relator's five-count complaint, a motion for default was filed and the board appointed a master commissioner. The board adopted the master commissioner's findings. In Count 1, in 2002, respondent's law firm was retained to represent a client in a personal injury case. The lawyer who filed the case left the firm and respondent assumed the representation. Respondent failed to respond to a motion to dismiss and a motion for summary judgment, which the trial court granted in favor of the defendant. At his deposition, respondent admitted receiving relator's inquiry but he failed to respond. He also admitted that his professional liability insurance lapsed and he failed to inform his client. He agreed to provide relator with additional information about his malpractice insurance and to provide the client case file, but failed to do so. Board found violations of DR 1-104(A) and (B), Prof.Cond.R. 1.1, 1.3, 1.4(c), and Gov.Bar R. V(4)(G). Court adopted. In Count 2, in 2005, respondent was retained and paid \$200 to pursue the expungement of a client's federal criminal conviction. One and a half years later, respondent sought assistance from another attorney with this matter. The client met that attorney and wrote a check for \$400, payable to respondent. Respondent cashed the check and gave money to the other attorney for work performed. Respondent failed to obtain the expungement and failed to return the client's calls. Respondent failed to provide the client file to relator, as agreed upon at deposition. The Board found violations of DR 6-101(A)(3), 7-101(A)(1), and Gov.Bar R. V(4)(G), but did not find support in the record that DR 7-101(A)(2) had been violated. Court adopted the findings of violations and dismissed the alleged violation of DR 7-101(A)(2). The court rejected the findings regarding respondent's intentional failure to obtain the client's goal of expungement and failure to return client telephone calls because relator had not submitted an affidavit from the grievant, but rather submitted a photocopy of the client's unsworn and uncertified grievance. In Count 3, a client retained respondent for a personal injury matter and respondent settled the matter in September 2005 for \$10,000 for his client. The client signed the check and respondent negotiated the check in November 2005. More than a year after the settlement, the client threatened to file a grievance if she did not receive her share. Several weeks later respondent delivered \$800 in cash to the client's home. Respondent promised but failed to provide relator with the client file. The board found violations of DR 6-101(A)(3), 7-101(A)(1), 7-101(A)(2), and 9-102(B)(4); Prof.Cond.R. 1.15(a), and 1.15(d); and Gov.Bar R. V(4)(G). The court agreed that respondent's delay in delivering the settlement proceeds violated DR 6-101(A)(3), 9-102(B)(4), and Prof.Cond.R. 1.15(d) and that he violated Gov.Bar R.V(4)(G), but the court dismissed the alleged violations of DR 7-101(A)(1) and (A)(2) and Prof.Cond.R. 1.15(a) because the record contained no sworn or certified evidence of these alleged violations. In Count 4, respondent failed to respond to a letter from relator in regard to a fourth grievance and at deposition said he provide relator a copy of the file but failed to do so. Board found a violation of Gov.Bar R. V(4)(G). The court agreed. In Count 5, respondent moved but failed to update his residential or business address. At deposition, he promised to update his attorney-registration record, but did not do so. The board found a violation of Gov.Bar R. VI(1)(D). The court agreed. The board recommended that respondent be indefinitely suspended. In aggravation, the board found that respondent: engaged in multiple offenses, failed to cooperate with the disciplinary investigation, harmed vulnerable clients, and refused to acknowledge the wrongfulness of his conduct. BCGD Proc.Reg. 10(B)(1)(d), (e), (g), and (h). The board found no mitigating factors. Respondent claimed to have alcohol dependence and a mental disability, but provided no evidence of this. The court, citing *Hoff* (2010), and *Mathewson* (2007), noted that neglect and failure to cooperate generally warrants indefinite suspension. The court adopted the board's recommended sanction and so

ordered an indefinite suspension with reinstatement conditioned upon proof that any alcohol and mental health problems have been resolved, that he followed all treatment recommendations including OLAP contract; that he is able to return to the competent, ethical and professional practice of law; payment of all settlement monies that the client in Count 3 is entitled to receive; and one year of monitored probation upon reinstatement.

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**Rules Violated:** Prof.Cond.R. 1.1, 1.3, 1.4(c), 1.15(d); DR 1-104(A), 1-104(B), DR 6-101(A)(3), 7-101(A)(1), 9-102(B)(4); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> (d), (e), (g), (h)		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

***O'Malley, Disciplinary Counsel v.***

126 Ohio St.3d 443, 2010-Ohio-3802. Decided 8/24/2010.

Respondent pleaded guilty on a single count of transporting and importation of obscene matters in violation of 18 U.S.C. §1462(a). He was sentenced on October 3, 2008 to 15 months in prison and three years of supervised release. On December 4, 2008, he received an interim felony suspension from the practice of law in *In re O'Malley*, 120 Ohio St.3d 1426, 2008-Ohio-6274. Respondent was elected recorder of Cuyahoga County in 1998, 2000, and 2004. After winning the 2008 primary, he agreed to plead guilty. He resigned his elected office. The misconduct occurred from February 18, 1998 through November 16, 2004. The panel and board accepted the parties' consent-to-discipline agreement to a DR 1-102(A)(6) violation and a 12 month suspension with credit for time served, but the Supreme Court of Ohio rejected the agreement. At the disciplinary hearing, respondent testified that the obscene materials were erotic photographs of adults and erotic stories that he and his wife had viewed in the privacy of their home. He claimed his former wife broke into his home, seized the computers, and turned them over to the FBI to gain an advantage over him in their then pending divorce and child-custody litigation. Based on the parties stipulations, as well as the hearing testimony, the panel and board found a violation of DR 1-102(A)(6) and recommended a 12-month suspension with credit for time served under the interim felony suspension. The Court accepted the Boards finding of a DR 1-102(A)(6) violation, but disagreed with the recommended sanction. There were no aggravating factors. In mitigation, respondent lacked a prior disciplinary record, fully cooperated and made free disclosure in the disciplinary process, had received other penalties or sanctions for this conduct, did not cause any harm to his clients, and provided evidence of otherwise good character. BCGD Proc.Reg. 10(B)(2)(a), (d), (f), and (e). Respondent expressed genuine remorse and accepted responsibility for the consequences of his actions, including bankruptcy, loss of his job, and potentially the loss of his law license. The Court noted that the cases cited by the Board in its recommendation as to sanction dealt with financial crimes, not sexual crimes. The Court noted that in two cases involving sexual misconduct, *Ridenbaugh* (2009) and *Linnen* (2006), the attorneys received indefinite suspensions. The Court noted that, at first glance, these cases seemed to involve more serious misconduct than respondent's importation of obscenity depicting consenting adults, but those attorneys actually served less time in prison than respondent. The Court ordered that respondent be suspended from the practice of law for two years, with credit for time served for the interim felony suspension, and as a condition to reinstatement respondent must complete his federal supervised release. Two justices dissented and would have adopted the Board's recommended sanction of a 12-month suspension with credit for time served under the interim felony suspension.

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**Rules Violated:** DR 1-102(A)(6)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (d), (e), (f)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> YES	<b>Sanction:</b> Two-year suspension		

*Palombaro, Mahoning Cty. Bar Assn. v.*  
121 Ohio St.3d 351, 2009-Ohio-1223. Decided 3/24/2009.

Respondent aided non-lawyers in the unauthorized practice of law through a foreclosure assistance company, failed to provide disclosures of his lack of malpractice insurance to his clients, and failed to properly preserve and account for client funds. Respondent came to represent Bradwin and Denise Jordan in 2005 through United Foreclosure Managers, L.L.C. (UFM), a company claiming to offer legitimate assistance to debtors facing foreclosure by negotiating with their creditors. No one at UFM is licensed to practice law in Ohio. UFM solicited the Jordans on the same day the couple received notice of their mortgagee's action in foreclosure. UFM arranged a meeting with the Jordans where Mrs. Jordan signed the necessary paperwork and paid half of the \$990 fee, with the second half paid the following month. UFM hired respondent to defend the Jordans by filing an answer or taking other legal action to avoid the entry of a default judgment. UFM dictated the scope of respondent's duties, which were limited to filing a Leave to Plead and Answer, and paid him \$55.00 for those services. Respondent timely filed the Leave to Plead and Answer, but did so without speaking to the Jordans. He remained as the counsel of record throughout the action, but never provided any verbal or written communication to the Jordans about his limited involvement or the status of their case. The bank moved for summary judgment, which was granted because there was no pleading in opposition filed. The court ordered the Jordans' home to be sold at auction. Respondent did not inform the Jordans of the summary judgment motion or judgment entry or that an order of sale was issued. While the Jordans were able to repurchase their home prior to eviction, they did so to their financial detriment. Respondent believed that UFM communicated to the Jordans that his participation was limited filing two pleadings; that UFM would communicate with the mortgage company to resolve the dispute and avoid foreclosure; that UFM provide necessary communications to the Jordans. Respondent settled a civil suit with the Jordans and paid full restitution. Further, respondent did not have any malpractice insurance in effect to provide coverage for this incident, and did not provide notification to the Jordans that he was uninsured for malpractice. As to the Jordans, the board found violations of DR 1-104(A) and 3-101(A). Respondent defended Michael Candle in a criminal indictment for felony theft and forgery beginning in 2004 and ending with his guilty pleas in June 2007. Candle accepted \$19,000 for the sale of two cars, but never delivered the cars. In November 2005, Candle claimed he transferred \$19,000 to respondent to be held in trust in anticipation of paying restitution to his victims. Respondent maintained that the funds were in payment of legal fees for a number of cases he had handled for Candle over the preceding years. However, respondent cannot produce detailed billing records for either himself or his office staff as to these fees. The judgement entry incorporated the negotiated plea and provided that at Candle was to pay the victims of his crime the \$19,000 at his sentencing hearing or be sentenced for felony crimes instead of misdemeanors. Respondent agreed to provide the money so Candle could make restitution, but maintains these funds were for past services, thus retaining the right to legally pursue Candle for the past fees. The \$19,000 was never dispersed from the trust account to respondent's operating account, yet the trust account records for November 2005 show a number of charges for insufficient funds and reflect improper payments. Respondent has made restitution to Candle, who is satisfied and wishes his grievance be dismissed or that respondent not be punished with an actual suspension. The board found violations of DR 9-102(A), 9-102(B)(3), and 9-102(B)(4). Lastly, he admitted that from November 1, 2005 and continuing through December 31, 2007, he failed as a general matter to properly preserve and safeguard client funds. He regularly wrote checks from the trust account to pay business expenses and overdrew the account. The board found violations of DR 9-102(A), 9-102(B)(3), and 9-102(B)(4), and Prof.Cond.R. 1.15(a), (b), and (c). In aggravation, he engaged in a pattern of misconduct and committed multiple offenses. BCGD Proc.Reg. 10(B)(1)(c) and (d). In mitigation, he has no prior disciplinary record, cooperated in the disciplinary proceeding, and established his good character and reputation. BCGD Proc.Reg. 10(B)(2)(a), (d), and (e). Further he has already made restitution to the Jordans and Candles and a third grievant whose grievance did not rise to the level of professional misconduct and his devotion to charitable and pro bono work weighs in his favor. BCGD Proc.Reg. 10(B)(2)(c). Consistent with the stipulations, the board recommended a one-year suspension stayed on

conditions that of a two year monitored probation in which his bank accounts be monitored by another attorney at his expense with quarterly reports to relator and the Supreme Court, full restitution be made to Candle, Westfield Insurance, and the Jordans attendance at a law office management CLE, and payment of all costs of this action. The Supreme Court agreed with the findings and recommended sanction and so ordered.

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**Rules Violated:** Prof.Cond.R. 1.15(a), 1.15(b), 1.15(c); DR 1-104(A), 3-101(A), 9-102(A), 9-102(B)(3), 9-102(B)(4)

<b>Aggravation:</b> (c), (d)		<b>Mitigation:</b> (a), (c), (d), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">One-year suspension, stayed</a>		

**Parrish, Cleveland Bar Assn. v.**

121 Ohio St.3d 610, 2009-Ohio-1969. Decided 5/5/2009.

Respondent was convicted of felony theft in July 2007 and received an interim felony suspension on October 23, 2007 in *In re Parrish*, 115 Ohio St. 3d 1434, 2007-Ohio-5636. Relator charged respondent in a 12-count amended complaint pertaining to conduct in two matters. In the first matter, respondent was hired in May 2002 to represent Father Vincent O’Dea in trust and estate matters. Father O’Dea had already established an inter vivos trust to provide funds to certain charitable organizations. Father O’Dea directed respondent to name Father James Ragnoni as his agent. Following Father O’Dea’s death in September 2002, Father Ragnoni, acting as trustee, retained respondent as attorney for the estate and the trust which contained over \$1.3 million. Respondent prepared and Father Ragnoni signed on March 5, 2004 a “Letter of Authority” authorizing a trust account to be established in the name of “The Father Vincent O’Dea Trust Account” which listed as signatories Father Ragnoni and Attorney Parrish. Respondent, listing himself as trustee, opened a new account named “Father Vincent O’Dea Trust” and transferred existing trust funds into the “Father Vincent O’Dea Trust.” Beginning with a check on March 9, 2004, fifteen checks on the account were signed by and made payable to Peter Parrish, totaling \$96,685. He also electronically transferred \$50,000 to his business account in November 2004, and \$25,436.85 to his attorney trust account in August 2005. He eventually withdrew more than \$172,000, not to pay for legal fees or other work for the trust but “to maintain [the] illusion” that he “was still a successful sole practitioner.” Father Ragnoni, did not know of the misappropriation, but discharged respondent as trust counsel, replaced him with Attorney Joyce Salisbury, and requested the file. For a month and a half, Salisbury asked for the file repeatedly but he did not return the file. On March 9, 2006, Salisbury filed a complaint for concealment. Salisbury told him that if he did not return the file she would file a grievance. Respondent said he would deliver the file on March 13, but did not. Salisbury filed a grievance on March 15. Salisbury determined that at least \$172,000 had been misappropriated. He pled guilty to third-degree felony theft, was sentenced to a four-year suspended sentence with a 20 day jail term and was ordered to pay \$250,000 in restitution. He did not carry professional-liability insurance during the representation and did not inform either Father O’Dea or Father Ragnoni of the fact. As to the second matter, in October 2000, John and Debra Sabo hired respondent to defend them in a dispute with a contractor. In May 2001, respondent filed an answer and counterclaim in response to a filing by the contractor to foreclose under mechanic’s lien on the Sabos’ property. Respondent neglected the case in at least three situations. He did not respond to the motion for summary judgment and a default judgment was entered on the validity of the lien. After a motion to compel discovery was granted and the Sabos timely provided responses to respondent, he did not provide them to opposing counsel. After receiving at least five continuances, from May 2005 to April 2006, he failed to appear for a June 2006 pretrial conference, resulting in dismissal of the counterclaim for failure to prosecute. Respondent did not inform the Sabos of his failure to appear or the dismissal of the counterclaim. The Sabos discharged him and retained new counsel who filed a motion for relief from judgment or reconsideration, but the motion was denied. Respondent did not carry professional liability insurance and did not inform the Sabos. The board adopted the panel’s finding of violations of DR 1-102(A)(3), 1-102(A)(4), 1-102(A)(6), 1-104(A), 2-106(A), 6-101(A)(3), 7-101(A)(3), 9-102(B)(4). In aggravation, he acted with dishonest or selfish motive and misappropriated funds from the O’Dea trust repeatedly over a 22 month period; the victims were vulnerable and were harmed. BCGD Proc.Reg. 10(B)(1)(b), (c), (d), (h). In mitigation, he cooperated and there was no prior discipline. BCGD Proc.Reg. 10(B)(2)(a),(d). Board rejected his contention that he acted under mental disability. BCGD Proc.Reg. 10(B)(2)(g). Board adopted the panel’s recommendation of a permanent disbarment. The Supreme Court of Ohio agreed with the Board’s findings and recommended sanction and so ordered a permanent disbarment.

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**Rules Violated:** DR 1-102(A)(3), 1-102(A)(4), 1-102(A)(6), 1-104(A), 2-106(A), 6-101(A)(3), 7-101(A)(3), 9-102(B)(4)

<b>Aggravation:</b> (b), (c), (d), (h)		<b>Mitigation:</b> (a), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Disbarment		

*Patterson, Geauga Cty. Bar Assn. v.*  
124 Ohio St.3d 93, 2009-Ohio-6166. Decided 12/2/2009.

Respondent mishandled a decedent's estate and committed other misconduct by disregarding his duty to exercise independent professional judgment on behalf of clients' facing foreclosure. Board accepted the consent-to-discipline agreement and the proposed 18 month suspension with a six-month conditional stay. As to Count I, respondent violated DR 6-101(A)(3) for mishandling a decedent's estate. He prepared a durable power of attorney, a trust, and a will for a client in early 2004. Respondent and the client's friend, who was also a client of respondent, were appointed cotrustees of the trust. The will named respondent executor of the estate. In June 2004, the client died and in July the probate court appointed respondent executor. In November 2005, respondent was removed as the estate's executor, by the probate court citing pending and anticipated legal action against his cotrustee for apparently misappropriating assets belonging to the estate and the resulting conflict of interest for respondent. In August 2006, the court followed up with a finding that respondent "neglected to secure estate assets and allowed [his co-trustee] to exercise dominion and control over estate assets to the detriment of the estate." According to the court order, respondent allowed the co-trustee to transfer the decedent's automobile to his wife; respondent, without court approval permitted the co-trustee to pay him \$2,500 out of estate assets for a debt allegedly owed by the decedent; respondent had been cited once for failing to file a certificate of service of notice of probate of the will and twice for failing to timely file the estate inventory. He was ordered by the court to reimburse the estate \$1,795.40 in fiduciary fees for neglect. As to Count II, respondent violated Prof.Cond.R. 1.2(a), 1.4(a), 1.4(b), 5.4(a), 5.4(c) for his misconduct in representing clients of Foreclosure Solutions who were facing foreclosure during 2007 wherein he failed to meet directly with the client, shared legal fees with non-lawyers, and aided in the unauthorized practice of law. In June 2007, he entered an agreement to represent customers of Foreclosure Solutions, LLC. He collected a flat fee of \$200.00 for each client in exchange for his representation of them in foreclosure proceedings file in common pleas court. The clients had no choice in his selection. He did not meet with the clients to determine their objectives or complete financial situation, or discover the facts that could be defenses to foreclosure. Respondent did not determine what was in the clients' best interest that was left up to the judgment of Foreclosure Solutions. He accepted a portion of the compensation paid to Foreclosure Solutions. As to Count III, respondent violated DR 2-103(C), 3-101(A), 3-102(A), 6-101(A)(2), 7-101(A)(1) for his misconduct in representing a client of Foreclosure Alternatives wherein he failed to meet directly with a client, shared legal fees with non-lawyers, and aided in the unauthorized practice of law. He accepted a referral from Foreclosure Alternatives on June 7, 2006. He collected a flat fee from Foreclosure Alternatives in exchange for representation of the client in common pleas court. The client had no choice in his selection. He did not meet with the client. The client did not learn respondent's identity until more than six months after respondent filed an answer to the foreclosure Complaint in common pleas court. Respondent accepted a portion of compensation paid to Foreclosure Alternatives. The client filed a voluntary bankruptcy petition in March 2007 and lost his home. Because of respondent's prior public reprimand in *Patterson* (1980), respondent's conduct warrants a more severe sanction than the one year suspension with six months stayed in *Willard* (2009) for similar misconduct of the attorney in partnering with a nonattorney organization to represent clients in mortgage-foreclosure proceedings. BCGD Proc.Reg. 10(B)(1)(a). Supreme Court accepted the consent to discipline agreement and recommended sanction of a suspension for 18 months with six months stayed on condition of no further misconduct and so ordered.

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**Rules Violated:** Prof.Cond.R. 1.2(a), 1.4(a), 1.4(b), 5.4(a), 5.4(c); DR 2-103(C), 3-101(A), 3-102(A), 6-101(A)(2), 6-101(A)(3), 7-101(A)(1)

<b>Aggravation:</b> (a)		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> 18-month suspension, 6 months stayed		

*Peden, Columbus Bar Assn. v.*

118 Ohio St.3d 244, 2008-Ohio-2237. Decided 5/15/2008.

Respondent mishandled client funds by overdrawing his client trust account, using unearned funds to cover operating expenses, not maintaining an interest-bearing client trust account for several months, and being unable to refund the unearned grievant's fees as a result. Respondent's misconduct came know to relator while investigating a grievance that was resolved informally. He overdrew his client trust account nine times during 2003 and 2004. He was unable to immediately refund an unearned fee of \$1500 to the grievant. He did not maintain a client trust account from December 2004 through February 2005, but collected client funds. When he maintained a trust account he sometimes used funds from the trust account to pay costs for client before they paid him. He occasionally deposited unearned fees in his office operating account. He failed to produce trust-account records during the investigation causing realtor to subpoena some records and having to ask repeatedly for others. He failed to disclose where he deposited client funds from December 2004 through February 2005. Board adopted the panel's findings and recommended sanction. Respondent's actions violated DR 1-102(A)(6) (prohibiting a lawyer from engaging in conduct that adversely reflects on a the lawyer's fitness to practice law), 9-102(A) requiring a lawyer to maintain client funds other than advances for costs and expenses in a separate identifiable bank account), 9-102(B) requiring a lawyer to account for, preserve, and, when appropriate, refund client funds in the lawyer's possession), 9-102(E) (requiring a lawyer to maintain an interest-bearing trust account in accordance with statutory standards), and Gov. Bar R.V(4)(G) (requiring a lawyer to cooperate in a disciplinary investigation). Mitigating factors considered in the sanction include a diagnosis of mental illness, an adjustment disorder with mixed emotional features, that has improved since treatment began, the entering into a four-year contract with the Ohio Lawyers Assistance Program (OLAP), no prior disciplinary record, and respondent did not act in dishonesty or greed and refunded the client's \$1,500 fee. BCGD Proc.Reg.10(B)(2)(a), (b), (c). Respondent acknowledged and apologized for the misconduct. The court adopted the Board's findings and recommended sanction and so ordered a suspension from the practice of law for six months, all of which is stayed on condition that respondent periodically provide treatment reports from his psychologist on his ability to practice law competently and within ethical standards and provide quarterly reports to the monitor, remain in compliance with his OLAP contract, and serve a one- year monitored probation, with the monitor paying specific attention to respondent's compliance with the requirements for client trust accounts.

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**Rules Violated:** DR 1-102(A)(6), 9-102(A), 9-102(B), 9-102(E); Gov. Bar R. [V\(4\)\(G\)](#)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (b), (c), (g)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Six-month suspension, stayed</a>		

*Peskin, Ohio State Bar Assn. v.*

125 Ohio St.3d 244, 2010-Ohio-1811. Decided 4/29/2010.

In June 2007, respondent was arrested and subsequently indicted. Respondent pleaded guilty to possession of crack cocaine and resisting arrest and was successfully completed an intervention-in-lieu-of-conviction program that resulted in dismissal of all charges. Respondent had a doctorate degree in psychology and worked as a licensed psychologist for approximately eight years before attending law school. He was the lead trial attorney in large medical malpractice actions at the time of his arrest. He admitted using marijuana occasionally since age 15. He was offered crack cocaine by an acquaintance in 2004 and used it approximately one weekend a month—15 to 20 times—over an 18 month period. He attributed the cocaine use to personal difficulties including his wife’s terminal cancer, his teenage daughter’s difficulty handling the diagnosis, and his second wife’s eating disorder and alcoholism. He claimed he was not impaired while working and that his drug use did not interfere with client representation. He admitted use of marijuana and purchase of crack cocaine days before filing an important motion. He criticized his former employer for notifying clients of his arrest. He implied that his conduct was not serious enough to warrant termination of his employment. He attributed his firing to a personality clash with a partner and the firm’s desire to retain his share of the fees in two lucrative cases. He did not submit any documents to support his contention that reporting to a probation officer for one year and submitting to random drug testing and a substance abuse assessment and a separate assessment by Dr. Horowitz determined that he did not have a substance abuse problem. He voluntarily contacted OLAP after his arrest and began to attend AA meetings, but after approximately a year he separated from OLAP under less than amicable circumstances and stopped attending AA claiming it to be outdated and ineffective. He submitted to psychological evaluation by Dr. Rosenbaum as part of the disciplinary investigation. Dr. Rosenbaum did not specifically diagnose an addiction to illegal substances, but reported that respondent remains at risk to returning to using cocaine and marijuana and would be best served by ongoing monitoring of his sobriety for an indefinite period. In mitigation, he does not have a prior disciplinary record, there were no dishonest or selfish motives, he gave full cooperation well as six character reference letters endorsing his quality legal representation and recommending he be permitted to continue practicing law. BCGD Proc.Reg. 10(B)(2)(a), (b), (d), and (e). In aggravation, he terminated participation in OLAP, his testimony demonstrates that he fails to appreciate the seriousness of his conduct and the substantial risk of harm to which he subjected his clients. He claims to be remorseful, but he resents that he had public humiliation, lost his job, and had disciplinary proceedings brought against him when, as he claims, others with more significant addictions and more egregious criminal records have been permitted to deal with their misconduct in private. Board found violations of Prof.Cond.R. 8.4(d) and (h). Board recommended a two- year suspension, stayed upon conditions. The court distinguished this case from May (2005) where respondent’s chemical dependency qualified as a mitigating factor pursuant to BCGD Proc.Reg. 10(B)(2)(g)(i) through (iv). Here the doctor’s report does not specifically diagnose a chemical dependency or state to a reasonable degree of medical certainty that respondent is able to engage in competent, ethical, and professional law practice. Lacking this mitigating factor and in light his failure to acknowledge the seriousness of his misconduct and his obvious resentment of the consequences, the court concluded that an actual suspension was warranted. The court adopted the board’s finding of violations of Prof.Cond.R. 8.4(d) and (h), but ordered a suspension for two years with 18 months stayed on the conditions recommended by the board, including probation: remain drug-free and alcohol-free and commit no further criminal violations; enter into a two year drug-related contract with OLAP with random drug screens, but not be required to participate in 12 step meetings, instead meet with a OLAP counselor to monitor drug screens and compliance; obtain mental health substance abuse counseling; submit to OLAP and his mental health/ substance abuse counselor the name and dosage of all prescription medications as well as the name and address of the prescribing physician; within one year of the court’s opinion submit a qualified health- care professional’s certification that he has successfully completed a substance abuse treatment program and is to a reasonable degree of medical certainty able to practice law in a competent, ethical, and professional manner, commit no further misconduct; be monitored by an monitory attorney and if he failed to comply with conditions serve the entire two year suspension.

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**Rules Violated:** Prof.Cond.R. 8.4(d), 8.4(h)

<b>Aggravation:</b> (g)		<b>Mitigation:</b> (a), (b), (d), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> NO	<b>Sanction:</b> Two-year suspension, 18 months stayed		

*Pfundstein, Disciplinary Counsel v.*

128 Ohio St.3d 61, 2010-Ohio-6150. Decided 12/21/2010.

Respondent's misconduct arose from his representation of a client in two matters: collection of a legal-malpractice judgment and litigation of an employment-discrimination claim against the client's former employer. As to Count I, in 1998, respondent was hired to represent an individual in a legal-malpractice claim. He obtained a \$3,906.52 judgment in April 2001 and agreed to pursue collection of the judgment. By 2007, he had done little to collect on the judgment and it had not been satisfied. Respondent failed to timely respond to the client's multiple telephone and email requests as to the status of the collection effort. He also made false statements and misrepresentations to the client: that he was waiting to get the attorney into court; that he was waiting on a court date to finish his update; that he was waiting on the municipal court for a date for a show cause motion; that he was waiting for a show cause date for the attorney's failure to appear at a hearing. Respondent and the attorney were never involved in litigation when he made these statements. He falsely told the client he found out where the attorney worked and was trying to garnish her wages. Since 2002, respondent had been suspended from the practice of law. As to Count I, the board adopted the panel's findings of violations of Prof.Cond.R. 1.3, 1.4(a)(3), 1.4(a)(4), 8.4(c), and 8.4(h) and the panel's dismissal of the stipulated violation of 8.4(d) because not supported by clear and convincing evidence. As to Count II, in late 1999 or early 2000, the same client hired respondent for representation in an employment-discrimination claim against a former employer. In May 2000, respondent filed the complaint. The client failed to cooperate in discovery and the trial court ordered him to respond or fact sanctions, including dismissal with prejudice. In February 2001, respondent voluntarily dismissed the case to preserve the claim. After dismissal of the case, respondent did not perform any other legal work on the matter, but in 2008 and 2008 he misrepresented the status, suggesting the claim remained pending. For example, he advised the client by e-mail that the litigation was in a holding pattern; he asked the client about coming into town for a deposition; he said he was trying to figure out a way to get the deposition without the client coming into town; he falsely stated by e-mail that he had mailed a copy of the update the client requested and would send a second copy. At the hearing, respondent admitted that no legal action was pending and no depositions planed, that he had sent the false e-mails to keep the client from filing a grievance and to buy time to figure out how to deal with the situation. As to Count II, the board adopted the panel's findings of violations of Prof.Cond.R. 1.3, 1.4(a)(3), 1.4(a)(4), 8.4(c) and 8.4(h), and the panel's conclusions that the stipulated violation of 8.4(d) was not supported by clear and convincing evidence. In aggravation, respondent engaged in a pattern of misconduct and committed multiple offenses. In mitigation, he had no prior discipline, displayed a cooperative attitude and remorse, submitted over 20 letters attesting to character and reputation and his community and legal service spanning 18 years of practice. BCGD Proc.Reg. 10(B)(2)(a) and (e). The municipal court judge who employs respondent as a part-time magistrate testified to his competence and good character. An associate director of OLAP testified that he was complying with a three year OLAP contract and posed no public threat. The boar found that relator did not show that he caused harm to the client. The board found that respondent proved he suffers from a mental disability within the meaning of BCGD Proc.Reg. 10(B)(2)(g). His psychologist testified that respondent had been diagnosed with dysthymia that contributed to cause the misconduct, that he had undergone successful treatment and could return to competent ethical professional practice. The court adopted the board's findings and conclusions and recommended sanction of a suspension for 12 months all stayed on conditions. The court rejected relator's contention that the evidence does not support the board's decision to consider respondent's metal disability as mitigating; relator's attacks on the credibility of the treating physician's determination that the dysthymia contributed to the respondent's dishonesty; and relator's urging that an actual suspension is necessary because of the pattern of dishonesty. The court noted that mitigating evidence can justify imposing a lesser sanction, such as in *Kimmins* (2009), *Ellison* (2008), and *Fumich* (2007). The court, citing *Heiland* (2008), noted that it will defer to the panel's credibility determinations in the courts' independent review unless the record weighs heavily against the determination. The court noted that the purpose of a disciplinary sanction is to protect the public, not punish the offender and that this purpose is

met by imposing the board’s sanction. The court ordered a suspension for 12 months, all stayed on condition that respondent comply with his OLAP contract, accept the treatment recommended by OLAP and his psychologist, serve a period of probation pursuant to Gov.Bar R. V(9) monitored by relator during the term of three year OLAP contract.

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**Rules Violated:** Prof.Cond.R. 1.3, 1.4(a)(3), 1.4(a)(4), 8.4(c), 8.4(h)

<b>Aggravation:</b> (c), (d)		<b>Mitigation:</b> (a), (e), (g)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> YES	<b>Sanction:</b> One-year suspension, stayed		

*Pheils, Toledo Bar Assn. v.*

129 Ohio St.3d 279, 2011-Ohio-2906. Decided 6/23/2011.

Respondent provided financial assistance to a client and created a conflict of interest by representing two clients with adverse interests. A client hired respondent to represent him in a civil action. Respondent negotiated a \$20,000 settlement for his client, but advised his client not to sign the agreement, as respondent believed it imposed obligations on his client to which the parties had not agreed. The client wanted to sign the agreement, because he needed the money. Respondent, upon the client's request, had his wife loan the client \$4000 while respondent continued to argue over the terms of the settlement agreement. The client signed a promissory note, prepared by respondent acting as his wife's attorney for the loan. Eventually, the client requested another loan of \$10,500 as the respondent still argued over the settlement agreement. Respondent provided his client with a check for \$10,450 from his firm's escrow account, but the check contained a notation that it was a loan from his wife. The client signed a promissory note for \$14,500, ostensibly to repay both loans with \$50 interest, and assigned his rights to the settlement to respondent's wife. Again, respondent acted as his wife's attorney in the loan transaction. At no time did Respondent advise the client to seek independent counsel, or obtain his informed consent. The client eventually terminated respondent, obtained a new attorney, and signed the \$20,000 settlement agreement. Respondent, representing his wife, sued the client for repayment of the loans; this case was dismissed as the debts were repaid. This conduct was found to have violated Prof.Cond.R. 1.8(e), 8.4(a), 1.7(a), and 1.7(b). The panel found that, although charged, respondent's actions did not violate Prof.Cond.R. 1.8(a), 1.8(i), and 8.1(b). Respondent objected to a finding of a Prof.Cond.R. 1.8(e) violation; he argued that because his wife loaned the client the money, it is not a violation of the rules. The Court disagreed; they noted that if respondent had sent his client to a legitimate financial institution that it would have been one thing, however, here respondent arranged for someone with whom he has a close relationship to lend money to someone (the client) whom the wife had never met. The Court stated that the prohibition under this rule is absolute and that it was clearly violated as a form of maintenance and/or champerty. Respondent also argued that he did not create a conflict of interest by representing the client and his wife in the loan, as his scope of representation to the client was only for the civil action. The Court found that, in this instance, the loan was tied to the representation in the civil action, as the loans were necessary due to the respondent's continued work on the case, and thus the delayed settlement. The board and Court adopted the findings of fact and conclusions of law. In mitigation, respondent lacked a prior disciplinary record. Respondent asked that his voluntary retirement from practice warrant only a public reprimand, but the Court rejected this, as respondent is not officially retired pursuant to Gov.Bar R. VI(6) and thus could resume practice at any time. In aggravation, respondent committed multiple offenses, did not cooperate in the disciplinary investigation, engaged in deceptive practices, and refused to acknowledge the wrongful nature of his conduct. BCGD Proc.Reg. 10(B)(1)(d), (e), (f), and (g). Relying on *Podor* (2009) and *Newman* (2004), the Court adopted the board's recommended sanction, and suspended the respondent for one year with six months stayed on the conditions that respondent complete an additional six hours of CLE in law office management and that he commit no further misconduct.

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**Rules Violated:** Prof.Cond.R. [1.7\(a\)](#), [1.7\(b\)](#), [1.8\(e\)](#), [8.4\(a\)](#)

<b>Aggravation:</b> (d), (e), (f), (g)		<b>Mitigation:</b> (a)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">One-year suspension, six months stayed</a>		

*Plough, Disciplinary Counsel v.*

126 Ohio St.3d 167, 2010-Ohio-3298. Decided 7/21/2010.

Respondent, a judge, failed to maintain or provide complete records of courtroom proceedings, unreasonably delayed compliance with a mandate of the court of appeals on remand; engaged in improper ex parte communication with a prosecutor; expressed an opinion on an issue of fact in the jury's presence; berated defense counsel during closing argument; refused to grant a mistrial based upon his own prejudicial conduct; refused to accept a guilty plea for a misdemeanor speeding violation based upon his mistaken belief that the prosecutor was statutorily required to charge the defendant with a greater offense. Respondent was elected judge in 2005 and served until his term expired in 2009. The parties stipulated to the findings of fact and conclusions of law, which the board adopted in their entirety except for Count I. In Count I, defense counsel moved for a continuance based on new discovery materials. Respondent did not review the materials, but denied the request based on the prosecutor's word that not granting the request would not be prejudicial. Defense counsel then refused to participate in the proceedings and was found in contempt. Later at the contempt hearing, the court withdrew the contempt and granted the motion for a continuance. The panel and board recommended dismissal of Count I. The court agreed, finding that this conduct may have been an abuse of discretion, but that abuse of discretion typically generates an appeal, not disciplinary proceedings. In Count II, respondent failed to maintain or provide a complete record in three separate proceedings, despite numerous requests filed by the parties. In one of the cases, respondent failed to comply with multiple remands from the court of appeals ordering him to produce the audio recordings or follow App.R. 9(C) procedure. Respondent's conduct in failing to maintain or provide complete recordings led to a reversal of a portion of one defendant's sentence that required him to register as a sex offender and the reversal of another defendant's OMVI conviction. The board adopted the panel's findings of violations of Canon 2, 3(B)(8), and 3(C)(1), and Prof.Cond.R. 8.4(d). In Count III, respondent waited almost three months to comply with a remand order from the court of appeals, ordering him to vacate a OMVI conviction and enter a judgment of acquittal. The board adopted the panel's findings of violations of Canon 2 and 3(B)(8) and Prof.Cond.R. 8.4(d). In Count IV, respondent phoned the county prosecutor without defense counsel present to discuss respondent's opposition to an assistant prosecutor's plea agreement. The board adopted the panel's findings of a violation of Canon 3(B)(7). In Count VI, respondent interrupted defense counsel while he was questioning a witness, and improperly gave his own opinion on an issue of fact while the jury was present. Respondent then subsequently refused to grant defense counsel's motion for a mistrial. During defense counsel's closing argument, respondent constantly interrupted the attorney, berated him, and questioned his professional qualifications in front of the jury. The court of appeals, which reversed the judgment of conviction in part, observed that the gratuitous vilification and general hostility toward defense counsel caused him sit down and refrain from completing the closing argument. The board adopted the panel's findings of violations of Canon 1, 2, and 3(B)(4) and Prof.Cond.R. 8.4(d). In Count VIII, respondent refused to accept a guilty plea in a minor-misdemeanor speeding offense, because he mistakenly believed that the statute required a more serious charge. Board adopted the panel's findings of violations of Canon 2 and Prof.Cond.R. 8.4(d). The Court adopted these findings of fact and conclusions of law, except that respect to Count VI in which the court found a violation of DR 1-102(A)(5) rather than Prof.Cond.R.8.4(d) because the conduct occurred before February 1, 2007. In aggravation, respondent engaged in multiple violations and prejudiced the appellate rights of several litigants by failing to maintain adequate records. BCGD Proc.Reg. 10(B)(1)(d) and (h). In mitigation, the Board found a lack of prior disciplinary record, no dishonest or selfish motive, full disclosure by respondent during the investigation, and good reputation for honesty, diligence, and fairness as a judge. BCGD Proc.Reg. 10(B)(2)(a), (b), (d), and (e). The Board adopted the panel's recommendation of a one- year suspension with six months stayed conditionally on respondent engaging in no further disciplinary misconduct. Respondent's conduct was found to be more serious than *Karto* (2002) (six-month suspension, but lacking the aggravating factors of dishonesty, failure to concede violations, or a prior disciplinary history of other cases *Parker* (2007) (18-month with six months stayed), *O'Neill* (2004) (two- year with one year stayed), *Squire* (two-year with

one year stayed), *Medley* (2004), 18-months with six months stayed); and more similar to *Campbell* (2010) (one-year with six months stayed). The Court agreed with the board's recommended sanction, and so ordered a six-months suspension stayed on condition of no violations during the suspension. One justice dissented and would suspend for one year.

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**Rules Violated:** Prof.Cond.R. 8.4(d); DR 1-102(A)(5); Code of Judicial Conduct Canons 1, 2, 3(B)(4), 3(B)(7), 3(B)(8), 3(C)(1)

<b>Aggravation:</b> (d), (h)		<b>Mitigation:</b> (a), (b), (d), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> YES	<b>Sanction:</b> Six-month suspension, stayed		

**Podor, Cleveland Metro. Bar Assn. v.**  
121 Ohio St.3d 131, 2009-Ohio-358. Decided 2/5/2009.

Respondent provided financial assistance to a client for living expenses while the client's case was pending. Relator charged respondent with four counts of professional misconduct in its amended complaint, two of which were dismissed leaving counts one and three to be heard before the panel. The panel found insufficient evidence to support the Count Three allegation that respondent had collected an illegal or clearly excessive fee. The board recommended dismissal of count three. The Supreme Court agreed and so ordered. As to Count One, respondent is the sole owner of his law practice Podor and Associates and also owns IMMI, which produces advertisement for legal services, primarily for television, and sells diet and exercise advice, primarily on the internet. Respondent represented his long-time client and friends, Carla and Charles White, in their personal-injury litigation. While their case was pending, Mrs. White asked respondent to advance her money for living expenses, to which respondent gave the Whites \$19,800 through IMMI. Mrs. White also made a brief appearance in one of IMMI's commercials. During the disciplinary investigation, respondent suggested that the advance was actually payment for her commercial appearance. The loan has since been repaid using the proceeds of the settlement of the lawsuit. The parties stipulated and the board adopted the panel's findings that this loan violated DR 5-103(B). The Supreme Court agreed. In mitigation, the board found respondent did not act out of a dishonest or selfish motive. In aggravation, the board found respondent had a prior disciplinary violation resulting in a stayed suspension in *Cleveland Bar Assn. v. Podor* (1995), 72 Ohio St.3d 40, 647 N.E.2d 470, and he engaged in a deceptive practice during the disciplinary process. The board adopted the panel's recommendation of a one-year suspension, stayed on conditions. Relator objected to the board recommendation and advocated for a more severe sanction. The Supreme Court agreed with the board and ordered a one-year suspension stayed on conditions that respondent complete six hours of continuing legal education in ethics and law office management beyond the hours required for all Ohio attorneys and that respondent commit no further misconduct. Two justices dissenting in favor of an actual suspension because of the aggravating factors of respondent's deceptive practice by giving guarded testimony regarding his motivation for providing money to the client and his prior discipline.

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**Rules Violated:** DR 5-103(B)

<b>Aggravation:</b> (a), (f)		<b>Mitigation:</b> (b)	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> One-year suspension, stayed		

*Poole, Cuyahoga Cty. Bar Assn. v.*  
120 Ohio St.3d 361, 2008-Ohio-6203. Decided 12/4/2008.

Respondent failed to provide promised legal services to two clients, failed to return unearned fees, and failed to cooperate in relator's investigation. As to Count I, respondent agreed to file a motion seeking judicial release of Delores Crawford's grandson. Respondent accepted \$200 in payment, but failed to do the work. The client discharged him and asked for a refund. He did not repay her until after she filed a grievance. Board adopted panel's findings of violations of DR 6-101(A)(3), 7-101(A)(1), 7-101(A)(2), and 9-102(B)(4). As to Count II, respondent agreed to pursue a predatory- lending claim on behalf of Nicole Thompson who paid him \$1,000. He deposited the money into his client trust account. When the client discharged him for lack of communication asked for a refund, he told her had researched her claim and would refund half of the money. He refunded the \$1,000, but not until after she filed a grievance. Board adopted panel's findings of violations of DR 6-101(A)(3) and 9-102(B)(4). As to Count III, he repeatedly failed to respond to relator's inquiries. Board adopted panel's findings as to a violation of Gov.Bar R. V(4)(G). Board adopted panel's recommendation of a two-year suspension and conditional 18-month stay. The court adopted the findings of violations as to all three counts, but disagreed with the recommended sanction. In determining the appropriate sanction, the court like the board accorded little weight to a delinquent registration filing in 2007 which respondent filed within the 90 day grace period and paid a late fee. However, the court agreed with respondent's objection to the board's assignment of dishonest or selfish motive to his misconduct as aggravating factors, BCGD Proc.Reg 10(B)(1)(b). The board had treated its findings of violations of DR 1-102(A)(4) and 9-102(A) as aggravating factors because the charges were dismissed by stipulation of the relator and respondent. The court agreed with respondent that relator did not prove dishonesty or commingling. The court noted that when the client asked for a refund and the \$1,000 was not in the trust account it was not proper but it was not commingling. The following were aggravating factors: misconduct in more than one case, delayed participation in the disciplinary process, and neglect of vulnerable clients. BCGD Proc.Reg. 10(B)(1)(d), (e), (h). In mitigation, respondent practiced for many years with no record of discipline, expressed remorse, and made restitution to the two clients.. BCGD Proc.Reg. 10(B)(2)(a), (c). He also offered evidence of significant health and personal problems during the time of the misconduct. As to the appropriate sanction, the court found *Sebree* (2002) instructive. The court ordered a six-month suspension, stayed on condition of a one-year monitored probation in which respondent must consult with OLAP and comply with recommendation for treatment; complete a one-year monitored probation with a monitor appointed by relator overseeing the law practice; comply with other requirements of Gov.Bar R. V(9); and commit no further misconduct. Three justices dissenting in favor of adopting the board's recommended sanction.

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**Rules Violated:** DR 6-101(A)(3), 7-101(A)(1), 7-101(A)(2), 9-102(B)(4); Gov.Bar R. [V\(4\)\(G\)](#)

<b>Aggravation:</b> (d), (e), (h)		<b>Mitigation:</b> (a), (c)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> <a href="#">YES</a>	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Six-month suspension, stayed</a>		

*Portman, Butler Cty. Bar Assn. v.*

121 Ohio St.3d 518, 2009-Ohio-1705. Decided 4/16/2009.

Respondent failed to return unearned legal fees, billed a court for appointed-counsel services that were already paid by the client, did not inform his clients of his lapse in malpractice coverage, and did not appropriately participate in the disciplinary investigation. Disciplinary Counsel and Butler County Bar Association, together as relator, charged respondent with a six-count complaint, which he never answered. Relator moved for default. A master commissioner appointed by the board granted the motion, made findings of fact, conclusions of law, and recommended disbarment. The board agreed and filed its report with the court. Respondent never disputed his misconduct, but moved the court to supplement the record. On 12/21/2007, the court granted the motion and ordered an interim suspension and remand for Board's review of evidence proffered in mitigation. In Count I, Keith Blech paid respondent \$500 to represent him in obtaining his portion of a damage award that his wife was going to receive from a car accident. Respondent did no work on the case, did not return numerous phone calls, and did not refund Blech's unearned fees. As to Count I, the board found violations DR 1-102(A)(6), 6-101(A)(3), and 9-102(B)(4). In Count II, Disciplinary Counsel sent multiple investigatory letters to respondent's addresses filed with the court. Some were returned, but others were signed for and accepted. Respondent did not answer the letters and failed to appear at a deposition for which he was subpoenaed. As to Count II, the board found a violation of Gov.Bar R. V(4)(G). In Count III, the Cooks paid respondent \$500 to procure the judicial release of their son, who was serving a prison term of almost seven years. Although advised by another attorney that their son was ineligible for judicial release until five years of the sentence was served, the Cooks relied on respondent's intimations that the rules may not apply. He promised to return the fee, if he could not procure release. He did not file the motion and did no work on the case, failed to return numerous phone calls, letters, and office visits, and refused to refund the fees. Respondent appeared at a transcribed proceeding to answer Butler County Bar Association's questions about the grievances in March 2008, where he represented that he had returned the Cooks' fees, a statement they fervently deny. Respondent also promised to produce various records, but failed to do so. As to Count III, the board found violations of DR 1-102(A)(4), 1-102(A)(6), 6-101(A)(3), 9-102(B)(4), and Gov.Bar R. V(4)(G). In Count IV, Beverly House paid respondent \$250 to file a motion for judicial release of her son, who was serving a one-year prison sentence. Respondent did no work on the case, failed to communicate with his clients, lied to the investigator about filing the motion, and then admitted his failures to file the motion, communicate with his clients, and return the unearned fees at the March proceeding. As to Count IV, the board found violations of DR 1-102(A)(4), 1-102(A)(6), 6-101(A)(3), and 9-102(B)(4). In Count V, Douglas Johnson paid respondent \$550 to defend a felony charge. Johnson pled guilty and was sentenced to 4 ½ years in prison. Johnson's mother paid an additional \$450 for the defense and an additional amount to file an appeal or motion for judicial release. Respondent never filed either. Further, respondent denied receiving payment from the Johnsons on the application for appointed-counsel fees to the Butler County Court Common Pleas Court, which paid him an additional \$1,065. As to Count V, the board found violations of DR 1-102(A)(4), 1-102(A)(6), and 6-101(A)(3). In Count VI, respondent continued to represent clients without providing disclosures or obtaining signed waivers after his malpractice insurance lapsed. As to Count VI, the board found he violated DR 1-102(A)(6) and 1-104. The Supreme Court agreed and adopted the board's findings of misconduct for all counts. Aggravating factors include a dishonest motive, a pattern of multiple offenses, failure to appropriately cooperate with the investigation, and making false statements during the investigation. BCGD Proc.Reg. 10(B)(1)(b), (c), (d), (e), and (f). Mitigating factors, mainly because of the supplemental evidence, include his lack of a prior disciplinary record, payment of restitution, acknowledgement of the wrongful nature of his conduct, and his full cooperation with the disciplinary process since the remand. BCGD Proc.Reg. 10(B)(2)(a) and (d). Respondent also proved that his mental disability qualifies as a mitigating factor under BCGD Proc.Reg. 10(B)(2)(g). His depression began in law school. Respondent's psychologist testified that respondent's generalized anxiety disorder with depressive features overwhelmed him to the point that it interfered with his daily functioning and professional responsibilities. Respondent has been in treatment for this disorder since

December 2007, has committed to an OLAP contract and supervision, and has steadily made progress. The board modified its original recommendation of disbarment to an indefinite suspension without credit for time served in the interim. The Supreme Court accepted the board's recommendation, but gave respondent credit for his interim suspension based the psychologist's testimony, and so ordered an indefinite suspension with credit for time served, and subject to conditions upon reinstatement, including a three- year probation upon return to practice.

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**Rules Violated:** DR 1-102(A)(4), 1-102(A)(6), 1-104, 6-101(A)(3), 9-102(B)(4); Gov.Bar R. **V(4)(G)**

<b>Aggravation:</b> (b), (c), (d), (e), (f)		<b>Mitigation:</b> (a), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

**Potter, Disciplinary Counsel v.**

126 Ohio St.3d 50, 2010-Ohio-2521. Decided 6/10/2010.

Respondent concealed the purchase of property from an estate of which he was the executor. Respondent began representing his client in 2003 and was granted power of attorney. The client's savings had been depleted by a previous attorney-in-fact. Respondent was forced to mortgage some of the client's property to pay for the client's medical needs. Respondent had control of the client's finances and was responsible for medical care decisions and handled a variety of legal matters, such as pursuing litigation against the former attorney-in-fact and terminating the client's family trust. The client died in 2006 and respondent was made the executor of the estate. Respondent determined that it was necessary to sell some farm property to satisfy the mortgage that paid for the client's care. The sole beneficiary agreed. A court-approved appraiser valued the farm at \$183,750. The appraisal was included in the inventory and appraisal of the estate and approved by the probate court. Respondent expressed interest in buying the farm to the beneficiary of the estate, but did not pursue it with her. Instead, in August 2007 respondent had a friend buy the property at the appraised value, using a cashier's check drawn from respondent's personal funds. Respondent did not disclose his involvement in the purchase of the farm to the beneficiary, the probate court, or the closing agent. In May 2008, respondent self-reported this misconduct to relator; met with the beneficiary, amended certain filings to reflect the purchase. Respondent waived the \$90,969 in legal fees owed to him by the estate and continued to serve as the executor of the estate until it was closed in August 2009 with no other problems. It appears no one lost money. Respondent stipulated to violating Prof.Cond.R. 8.4(c) and (h); the board and the court adopted these findings of fact and conclusions of law. In aggravation, there was a dishonest/selfish motive. BCGD Proc.Reg. 10(B)(1)(b). In mitigation, the board found a lack of prior disciplinary record, an effort to rectify the misconduct, a cooperative attitude by respondent in the disciplinary process and self-reporting of the misconduct, and an otherwise good character and reputation. BCGD Proc.Reg. 10(B)(2)(a), (c), (d), and (e). The board recommended a one-year suspension, stayed on the condition of no further misconduct. As noted in *Rohrer* (2009) a violation of Prof.Cond.R. 8.4(c) usually results in an actual suspension unless significant mitigating factors warrant a departure. The court agreed with the board and the parties that this case is one in which significant mitigating factors are present and that the factors lead the court to conclude that respondent is unlikely to commit future misconduct. Citation to *Niermeyer* (2008). The court adopted the board's recommended one-year suspension, conditionally stayed and so ordered.

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**Rules Violated:** Prof.Cond.R. 8.4(c), 8.4(h)

<b>Aggravation:</b> (b)		<b>Mitigation:</b> (a), (c), (d), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> One-year suspension, stayed		

*Powers, Cincinnati Bar Assn. v.*

119 Ohio St.3d 473, 2008-Ohio-4785. Decided 9/25/2008.

Respondent was a part owner and oversaw operations of a title company that defrauded various financial institutions and he pleaded guilty to two felonies for his part in the scheme. On January 27, 2006, he received an interim suspension for his felony convictions for making a material false statement in a loan application, a violation of Section 1014, Title 18 U.S.Code and filing a false income tax return, a violation of Section 7206(1), Title 26, U.S.Code in *In re Powers*, 108 Ohio St.3d 1424, 2006-Ohio-289. On October 31, 2005 he was sentenced to imprisonment for 28 months on the first count and 36 months on the second count, to be served concurrently. He was paroled in August 2007. He was living at a halfway house when he testified at the panel hearing. The Board adopted the panel's findings of violations of DR 1-102(A)(3), (A)(4), (A)(6) and the recommended sanction of an indefinite suspension. The Supreme Court of Ohio agreed with the findings of violations but ordered a permanent disbarment. "Respondent, as the licensee and part owner of the title occupancy in each transaction, facilitated as many as 310 real estate closings in which agents supplied fictitious appraisals, some of which respondent specifically knew to be fabricated. Pay stubs, W-2 forms, bank statements, and records that verified a buyer's employment were routinely falsified to close these deals. Respondent personally signed numerous HUD forms, certifying that the buyer had remitted the required down payment, a certification that he knew to be false, Moreover, the 'rather large' profit that respondent realized in two of five transaction, during which he acted as title agent and seller of exceedingly overvalued property, totaled \$41,000 in one case and \$104,000 in the other. Through these devices, respondent's real estate 'flipping' scam garnered a colossal return." The court stated that the board exercised lenience, relying on panel's trust in respondent's compelling and credible testimony in which he acknowledged wrong doing but insinuated "limited involvement in the criminal and fraudulent conduct." The court noted that this case "is not the time to defer to a panel's credibility determinations, as is our usual practice." Cf. *Statzer* (2003), *Furth* (2001), *Reid* (1999). The court agreed with relator that "respondent cannot now deny the extent of his culpability to evade our strictest sanction in the disciplinary proceeding ensuing from those convictions." The court also cited *Mesi* (1995): "[A] guilty plea is not a ceremony of innocence, nor can it be rationalized in a subsequent disciplinary proceeding."

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**Rules Violated:** DR 1-102(A)(3), 1-102(A)(4), 1-102(A)(6)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> NO	<b>Sanction:</b> Disbarment		

*Pullins, Disciplinary Counsel v.*

127 Ohio St.3d 436, 2010-Ohio-6241. Decided 12/23/2010.

Respondent filed false and disrespectful statements regarding two judges in affidavits of disqualification, improperly used his notary powers, issued subpoenas in a stayed case, accused two judges and a prosecutor of engaging in ex parte communications about pending cases, and issued a subpoena to a judge's wife. The board adopted the majority panel's findings, conclusions, and recommended sanction. As to Count 1, respondent filed an action in common pleas court seeking civil stalking protection orders and behalf of himself, his wife, his daughter, and his wife's parents, but the court denied the petition at a hearing upon the affidavit submitted by respondent. Before the full hearing on the petition, respondent filed grievances against the judge and an affidavit of disqualification with the Supreme Court of Ohio. In the affidavit, he stated that he had filed three separate complaints with the Office of Disciplinary Counsel regarding the judge's refusal to follow Ohio law and the Ohio civil rules. After the Chief Justice denied the affidavit of disqualification, respondent voluntarily dismissed his petition for a civil stalking protection order. Respondent admitted that he was aware of the confidentiality relating to grievances and the court's caution to attorneys regarding disciplinary complaints remaining private until formal proceedings began before the board. See *In re Krueger* (1995), 74 Ohio St.3d 1267. The board found that respondent knew he should not have revealed the filing of the grievance, but did so based upon the belief that the affidavit of disqualification was, to some extent, private. The board found violations of DR 1-102(A)(5), 1-102(A)(6), 7-106(C)(6), 8-102(B), and Gov.Bar R. IV(2) and V(11)(E). The board recommended dismissal of the alleged violation of DR 1-102(A)(4) because not proven by clear and convincing evidence. The court adopted the board's findings of violations. The court rejected respondent's arguments that he had a reasonable factual basis for stating the judge violated Canons 1, 2, and 3 of the former Code of Judicial Conduct and that he had a factual and legal basis for revealing he had filed grievances against the judge in the context of the affidavit of disqualification. The court noted that an affidavit of disqualification is not a vehicle to challenge a judge's exercise of discretion as to type of hearing that must be held pursuant to R.C. 2903.214(D)(1). See *In re Disqualification of Solovan*, 100 Ohio St.3d 1214, 2003-Ohio-5484. And, the court noted that an objective standard is used to determine whether a lawyer's statement about a judicial officer was made with knowledge or reckless disregard of its falsity. See *Gardner* (2003). A reasonable attorney would believe that respondent statements were false. The court rejected his argument that because attorneys are not required to take the oath in Gov.Bar R. V(11)(E)(4) this exempt them from the obligation to maintain the privacy of a disciplinary grievance prior to certification of a complaint. See BCGD, Advisory Op. 98-2(1008) and *In re Disqualification of Squire*, 105 Ohio St.3d 1221, 2004-Ohio-7358. As to Count Two, in September 2005, the judge appointed him to serve as guardian ad litem in a domestic relations case. The court denied that mother's petitions for an ex parte and permanent domestic-violence civil protection order from her former boyfriend. Respondent, in his February 2006 guardian's report made statements that the judge ignored the law, failed the mother significantly in her time of need, and that it was the worst example of he had seen of negligence and incompetence is carrying out the duties of a public official. The board found these statements to violate DR 1-102(A)(5), 1-102(A)(6), 7-106(C)(6), and Gov.Bar R. IV(2). The court agreed. The court rejected respondent's arguments, including his argument that he made the statement in his capacity as guardian ad litem, rather than an attorney and that the report was not made public because it was not entered into evidence. The court noted that even lay guardian ad litem are officers of the court and that as a general rule a guardian ad litem's report is not private. Further, the court's review of the transcript confirms the judge's testimony that a domestic violence protection order was unwarranted. As to Count Three, he filed a complaint for temporary and permanent injunctions and declaratory judgment on behalf of his wife and his father-in-law and contemporaneously filed a motion for a temporary restraining order and affidavit in support of the motion. Respondent placed his notary stamp and seal on an affidavit purportedly executed by his wife, but actually signed by respondent who claimed he had done so pursuant to a power of attorney. The board found violations of DR 1-102(A)(4) and (A)(6), 7-102(A)(4) and (A)(6). The court agreed. Respondent asked the court to find that he only violated DR 1-102(A)(6). The court rejected respondent

arguments, including his contention that that the trial judge's failure to sanction him or report him precludes the court from considering the alleged ethical violations. The court noted that violations of DR 1-102(A)(4) have been found when attorneys sign a client's name to an affidavit without indicating phone authorization and then notarize the document. See *Thomas* (2001). See also *Mezacapa* (2004). Lawyers must not take cavalier attitudes toward notary responsibilities. See *Papcke* (1998). As to Count IV, respondent filed a pro se lawsuit in common pleas court against a state representative. A visiting judge was assigned to the case. By agreement of the parties, the case was stayed until a ruling by the Court of Claims as to jurisdiction. During the stay, respondent caused two subpoenas duce tecum to issue in the inactive case and failed to serve copies on opposing counsel. When the judge learned of this through a notice filed on behalf of the clerk of the court by the assistant county prosecutor, the judge issued an order for respondent to appear and to defend against a suggestion of an apparent abuse of process. Respondent then dismissed both the stayed action and the action in the Court of Claims and filed a writ of prohibition in the court of appeals alleging that because he dismissed both actions, the judge lacked jurisdiction to pursue civil contempt charges. The court of appeals granted the judge's motion to dismiss—this occurred in the morning of the day respondent was to appear before the trial court judge and respondent's wife called the court to say he was ill and would not appear. The judge reset the hearing. Respondent filed an affidavit to disqualify the judge alleging bias and prejudice; violations of multiple judicial canons; improper ex parte with the assistant prosecuting attorney; deciding key evidentiary and legal matters without affording opportunity for respondent to argue his case; and action as an advocate rather than an impartial judge. The affidavit of disqualification was denied. See *In re Disqualification of Curran* (Apr. 26, 2007, case No. 07-AP-34. Among other findings, the board found that respondent's failure to serve the subpoenas on opposing counsel was an intentional act. The board found violations of DR 1-102(A)(4) and Prof.Cond.R. 8.4(c); DR 1-102(A)(5) and Prof.Cond.R. 8.4(d); DR 1-102(A)(6) and Prof.Cond.R. 8.4(h); DR 7-106(A) and Gov.Bar R. IV(2), Prof.Cond.R. 3.1, 3.5(a)(6), and 8.2. Respondent objected to the board's findings regarding the issuance of the subpoenas because his conduct did not constitute an abuse of process or constitute frivolous activity. But, as in Count Three, Section 2(B)(1)(g), Art.IV of the Ohio Constitution gives the court original jurisdiction over disciplinary matters. Thus, the trial court's decision does not divest the Supreme Court of jurisdiction to consider whether the conduct violated the ethical rules. The court rejected respondent's other arguments, including his claim that he had a reasonable factual basis for making statements in his affidavit of disqualification. The court also noted that it defers to panel findings, unless the record weighs heavily against. See *Wise* (2006). As to Count Five, respondent represented a client in a post-conviction proceeding. The common pleas court judge had presided over a jury trial. An appellate court overturned the intimidation convictions, but affirmed the conviction for having weapons under disability. Respondent filed an affidavit of disqualification against the judge averring that he bore a "substantial grudge" based upon the appellate court's ruling; that he engaged in improper ex parte communications with the county prosecutor; and had "made up his mind to reject" the defendant's request to restore his firearm rights. The affidavit of disqualification was denied. See *In re Disqualification of Eyster* (Apr. 4, 2007), Case No. 07-AP-23. The board found violations of Prof.Cond.R. 3.1, 3.5(a)(6), 8.2(a), 8.4(c), 8.4(d) and 8.4(h) and Gov.Bar R. IV(2). The court deferred to the panel's credibility determinations and adopted the board's findings. As to Count Six, respondent filed, on behalf of his wife and two others, a derivate action against officers, directors, and employees of a property owners association (AVPOA). He filed an affidavit of disqualification against the judge alleging personal bias 3(E)(1)(a) and a conflict of interest under 3(e)(1)(d)(i) and (iv) based upon the judge's wife's employment as President and Director of a hospital's foundation. Respondent alleged that the defendants employed and supervised the judge's wife, since the AVPOA is a voting member or director of the foundation and 9 of 36 directors are members of AVPOA. The affidavit of disqualification was denied. See *In re Disqualification of Eyster* (Feb. 8, 2007), case No. 08-AP-001. After respondent filed an amended complaint which the trial court dismissed or granted judgment on the pleading on all but one count of the complaint, respondent appealed the dismissals and while the appeal was pending issued a subpoena to the judge's wife seeking a list of all donors to the hospital and the foundation. The subpoena was not related to the only pending issue in the case. The board concluded he was trying to resurrect the previous affidavit of

disqualification. He then filed a request for the judge to recuse himself because of bias and he stated that unless the judge recused himself the plaintiffs would be forced to file another affidavit of disqualification. Board found violations of Prof.Cond.R. 3.1, 8.4(d) and 8.4(h), but did not find a violation of Prof.Cond.R. 8.4(c). The court agreed with the board. The court rejected respondent's arguments that his discovery efforts were valid and directed at obtaining evidence to support a new claim for seeking the judge's disqualification and that since the trial court did not rule his conduct frivolous or an abuse of process and the judge's wife was not harmed, his conduct is not a disciplinary violation. As to Count Seven, a municipal court case in which respondent and his wife were defendants was transferred to the common pleas court and assigned to Judge Eyster. Respondent prepared for his wife to sign an affidavit of disqualification alleging that the judge violated Canon 3(E)(1), (a), (1)(c), (1)(d)(iv), and (2). The affidavit of disqualification was granted to avoid the appearance of impropriety: "While I see no evidence in the record before me to suggest that Judge Eyster has shown any improper bias or prejudice in favor of the plaintiff, I conclude that he should not remain as trial judge on this case." *In re Disqualification of Eyster* (Feb. 2, 2006), case No. 06-AP-2. The board found respondent's statements in the affidavit of disqualification to violate DR 1-102(A)(5), (A)(6), 7-102(A)(5), 7-102(A)(6) and Gov.Bar R. IV(2). The court agreed. In mitigation, respondent has no prior disciplinary record, has made full and free disclosure to the board, and has demonstrated a professional, respectful, and cooperative attitude in the disciplinary proceedings. BCGD Proc.Reg. 10(B)(2)(a) and (d). In aggravation, he had a dishonest and selfish motive, a pattern of misconduct and multiple offenses committed, repeatedly making false accusations against judges, prosecutors, and assistant prosecutors, and utilized his position as a lawyer as a "license to harass"; he refused to acknowledge the wrongful nature of the misconduct; and there was vulnerability and harm to victims of his misconduct. BCGD Proc.Reg. 10(B)(1)(a), (b), (c), (d), (g), (h). The board adopted the recommendation of the panel's majority of an indefinite suspension. A dissenting panel member would reject findings in counts three and Four of engaging in dishonesty, fraud, deceit and misrepresentation and would recommend a two-year suspension with 18 months stayed, The dissenting panel member cited his belief that respondent was "generally remorseful" for conduct that occurred when he was a relatively inexperienced attorney and implied that the other panel members had not sufficiently divorced their admiration for the respected jurist, who currently serves as the Board's chairman. The court considered as an additional aggravating factor that respondent terminated his participation with OLAP through which he was under the care of a psychiatrist to regulate certain medications and working with a psychologist to control inappropriate aggression. The court found his conduct most similar to Frost (2009). The court agreed with the board that the appropriate sanction is an indefinite suspension and so ordered, adding that because of concern that he has underlying mental-health issues that may have contributed to the misconduct, he must comply not only with the reinstatement requirement in Gov.Bar R. V(10)(B), but also provide proof to a reasonable degree of medical certainty that he is mentally fit to return to the competent and ethical practice of law.

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**Rules Violated:** Prof.Cond.R. 3.1, 3.5(a)(6), 8.2(a), 8.4(c), 8.4(d), 8.4(h); DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 7-102(A)(4), 7-102(A)(5), 7-102(A)(6), 7-106(A), 7-106(C)(6), 8-102(B)

<b>Aggravation:</b> (a), (b), (c), (d), (g), (h)		<b>Mitigation:</b> (a), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Ramos, Cleveland Bar Assn. v.*

119 Ohio St.3d 26, 2008-Ohio-3235. Decided 7/3/2008.

Panel considered the case on the parties' consent-to-discipline agreement. Panel accepted the agreement as did the Board. Respondent neglected one client's case and failed to properly maintain and account for fees the client advanced. In April 2004, respondent agreed to represent a client in a real estate dispute. The written agreement was that the client would advance \$2,000 and would pay \$150 per hour plus expenses and respondent would send month invoices detailing legal fees and expenses. Respondent filed a complaint in common pleas court, the defendant moved to dismiss, and respondent filed a brief in opposition. The court converted the motion to dismiss to a motion for summary judgment. Respondent was granted his request for an extension of time to oppose the motion but neglected to file the brief. The court granted the motion for summary judgment. Respondent moved the trial court to reinstate the case which the court denied and respondent appealed the summary judgment which the court of appeals affirmed the motion for summary judgment. Respondent violated DR 6-101(A)(3) by failing to respond to the motion for summary judgment. Respondent violated DR 9-102(A) and 9-102(B)(3) by depositing the retainer directly into his operating account instead of into a trust account and for failing to account with monthly invoices as promised. In mitigation, there is no prior discipline, he rectified his failure to account, he repaid his entire fee and tried to help the client with different options to resolve the real estate dispute, and he cooperated and acknowledged his misconduct. BCGD Proc.Reg. 10(B)(2)(a), (c), and (d). In aggravation, the client's advanced age made him a vulnerable client. BCGD Proc.Reg. 10(B)(1)(h). Supreme Court of Ohio accepted the consent to discipline agreement and ordered suspension for six months, stayed on condition of no further misconduct and completion of a six-month monitored probation.

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**Rules Violated:** DR 6-101(A)(3), 9-102(A), 9-102(B)(3)

<b>Aggravation:</b> (h)		<b>Mitigation:</b> (a), (c), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Six-month suspension, stayed		

**Randall, Dayton Bar Assn. v.**

118 Ohio St.3d 408, 2008-Ohio-2709. Decided 6/12/2008.

Upon relator's motion for default, the matter was referred to a master commissioner. Between November 2000 and February 2004, respondent filed eight social security appeals in a federal district court, but failed to prosecute the cases. In seven of the cases, the cases were dismissed without prejudice for want of prosecution after respondent failed to respond to show-cause orders. The eighth case was dismissed when respondent failed to comply with the federal magistrate's order to file a "Statement of Errors" by a certain date. Between April 2003 and March 2004, respondent neglected the cases of four other clients in the federal district court. Respondent showed the same neglect of legal matters and disregard of court orders and procedures as in the cases above. Each case was dismissed without prejudice for want of prosecution. Respondent failed to respond to relator's inquiries. Board adopted master commissioner's findings of violations of DR 1-102(A)(5), 1-102(A)(6), 7-106(B)(7), Gov.Bar R. V(4)(g). Board found that there was insufficient evidence to support the charged violation of DR 6-101(A)(3). In aggravation, respondent is under suspension for failing to comply with attorney-registration requirements, engaged in a pattern of misconduct, and did not cooperate. BCGD Proc.Reg. 10(B)(1)(c) and (e). Board adopted the master commissioner's recommended sanction of indefinite suspension. The Supreme Court of Ohio adopted the findings of violations of DR 1-102(A)(5), 1-102(A)(6), 7-106(B)(7), and Gov.Bar R. V(4)(G), but also found, contrary to the board, that respondent violated DR 6-101(A)(3). The court cited *Reid* (1999) paragraph 1 of the Syllabus (this court is not bound by the board's findings of fact or conclusions of law). The court agreed with the recommended sanction and so ordered an indefinite suspension. Two justices dissenting for a permanent disbarment.

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**Rules Violated:** DR 1-102(A)(5), 1-102(A)(6), 7-106(B)(7); Gov.Bar R. **V(4)(G)**

<b>Aggravation:</b> (a), (c), (e)		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Ranke, Cleveland Metro. Bar Assn. v.*  
127 Ohio St.3d 126, 2010-Ohio-5036. Decided 10/21/2010.

Respondent failed to get a client's permission not to respond to a motion for summary judgment. Respondent agreed to represent a husband and wife for injuries the husband sustained in April 1999 while on a business trip. The husband was a passenger in a car, driven by a co-worker, and was left permanently disabled in a car accident. The co-worker died. The clients' original attorney filed an application for workers' compensation benefits, but was later discharged. Respondent was hired to prosecute all claims arising out of the accident, including uninsured/underinsured-motorist insurance. Respondent referred the workers' compensation claims to another attorney, who after several appeals prevailed and secured present and future workers' compensation benefits in excess of \$1.5 million. Relator alleged that respondent violated ethics rules by failing to prosecute tort claims against the coworker's estate and the employer, a strategy that *might* have led to greater recovery. However, by operation of R.C. 4123.741, before pursuing a tort recovery against the coworker, the clients' would have had to withdraw the workers' compensation claim that they had initiated before hiring respondent, and forgo the benefits arising from the claim, at a time when their financial situation was grim. By operation of R.C. 4123.74, the same would be true regarding pursuing tort recovery against the employer. Testimony from the attorney who handled the workers' compensation claim said it would have been malpractice to abandon the claim, and that if asked to do so, she would have withdrawn. Respondent filed two tort actions. The parties stipulated that in the first action respondent 1) named as defendant the co-worker's widow as personal representative of the coworker's estate, when no estate had been opened, 2) never conducted any formal discovery, 3) never responded to any formal discovery requests, but provided relevant medical bills and records, 4) failed to respond to motions to dismiss filed by the coworker's widow and the insurance company, and then voluntarily dismissed claims against them and the employer's insurer, 5) failed to appear at a pretrial conference, and 6) did not oppose the employer's motion for judgment on the pleadings, which the court later granted. The board concluded that none of these acts constituted neglect. Among other things, the board noted that it is not neglect for an attorney to voluntarily dismiss a defendant instead of responding to a motion to dismiss, and it is not neglect to miss a single pretrial when that failure does not cause prejudice. Rejecting allegations of neglect for taking or not taking actions without her client's permission, the board noted that respondent's uncontroverted testimony revealed she discussed every decision with the clients and kept them apprised of the case status. In October 2004, respondent refiled the clients' tort action against the co-worker's surviving spouse as the representative of the co-worker's still unopened estate, but did not conduct any formal discovery, failed to respond to interrogatories and to requests for production of documents and admissions. But, the board did not find clear and convincing evidence that these actions constituted neglect since once she became aware that she sued the wrong party "there was nothing she could do to salvage the case." The board rejected allegations that respondent neglected her clients by failing to communicate, and rejected allegations of a violation of DR 7-101(A). The board was impressed with the degree of selflessness that she exhibited in doing everything she could to help the clients. The board agreed that the clients should have been advised of benefits and drawbacks of pursuing a workers' compensation recovery versus pursuing a tort recovery, but the time for that discussion was before filing the worker's compensation claim when they were represented by other counsel. The board rejected findings of a violation of DR 7-101(A), as there was no intentional attempt to harm her clients, she actually did all she could to help her clients, and the workers' compensation claim may have actually been the better way to address the client's financial needs. The board did accept the stipulation that respondent failed to get client's permission not to respond to a motion for summary judgment filed by the coworker's widow in the second tort action. This violated DR 6-101(A)(3) because respondent had a duty to obtain her clients' consent to allow the motion to go unopposed. But, because the state had not been opened, the board concluded that the dismissal of the action against the widow, as the purported representative of his nonexistent estate, did not prejudice the clients. In aggravation, respondent failed to acknowledge the wrongful nature of her conduct in not seeking her clients' permission to allow the motion to go unopposed. BCGD Proc.Reg. 10(B)(1)(g) In mitigation, there was no prior disciplinary

history, no dishonest or selfish motive, full and free disclosure, and a cooperative attitude, letters from two judges and two lawyers attesting to her good character and reputation, and the settlement of a related malpractice action with her clients for \$419,235.45. BCGD Proc.Reg. 10(B)(2)(a), (b), (d), (e), and (f). Relator sought a one-year suspension with six months stayed; respondent asked for a dismissal of all charges. The board recommended a public reprimand. Citations to *Watterson* (2004), and *Kerek* (2004). The court adopted the board's findings of fact, conclusions of law, and recommended sanction, and so ordered a public reprimand.

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**Rules Violated:** DR 6-101(A)(3)

<b>Aggravation:</b> (g)		<b>Mitigation:</b> (a), (b), (d), (e), (f)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Public Reprimand</a>		

**Ranke, Disciplinary Counsel v.**

130 Ohio St.3d 139, 2011-Ohio-4730. Decided 9/22/2011.

Respondent improperly maintained her trust account, failed to file an appeal on her client's behalf and failed to cooperate in the disciplinary investigation. Respondent was previously publicly reprimanded in 2010. Respondent did not answer the complaint. A master commissioner was appointed and made findings of fact, conclusions of law, and recommended an indefinite suspension. In Count One, respondent failed to return a client's money upon completion of representation, advanced money to a client from her IOLTA without any of the money belonging to the client, and eventually overdraw her IOLTA account. When the relator questioned respondent about the overdraw, respondent did not reply, appear for a deposition, or produce the requested documents. Respondent eventually responded and produced copies of IOLTA records that substantiated misuse. The board found this conduct violated Prof.Cond.R. 1.8(e) (financial assistance to clients), 1.15(a)(2) (financial record for each client), 1.15(a)(5) (monthly reconciliation of trust account funds), 1.15(d) (prompt delivery of client funds). The Court did not find a violation of 1.15(d) because there was insufficient evidence that the client was entitled to those funds. In Count Two, respondent did not file an appellate brief for her client, despite four extensions of time for respondent to do so. The Court later dismissed the appeal and respondent failed to inform her client of that fact. Respondent failed to respond to inquiries from relator about this incident. This conduct violated Prof.Cond.R. 1.2(a) (abiding by client's objectives), 1.3 (diligence and promptness), 1.4(a)(3) (reasonably informed), 8.4(d) (conduct prejudicial to the administration of justice), 8.4(h) (conduct adversely reflecting on fitness to practice law). In Count Three, respondent failed to cooperate in relator's investigation, which violated Prof.Cond.R. 8.1(b) (failure to respond in an investigation) and Gov.Bar R. V(4)(G) (failure to cooperate). The Court adopted these findings. There were no mitigating factors present; in aggravation, respondent had a prior disciplinary offense, engaged in multiple offenses, failed to cooperate, refused to acknowledge the wrongful nature of her conduct, and caused harm to vulnerable clients. BCGD Proc.Reg. 10(B)(1)(a), (d), (e), (g), (h). The board recommended an indefinite suspension. Citing *Goodlet* (2007), *Emerson* (1999), *Davis* (2009), and *Wilson* (2010), the Court agreed.

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**Rules Violated:** Prof.Cond.R. 1.2(a), 1.3, 1.4(a)(3), 1.8(e), 1.15(a)(2), 1.15(a)(5), 8.1(b), 8.4(d), 8.4(h); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> (a), (d), (e), (g), (h)		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

**Raso, Disciplinary Counsel v.**

129 Ohio St.3d 277, 2011-Ohio-2900. Decided 6/22/2011.

Respondent neglected a legal matter entrusted to him, failed to keep the client reasonably informed about the status of the matter, and lied to his client about the finalization of a pending case. The parties stipulated to following facts and misconduct, which the board and Court adopted. In Count 1, respondent accepted a retainer to file a civil action on behalf of his client. The client received an award of \$8000, but it was offset by a \$3000 counterclaim. Respondent did not attempt to collect the judgment, and pretended the case was still ongoing by sending the client documents that he had purportedly filed. The trial court eventually closed the case, as no action had been taken on it. Not until after relator began its investigation, over 4 years later, did respondent collect the arbitration award of \$5500. In Count 2, a client paid respondent to pursue a small-claims action. Respondent did not file the action, nor did he return the fee despite the client's requests. The client eventually obtained new counsel to pursue a refund; respondent continuously made false representations to the client, including telling him that the check was in the mail. After relator began its investigation, respondent refunded the money. Respondent's conduct violated DR 1-102(A)(4), Prof.Cond.R. 8.4(c); 6-101(A)(3), Prof.Cond.R. 1.3; and Prof.Cond.R. 1.4(a)(3) with respect to Count 1, and DR 6-101(A)(3), Prof.Cond.R. 8.4(c) with respect to Count 2. In mitigation, respondent had no prior disciplinary record, made timely, good-faith restitution, provided full and free disclosure to the board, and displayed a cooperative attitude. BCGD Proc.Reg. 10(B)(2)(a), (c), and (d). The Court noted that the restitution mitigation is tempered, because respondent did not make it until after the disciplinary investigation began; and that respondent did have his license suspended for failing to comply with the registration rules in 2007. There were no factors in aggravation. Citing *King* (1996) and *Stollings* (2006), the Court adopted the parties' stipulated, and the board's recommended, sanction of a six-month suspension.

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**Rules Violated:** Prof.Cond.R. 1.3, 1.4(a)(3), 8.4(c); DR 1-102(A)(4), 6-101(A)(3)

<b>Aggravation:</b> (d), (e), (h)		<b>Mitigation:</b> (a), (g)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Six-month suspension		

***Rathburn, Disciplinary Counsel v.***

126 Ohio St.3d 502, 2010-Ohio-4467. Decided 9/28/2010.

Respondent was charged with two felonies for presenting altered prescription for Roxicodone to a pharmacy. For years, respondent suffered from severe chronic back pain and a severe knee injury. From June 2003 through May 2009, his treating physician prescribed increasing doses of narcotic pain medication. Respondent presented a pharmacist with an altered prescription. Respondent was charged with “deception to obtain a dangerous drug” in violation of R.C. 2925.22(A) and “illegal processing of drug documents” in violation of R.C. 2925.23(B)(1), both fourth-degree felonies. Respondent asked for intervention in lieu of a conviction and pleaded guilty to both charges. The trial court sentenced him to three years intervention and 40 hours community service. He completed inpatient treatment from June 12 through June 17, 2009, followed by intensive outpatient program from June 18 through August 3, 2009. The panel and board accepted the parties’ consent-to-discipline agreement to violations of Prof.Cond.R. 8.4(c) and 8.4(h) and a two-year suspension, all stayed on the conditions that respondent remains drug and alcohol free, enter into and comply with a two-year OLAP contract, attend at a minimum a weekly AA or NA meeting, and comply with his court-supervised intervention. In mitigation, respondent lacked a prior disciplinary record, made full and free disclosure and had a cooperative attitude during the disciplinary process, was subject to other sanctions; and he had a diagnosis of a chemical dependency that contributed to his misconduct, successfully completed an approved treatment program, and a prognosis that he will be able to return to the competent, ethical practice of law. BCGD Proc.Reg. 10(B)(2)(a), (d), (f), and (g). There were no aggravating factors. A similar sanction was imposed in *Wolf* (2006). The Supreme Court, on the recommendation of the panel and the board, accepted the consent to discipline agreement and so ordered.

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**Rules Violated:** Prof.Cond.R. [8.4\(c\)](#), [8.4\(h\)](#)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (d), (f), (g)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Two-year suspension, stayed</a>		

*Resnick, Ohio State Bar Assn. v.*

128 Ohio St.3d 56, 2010-Ohio-6147. Decided 12/21/2010.

Respondent twice received felony convictions, once in 2006 for possession of cocaine and once in 2007 for resisting arrest and disrupting public service. As a result of the cocaine conviction, the Supreme Court of Ohio imposed an interim remedial suspension on her law license on 1/18/2007. As to Count I, in 2005, respondent traveled from Cleveland to Oxford for a court appearance. She rode in her car which was driven by a male companion whom she had previously represented in a criminal case and whom she knew had been convicted of drug-related crimes. When respondent's vehicle ran out of gas, a police officer took respondent to court. Her companion remained with the vehicle, but later abandoned the vehicle. Police had it towed after conducting an inventory search during which they discovered in the glove compartment a change purse containing cocaine and a straw with cocaine residue wrapped inside a page of advertisements typically found in legal advertisements, and behind the driver's seat they found a small amount of cocaine in a makeup bag. On 2/14/2006, respondent was convicted of possession of cocaine, a fifth-degree felony and placed on community control sanctions. Despite the conviction and admitted occasional use of cocaine, respondent maintains that the cocaine was not hers. During the disciplinary hearing she suggested that she is not guilty of the crime of possessing cocaine. She claims her error was using poor judgment in having the male companion drive. She claimed she was forced to because she was under the influence of asthma drugs and ordered by her physician not to drive; that she could not get the court date continued and he was the only one she could find to drive for her. Respondent denies that the cocaine was hers, but does admit that the makeup bag was hers. The board agreed with the panel that this conduct violated DR 1-102(A)(3), (4), and (6). As to Count II, on 10/19/2006, respondent called 9-1-1 to report that her car had been stolen. Respondent avers she became agitated because she did not think the police responded appropriately. She testified she did not have a good relationship with the police department and she had called them at least three times that day regarding the stolen car. In connection with these events, respondent was indicted for nine fifth degree felony counts of disrupting public service and one second degree misdemeanor count of resisting arrest. At her court appearance on these charges, the judge was so concerned with respondent's demeanor and erratic behavior that he ordered her to undergo a mental-competency exam. She was held for 60 days at a treatment facility in Cleveland. After being declared competent, respondent pleaded guilty to one count of disrupting public service and one count of resisting arrest and was sentenced to community control. During the disciplinary hearing included testimony by respondent's treating psychiatrist, Dr. Cerny, but was continued by agreement of the parties to have respondent submit to an independent psychiatric examination by Dr. Rosenbaum. Although much evidence was submitted at the hearings regarding her mental health, the board was unsure whether she required treatment. She was diagnosed with bipolar disorder at the treatment facility, but Dr. Cerny testified that she does not believe that respondent has bipolar disorder. Dr. Cerny believes her behavior was caused by the use of illegal and/or prescription drugs. There is no evidence that respondent has experienced similar symptoms since her time at the treatment facility, that she continues to use cocaine or other illegal drugs, or that she misuses prescription drugs. Dr. Cerny does not think she will have another manic episode unless she abuses drugs. The doctor did not send her for substance-abuse treatment because respondent denied using drugs after discharge from the facility and Dr. Cerny saw no evidence of drug abuse by respondent. Respondent testified that she has been evaluated in the past and was told she does not have a substance abuse problem. The board agreed with the panel that respondent's conduct violated DR 1-102(A)(6). The court adopted the board's findings of fact and conclusions of law. In aggravation, respondent acted with a dishonest and selfish motive, and was convicted of multiple offenses. BCGD Proc.Reg. 10(B)(1)(b) and (d). In mitigation, respondent had no prior disciplinary record, exhibited a cooperative attitude, and had been under interim suspension since 1/18/2007, due to her felony conviction. BCGD Proc.Reg. 10(B)(2)(a), (d), and (f). Relator sought disbarment. The board agreed with the panel's recommended sanction of an indefinite suspension retroactive to the date of her interim suspension, 1/18/2007, with conditions for reinstatement that she participate in intensive and long term therapy (as recommended by Dr. Rosenbaum) resulting in a report that she is fit to practice law; show

proof that she entered into an OLAP contract, and submit to a law practice monitor. The court noted that it was aware of the conflicting evidence of whether respondent has substance abuse or mental health issues, but that the record established the need to ensure that problems or issues are treated before she resumes the practice of law. The primary purpose of sanctions is not to punish the offender but to protect the public. *O'Neill* (2004). The court expressed concern regarding indications that respondent may not be fully compliant with treatment plans, such as she had missed scheduled appointments with Dr. Cerny. Even though there is no evidence of current abuse, she did admit to cocaine use in the past, she was convicted of possession and her use or misuse of prescription drugs may have played a part in her inability to function when she faced charges in the courtroom. In a footnote, the court noted that although the panel did not mention it in its report, respondent admitted to a mental health counselor she had been convicted of driving under the influence in 1997 and 1999. "Thus, there is an obvious need to ensure that respondent does not have untreated substance-abuse and mental-health issues if and when she is reinstated to the practice of law." The court tailors the sanctions to assist in and monitor an attorney's recovery such as in *Lawson* (2008), and *Washington* (2006). The Court adopted the boards recommended sanction and conditions and so ordered.

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**Rules Violated:** DR 1-102(A)(3), 1-102(4), 1-102(6)

<b>Aggravation:</b> (b), (d)		<b>Mitigation:</b> (a), (d), (f)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Ricketts, Disciplinary Counsel v.*

128 Ohio St.3d 271, 2010-Ohio-6240. Decided 12/23/2010.

Respondent was hired by a woman to help liquidate a company that she and her now deceased husband had developed. The wife told respondent she wanted to keep the creditors from panicking during liquidation and to prevent them from moving against their collateral or other assets. At the time of liquidation the company was solvent, but the company owed money to several large lenders. These loans were secured by the equipment, parts, or the company's personal property. On most of these debts, the wife was personally liable. The company also owed smaller amounts to unsecured creditors. Also, the wife personally owed several lenders. The wife's personal creditors, including Ag Credit, were secured by mortgages on property she owned. Some of the money the wife had borrowed had been put into the company, but the company was not a party to the personal loans. Ag Credit had never given the company a loan and had previously denied the company a loan. Respondent discovered that the company owned two pieces of real estate that were unencumbered. Respondent e-mailed the wife saying that to force the creditors to accept the collateral equipment and parts as full satisfaction of the debt the creditors "must perceive they will not otherwise collect from the company." He also suggested that the company "eliminate the potential for equity in the real estate being made available for general unsecured creditors of the company." He decided that the company would execute mortgages on each of the unencumbered properties to four creditors to whom the wife was personally liable. At least two of these four creditors had no lending relationship with the business, including Ag Credit. In November 2001, the mortgages were signed by the wife on behalf of the company and were recorded with the county recorder in December 2001. Ag Credit did not know of the mortgage until years later. In 2002, the company's personal property assets were auctioned off. The company debts were satisfied and the business was closed. In 2007, the wife attempted to obtain a mortgage loan to finance a business she was constructing on one of the properties. The bank she approached for the loan discovered during a title search that the mortgages were attached to the property. All of the mortgagees released their mortgages except Ag Credit which refused since they never had a loan with the wife's company and had no record of a mortgage on the land. Respondent told Ag Credit's outside counsel that he would proceed by filing a declaratory judgment action to quiet title. Instead in response to the wife's urgent need to resolve the issue, respondent drafted and signed a release of Ag Credit's mortgage and filed it with the county recorder, but Ag Credit was not sent a copy of the release. When Ag Credit discovered the release had been filed, it asked outside counsel to file a grievance against respondent regarding how he created and released the mortgage. As to the execution of the mortgage, the board agreed with the panel's conclusion that respondent executed the mortgages to create the appearance of debt and deceive creditors, not to provide additional protection to the mortgagees; and found that the mortgages were of doubtful legality and likely unenforceable. The board disagreed with the panel's conclusion that there was no legal barrier to creating the appearance of debt for a solvent company and the panel's recommendation to dismiss the alleged violation of DR 1-102(A)(4). As to the execution of the mortgages, the board found a violation of DR 1-102(A)(4). The court agreed with the board that the primary reason he executed the mortgages was to mislead creditors of the company regarding the true status of the land and that respondent's conduct in executing the mortgages violated DR 1-102(A)(4). The court rejected respondent's contention that he had a good-faith belief that that he was legally executing the mortgages that fell within the good-faith exception of DR 7-102(A)(2) and Prof.Cond.R. 3.1. As to the release of the mortgage, the board agreed with the panel that respondent violated Prof.Cond.R. 8.4(c) and (h) when he unilaterally released the mortgage. They concluded that although the document may not have contained false statements, it was made to appear as if the mortgage had been released. The court agreed with the board that respondent did intend to deceive the county recorder who filed the release and the bank who discovered the mortgage after the wife asked for a loan. The court rejected respondent's contention that he was acting on a good-faith interpretation of existing mortgage law. The court noted that "a client's need for expediency does not provide an attorney with the privilege of acting outside the ethical rules." In mitigation, there was no prior discipline, lack of selfish motive, cooperation with the investigation, and exemplary character and reputation. BCGD Proc.Reg. 10(B)(2)(a), (b), (d), and (e).

The panel found that the respondent's continued insistence that what he did was legal and ethical is the only aggravating factor, but should not be given much weight since several legal experts testified that his conduct was not improper. The panel recommended a public reprimand based solely upon the release of the mortgage; but the board found the execution of the mortgage was also a violation and recommended a six-month suspension, all stayed. The court rejected respondent's argument that only misrepresentations made to a court or to a client should result in suspension. The court noted it has consistently held that violation of Prof.Cond.R. 8.4(c) will typically result in an actual suspension unless significant mitigating factors warrant departure. The court noted that respondent's laudable motive to fulfill the wife's wish to pay all creditors fully and his belief that everyone owed could be paid if he could discourage creditors from seeking unencumbered assets does not excuse his behavior but that this one-time lapse by a attorney with otherwise sterling reputation does not merit an actual suspension. The court agreed with the board's recommended sanction of a six- month suspension, all stayed due to mitigating factors. One justice dissented and would have ordered a public reprimand.

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**Rules Violated:** Prof.Cond.R. [8.4\(c\)](#), [8.4\(h\)](#); DR 1-102(A)(4)

<b>Aggravation:</b> (g)		<b>Mitigation:</b> (a), (b), (d), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Six-month suspension, stayed		

**Ridenbaugh, Disciplinary Counsel v.**

122 Ohio St.3d 583, 2009-Ohio-4091. Decided 8/20/2009.

Respondent pleaded guilty to a bill of information charging him with three counts of pandering sexually oriented matter involving a minor in violation of R.C. 2907.322(A)(5), a felony of the fourth degree, and one count of the illegal use of a minor in nudity-oriented material or performance in violation of R.C. 2907.323(A)(3), a felony of the fifth degree, for acts occurring on 11/9/2006. On 11/21/2007, he was sentenced to a 48-month prison term. In mid-January 2008, after serving 56 days, he was granted early judicial release, placed on community control for five years, ordered into therapy and ordered to comply with probationary restrictions, including completion of 300 hours of community service. On February 7, 2008, he received an interim felony suspension from the practice of law in *In re Ridenbaugh* 116 Ohio St.3d 1511, 2008-Ohio-441. In 2004, respondent began engaging in the activities that would lead to his arrest. While walking around his apartment complex, he noticed that he could hear people inside an apartment having sexual relations. He started placing a recording device outside apartment windows so he could record residents' sexual activity and later listen to them for sexual gratification. He continued making these recordings until May 21, 2007 when a resident spied him placing a recording device outside a bedroom window. He was apprehended by law enforcement later the same day. He confessed to surreptitious recordings. Police searched his apartment which revealed possession of child pornography—three videos and hundreds of photos and digital images showing minors in various stages of nudity. He later revealed that he began obtaining the child pornography near the end of 2006. Officers found that he had made a peephole allowing him to view the female in the adjoining apartment. Respondent admitted to the following violations and the Board adopted panel's findings and conclusions that respondent violated DR 1-102(A)(3), Prof.Cond.R. 8.4(b), DR 1-102(A)(6), and Prof.Cond.R. 8.4(h). In mitigation, there is no disciplinary record, he cooperated, his has attempted to rectify his misconduct by seeking and continuing treatment for psychological and psychiatric disorders, he has undergone other significant sanctions. BCGD Proc.Reg 10(B)(2)(a), (c), (d), (f). In aggravation, there was a selfish motive by his succumbing to his sexual fetishes without regard to privacy and well being of his victims, there were multiple offenses over a period of years, his conduct was directed at vulnerable victims. BCGD Proc.Reg 10(B)(1)(b), (d), (h). Panel recommended that this court suspend respondent for two years, order him to comply with various restrictions, and deny his request for credit for time served under the interim suspension. Board recommended an indefinite suspension under suggested restrictions and without credit for time served under the interim suspension. Respondent objected to the board's recommendation and claimed the Board did not adequately acknowledge his remorse and mental disability. The court noted that the Board did not specify his contrition as a mitigating factor, but that the court had no difficulty accepting he deeply regrets his misconduct and its devastating effects. But, the court noted that respondent is unable for now to completely satisfy the test in BGDG Proc.Reg. 10(B)(2)(g)(i) through (iv) for attributing significant mitigating effect to his mental disability. He established the first three elements, but not the fourth requirement of a prognosis that he will be able to return to competent, ethical professional practice under conditions—the court found too much equivocation in the treating psychiatrist's optimism for respondent's immediate future. His psychiatrist testified that he had 1) dysthymia since childhood; 2) chronic substance abuse, mainly marijuana; 3) paraphilia, manifested by voyeuristic and pedophilic activity, with mixed character disorder marked by a passive, socially avoidant personality, and (4) attention deficit disorder. Since he entered therapy he has not engaged in illegal sexual activity and a random drug testing showed that he had ceased all substance abuse. The Supreme Court of Ohio agreed with the Board's findings and conclusions of violations, but disagreed with the recommended sanction of indefinite suspension with no credit for time served under the interim suspension. The Supreme Court ordered an indefinite suspension with credit for time served under the February 7, 2008 interim suspension, and upon petition for reinstatement in addition to the requirements of Gov.Bar R. V(10) must show proof of (1) compliance with terms of ordered community control, (2) compliance with OLAP contract, (3) continued psychiatric treatment and ability to return to competent, ethical, and professional practice of law. One justice dissented and would disbar respondent.

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**Rules Violated:** Prof.Cond.R. 8.4(b), 8.4(h); DR 1-102(A)(3), 1-102(A)(6)

<b>Aggravation:</b> (b), (d), (h)		<b>Mitigation:</b> (a), (c), (d), (f)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Riek, Disciplinary Counsel v.*

125 Ohio St.3d 46, 2010-Ohio-1556. Decided 4/12/2010.

Respondent improperly used his IOLTA, commingled personal and client funds, paid personal expenses from the trust account, gave personal creditors electronic access to his trust account, and misappropriated settlement funds. In Count I, between June 2007 and May 2008 respondent commingled personal and client funds in his IOLTA account, overdraw the account on four occasions, and paid personal expenses directly from the account. Respondent gave his personal creditors electronic access to his IOLTA and overdraw the account three times to pay for personal expenses. As to Count I, the board adopted the panel's findings of violations of Prof.Cond.R. 1.15(a), 1.15(c) and 8.4(h). In Count II, respondent deposited a \$10,000 settlement check for one of his clients in his IOLTA. Over the next two weeks, respondent wrote over \$8000 in checks directly from his IOLTA to pay himself and various personal expenses. Shortly thereafter, the client attempted to cash a check for \$2875 drawn on the trust account, but it was dishonored. When the client questioned the lawyer about this, the lawyer falsely stated that the check was dishonored because the \$10,000 settlement check had also been dishonored, and said he would contact the employer about the check and inform the client when the matter was resolved. Respondent later falsely told the client that the \$10,000 settlement check had now cleared and that client could now cash his check; the client resubmitted the check and it cleared. As to Count II, the board adopted the panel's findings of violations of Prof.Cond.R. 1.15(a), 8.4(c) and 8.4(h). There were no aggravating factors. In mitigation, respondent had no prior disciplinary record, had presented positive character evidence, and had made full and free disclosure to the Board and cooperated during the disciplinary process. BCGD Proc.Reg. 10(B)(2)(a), (d), and (e). The Board recommended an 18-month suspension with 12 months stayed on the condition that respondent refrain from any further misconduct. The Board compared this case to Johnston (2009) in which the court imposed a one-year conditionally stayed suspension on an attorney who comingled personal and client funds, but noted that respondent's deception in this case justifies a longer partially stayed suspension. The court citing *Thompson* (1982) noted that mishandling of clients' funds is an area of gravest concern of the court in reviewing claimed attorney misconduct. The court citing *Wise* (2006), *Miles* (1996) and *Crosby* (2009) noted that maintaining personal and office accounts separate from clients' accounts is of utmost importance and violations warrant a substantial sanction whether or not there is harm to the client. The Supreme Court agreed with the Board's findings and recommended sanction and so ordered an 18 month suspension with 12 months stayed on condition of no further misconduct. (In footnote 1, the court noted that the panel found that respondent violated all the rules stipulated, but then cited only three of the four rules stipulated. The court found this an inadvertent omission. The court concluded that the panel and board found respondent committed all of the four stipulated violations and that clear and convincing evidence supports this conclusion.)

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**Rules Violated:** Prof.Cond.R. 1.15(a), 1.15(c), 8.4(c), 8.4(h)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (d), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> 18-month suspension, 12 months stayed		

*Ritson, Toledo Bar Assn. v.*

127 Ohio St.3d 89, 2010-Ohio-4504. Decided 10/29/2010.

In December 2006, respondent pleaded guilty to one count of conspiracy to commit mail fraud and wire fraud in violation of Section 371, Title 18, U.S. Code. In January 2007, he placed his license on inactive status pending imposition of his federal sentence on October 2008 in which he was sentenced to one year and one day in federal prison and three years of supervised release and was ordered to pay \$3.7 million in restitution. On 12/4/2008, respondent received a felony interim suspension and the court referred the matter to relator in 120 Ohio St.3d 1429, 2008-Ohio-6274. From 1997 to 2001, respondent induced real estate agents and appraisers to purchase membership in American Estate Association (AREA) and the Nobel Group (Noble) on the false representation that a membership benefit was errors-and-omissions insurance coverage from Midwest Insurance Company (Midwest). The errors-and-omissions insurance coverage never existed. Midwest is an offshore entity formed by respondent's coconspirator. Midwest was never licensed to provide insurance in the United States. Respondent mailed or faxed certificates of membership and certificates of insurance stating that members were covered by a policy issued by Midwest and sent a monthly newsletter that on occasion identified Midwest as the provider of the errors-and-omissions policy. He used dues and fees paid by AREA and Noble members to pay the members' claims for attorney fees and settlements in installments. On May 31, 2001, respondent voluntarily stopped participating in the enterprise. The board adopted the panel's findings of violations of DR 1-102(A)(4) and 1-102(A)(6). In aggravation, respondent received a public reprimand in 2002 for filing an action without the knowledge or consent of the party he claimed to represent; his conduct involves dishonesty and a selfish motive and a pattern of misconduct of multiple offenses over four and one-half years; and he caused \$3.7 million in losses to victims which has not been repaid as ordered by the federal court. BCGD Proc.Reg. 10(B)(1)(b), (c), (d), (h). In mitigation, he cooperated in the disciplinary process and in the federal investigation and prosecution of his coconspirator. Because respondent knew of the criminal operation after his departure and did not report it, the panel and board refused to consider as mitigating his voluntary abandonment of the conspiracy. The board recommended permanent disbarment. The board rejected relator's recommendation of an indefinite suspension, the respondent's recommendation of a sanction no greater than two years, and the panel's recommendation of an indefinite suspension. Respondent claims that the board failed to consider significant mitigating evidence and that his prior discipline should not weigh against him because it was public reprimand. Among other objections, he noted that the panel and board's failure to recognize his positive character-reference letters and testimony may be due to the fact that the transcript of the panel hearing was not filed until three days after the board considered the panel report. Under Gov.Bar R.V(6)(J) the panel report "shall include the transcript of testimony taken" and BCGD Proc.Reg. 9(B)(1) and (2) also contemplates that the transcript will be filed before the panel report and that the panel report will be submitted to the Secretary at least seven days prior to the board meeting date." Citing Gov.Bar R. V(11)(D) as to nonprejudicial irregularity, the court found that any irregularity in the filing of the transcript did not cause any prejudice to respondent since the panel heard the witnesses first hand and the board may rely on the panel's assessment of credibility, unless other evidence weighs against it and the transcript was filed before the Board prepared and issued its report. Respondent's witnesses and character letters, which are few in number and are mainly from friends, have some mitigating value but little weight in light of the facts and aggravating factors. The court found respondent's arguments regarding his efforts to rectify consequences and make restitution presented only half the picture. It is not clear from the record that his break from the practice of law was voluntary and his reliance on paying 10% of his gross income toward the restitution order would take more than 616 years. The court rejected his claim that his continued participation in the conspiracy was not motivated by monetary gain, but by concern for the victims—if he was concerned he should have taken steps to ensure that no one else was harmed. The court rejected his claim that his prior discipline of a public reprimand should not weigh heavily against him. Citing Gov.Bar R. V(6)(C), the court noted that "the mere existence of a prior disciplinary offense, regardless of the degree of the offense or sanction, is relevant in determining the likelihood of committing further misconduct." In comparing sanctions in other cases, the court noted that although

respondent's misconduct did not involve the use of his law license, lies to a tribunal or harm to clients, it did cause harm to approximately 3,000 victims and resulted in a restitution order of \$3.7 million. The court adopted the board's findings, conclusions, and recommended sanction and so ordered a permanent disbarment. Two justices dissented in favor of the sanction recommended by the panel, an indefinite suspension without credit for time served under the felony suspension.

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**Rules Violated:** DR 1-102(A)(4), 1-102(A)(6)

<b>Aggravation:</b> (b), (c), (d), (h)		<b>Mitigation:</b> (d)	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> NO	<b>Sanction:</b> Disbarment		

**Roberts, Disciplinary Counsel v.**

117 Ohio St.3d 99, 2008-Ohio-505. Decided 2/14/2008.

Respondent improperly notarized signatures. Respondent was retained to represent an over-the-road truck driver who had been injured in a motor vehicle accident. He met with the man and his wife in their home in a remote area of Michigan. They entered into a contingent fee contract. He communicated frequently with them but never met face to face with them again. The couple was without health insurance and traveled several times a week to obtain medical services upon credit from a family practitioner and a chiropractor 130 to 150 miles away. Respondent quickly negotiated a settlement with two insurance companies. He settled a claim with Geico Insurance for \$100,000 and a claim with Cincinnati Insurance Company for \$47,500. As to a third insurance carrier, respondent sent a release to his clients to allow him to obtain wage information for the third insurance carrier. The husband signed the release, but the insurance company returned it because it was not notarized. Respondent learned that the couple had no money to buy gas to drive to the nearest town for the needed notarization. Respondent changed both the date of the release and the date of the husband's signature and then notarized the signature. He later advised the client he had notarized the release. As to the Geico claim, respondent had the clients sign a limited power of attorney authorizing him to settle the claims and expedite the settlement process. He sent the clients their share of the proceeds from the Geico settlement and a disbursement sheet to account for the rest. As to the other Cincinnati claim, he signed his clients' names to the release of claims against the Cincinnati Insurance Company, notarized the signatures that purported to be his clients, and asked an assistant to sign the release as a witness. After the Cincinnati Insurance Company paid the settlement proceeds, respondent sent a check to the client for their share. The wife received the check and apparently endorsed it for her husband without his authority and deposited into their joint checking account, and eventually withdrew the money without the husband's knowledge. The husband did not discover it until he call respondent several months later to ask what happened to the money. Respondent acknowledged his mistakes. Panel and board found that his conduct in dishonoring his notary jurat and signing his clients names without authority violated DR 1-102(A)(4) and (6). "When a lawyer notarizes a signature knowing that it is forged, and especially when the lawyer commits the forgery, and actual suspension is warranted." Citation to *Shaffer* (2003). Failing to properly notarize a document, although a violation of DR 1-102(A)(4) for which an actual suspension usually follows, may warrant a lesser sanction depending on the presence of mitigating factors." Citations to *Gottesman*, (2007), *Russell* (2007). A public reprimand will issue if the lawyer does nothing improper in addition to notarizing a signature affixed outside the lawyer's presence." *Dougherty* (2005). "When a lawyer signs a document for another person under the mistaken belief that she or she has this authority, however, we have used a six-month suspension and stayed the suspension on conditions. Citation to *Freedman* (2006). In mitigation, he has no prior discipline, did not act out of self-interest, cooperated, and established his good character and reputation. BCGD Proc.Reg. 10(B)(2)(a), (b), (d), and (e). In aggravation, he committed more than one infraction. BCGD Proc.Reg 10(A)(1)(d) [sic 10(B)(1)(d)]. He signed twice on behalf of others without authority, induced an assistant to falsely witness the signatures, and dishonor the notary jurat three times. But, he did accept responsibility for his mistakes. Because of his contrition, unblemished record, and good, albeit misguided, intentions, and actual suspension is not required. The court adopted the Board's findings of violations, but ordered a suspension for six months, stayed on condition of no further misconduct. One justice dissented in favor of a public reprimand.

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**Rules Violated:** DR 1-102(A)(4), 1-102(A)(6)

<b>Aggravation:</b> (d)		<b>Mitigation:</b> (a), (b), (d), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Six-month suspension, stayed		

**Robinson, Lorain Cty. Bar Assn. v.**  
121 Ohio St.3d 24, 2009-Ohio-262. Decided 1/29/2009.

Respondent abandoned four bankruptcy clients, falsely reassured clients, and failed to follow court orders to correct deficiencies when he finally did file the petitions. Respondent received notice of the complaint, but did not answer. Relator moved for default pursuant to Gov.Bar R. V(6)(F). A master commissioner granted the motion, made findings and recommended an indefinite suspension which the board adopted. The board found violations of Gov.Bar R. V(4)(G) and Prof.Cond.R. 8.1, but the Supreme Court disagreed, noting the investigator's affidavit was not included and finding that relator failed to provide sworn or certified prima facie evidence to show that respondent (1) failed to cooperate in the disciplinary investigation of the underlying grievances or (2) in response to a demand for information from a disciplinary authority, failed to disclose a material fact or knowingly failed to respond. However, the Court found the other violations warranted the recommended sanction. In Count I, Jerry T. Williams, Sr. paid respondent \$1,200 in April 2006 to file his bankruptcy petition. Williams frequently called with concerns and respondent reassured him "everything was all right" and that no notice of sheriff's sale would be published. Respondent did not file the petition until September 2006. In the meantime, there was public notice of a sheriff's sale of his home. He did not appear at a creditor's meeting. He apparently resigned from his law firm and another attorney unknown to the client appeared on the client's behalf. The attorney, whom Williams did not know or retain, saw the bankruptcy through to discharge. The board found violations of DR 6-101(A)(3) and 7-101(A)(3) for waiting over five months to file the bankruptcy, until after the notice of the sheriff's sale had been published, and then quitting the case without notice. In Count II, Brian Jones paid respondent \$1,600 in June 2006 to handle his bankruptcy. Respondent waited three months after being retained and one month after being paid in full to file the petition, failed to keep three appointments with his client, failed to appear at the October 2006 bankruptcy hearing where he sent an associate whom Jones did not know and thought was inexperienced. He was notified by the court of its plan to dismiss the case for irregularities in court filings, told the client he would handle it, but he did not correct the deficiencies. The case was dismissed in December 2006 for irregularities in the filing. Creditors took collection measures against Jones. Respondent falsely told the client that he had refiled the case. Another attorney took over the case and obtained a discharge in bankruptcy. The board found violations of DR 1-102(A)(4) and 7-102(A)(5) by misrepresenting the status of the case and 6-101(A)(3) and 7-101(A)(3) by allowing the case to languish after the court's warnings of filing deficiencies and possible dismissal. In Count III, respondent abandoned Herbert Gillespie Jr. after being paid \$1,850 in February 2006. When the client called, respondent reassured him repeatedly that the petition had been filed, but it was not filed until 11 months after he was retained. Gillespie suffered \$1,000 in garnishments. The client's case was dismissed for failure to show cause why respondent had not paid the filing fees or filed all necessary papers. Respondent returned Gillespie's fees, but failed to return his papers. Gillespie hired another lawyer to complete his bankruptcy. The board found violations of DR 1-102(A)(4) and 7-102(A)(5) by misrepresenting the status of the bankruptcy case, 6-101(A)(3) by neglecting the case, 7-101(A)(3) by allowing creditor garnishments, and 1-102(A)(5). In Count IV, Michael Lenneth retained respondent in May 2006 to file a bankruptcy petition. He reassured the client it had been filed, but did not file the petition until November 2006. In mid-December 2006, respondent failed to appear at a court ordered appearance to show cause for why he failed to correct deficiencies in the petition. As a result, the court dismissed the case. Respondent failed to oppose a mortgage company's petition for relief from the automatic stay, which led to the foreclosure of Lenneth's home. Respondent remitted his fee, but caused the client to obtain another attorney and incur \$1,598 in fees. The board found violations of DR 1-102(A)(4) and 7-102(A)(5) by misrepresenting the status of the case, 6-101(A)(3) by neglecting the case, and 7-101(A)(3) by filing to prevent foreclosure of the client's home, and DR-102(A)(5). The Supreme Court agreed. During the disciplinary investigation, respondent communicated his desire "to resolve all cases and complaints and close [his] bankruptcy practice" for other employment. Respondent's license has been listed inactive since November 30, 2007. The board recommended an indefinite suspension. The Supreme Court agreed and so ordered.

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**Rules Violated:** DR 1-102(A)(4), 1-102(A)(5), 6-101(A)(3), 7-101(A)(3), 7-102(A)(5)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Robinson, Disciplinary Counsel v.*

126 Ohio St.3d 371, 2010-Ohio-3829. Decided 8/25/2010.

Respondent gave false and misleading testimony during a deposition and hearing in a civil matter and destroyed documents that had potential evidentiary value. In 2000, respondent joined a firm to develop its governmental-affairs practice. In 2005, when the firm created a lobbying subsidiary, he entered an employment agreement requiring him to keep all business information confidential during employment and thereafter. In 2007, Respondent began organizing a campaign for political office, but stopped when the firm's managing partner provided him with a revised employment agreement with a lobbying subsidiary that would have required him to resign his firm partnership and stop practicing law. Believing his job was in jeopardy, respondent interviewed with two other law firms. He faxed a copy of his employment contract and a redacted copy of the current firm's engagement letter to one of the firms. After signing a confidentiality agreement with one firm on August 3, 2007, he disclosed detailed client information and client billing reports. On August 3 and 4, respondent went to his firm's office while the rest of the firm was on a retreat, and he packed and removed seven boxes of documents from his office. On August 14, 2007, the firm later terminated respondent's employment. The next day, respondent accepted a position at the law firm to which he had not disclosed any confidential information. On August 27, 2007, respondent's former law firm filed a civil suit seeking injunctive relief and alleging that respondent violated the nonsolicitation and nondisclosure covenant of his employment agreement. Respondent, during a deposition in the matter, testified that he had "made sure not to take any client files or client information" and stated he "did not take any of the [lobbying subsidiary's] business plan or marketing information." At the August 29, 2007 hearing on the complaint for injunctive relief, respondent said he did not take business plans or marketing list to the best of his knowledge, but he did admit that he might have started cleaning out his office after he started looking for a new position. He testified that to the best of his knowledge he did not possess the engagement letter, but on further questioning he admitted he had taken a redacted version of the engagement letter from the firm and had forwarded it to his new employer. After his testimony the court took a recess during which time respondent took his personal trial notebook into the men's restroom, removed a firm report of his 2004-2007 billable hours, tore it up and put it in the trash receptacle. Later that day, he went home and put several boxes of law firm documents in his car and drove toward downtown Columbus, stopping three times on his way to tear up and dispose of confidential firm documents. In September 2007, the court granted a temporary restraining order and ordered respondent to give the firm all its confidential information that remained in his possession. The next day, respondent returned three boxes, including his 2000-2006 timesheets, economic-development papers, Powerpoint presentations, and various documents related to training, lobbying, and client strategy. Four days later, respondent self-reported destruction of the documents to his previous employer and the court. He later provided an inventory of the documents he destroyed. In September, he testified at a second hearing on the firm's complaint and subsequently the court granted the firm's motion for injunctive relief. The board adopted the panel's findings that respondent's false statements under oath at the deposition and the hearing violated Prof.Cond.R. 8.4(c), 8.4(d), 8.4(h), and that his conduct in destroying documents having potential evidentiary value on the same date he testified he did not possess such documents violated Prof.Cond.R. 3.4(a). Respondent objected to a finding of violation of Prof.Cond.R. 8.4(c), 8.4(d), and 8.4(h) because he claimed that, at the time of his deposition, he didn't remember that he took the files and that he did not intend to conceal the document. He argued that even if his testimony was misleading, relator did not prove that he willfully violate 8.4 and that he cannot be punished pursuant to Gov.Bar R. IV(1). The Court found ample evidence from which to infer his willful violation of the rules. The court cited disciplinary case law wherein it observed that where evidence is in conflict, the trier of fact determines what is accepted as the truth. And, the court cited case law that when the record is not against the findings, the court will defer to the to the panel's credibility determinations. Respondent also contended that the board erred in applying Prof.Cond.R. 3.4(a) because the rule only applies to attorneys who are acting in their professional capacity as advocates because Chapter III of the Rules is entitled "Advocate." Respondent cited no case law for this position, and the Court found several other

jurisdictions that held that the rule does apply to an attorney as a party. The court also cited Stein (1972) regarding personally and professional integrity and refraining from any illegal conduct. The court cited R.C. 2921.12 regarding tampering with evidence. The court stated: Thus, in applying Prof.Cond.R. 3.4(a) to respondent's conduct as a party to litigation, we do not hold respondent to a higher standard than a member of the general public. Instead, we recognize that respondent's conduct, be it in a personal or professional capacity, demonstrates a lack of respect for the law that he has been sworn to uphold, thereby undermining public confidence in our justice system. Therefore we conclude that the prohibitions against the obstruction of access to evidence set forth in Prof.Cond.R. 3.4(a) apply with equal force to attorneys acting in either a personal or professional capacity." The Court thus accepted the Board's finding a violation of Prof.Cond.R. 3.4(a). In mitigation, the Board found that respondent lacked a prior disciplinary record, had an excellent reputation with charitable and political communities, and had a generally good character, as evidenced by over two dozen letters. BCGD Proc.Reg. 10(B)(2)(a) and (e). In aggravation, the Board found that respondent: acted with a dishonest or selfish motive, engaged in multiple offenses and a pattern of misconduct, and failed to acknowledge the wrongful nature of his conduct. BCGD Proc.Reg. 10(B)(1)(b), (c), (d), and (g). The panel recommended a one-year suspension from the practice of law, but the Board recommended a two-year suspension from the practice of law. Respondent objected to both, arguing that both ignored significant mitigating factors and found unsupported aggravating factors and that his conduct caused no harm to his former employer or his clients. The Court dismissed these objections. The court did not accept the Board's recommended sanction, instead ordering the one- year suspension recommended by the panel. Two justices dissented and would have suspended respondent for two years.

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**Rules Violated:** Prof.Cond.R. 3.4(a), 8.4(c), 8.4(d), 8.4(h)

<b>Aggravation:</b> (b), (c), (d), (g)		<b>Mitigation:</b> (a), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> One-year suspension		

*Rohrer, Disciplinary Counsel v.*

124 Ohio St.3d 65, 2009-Ohio-5930. Decided 11/17/2009.

Respondent deliberately violated a court order and then misrepresented to the court his responsibility for that misconduct. Board adopted the panel's findings and recommended sanction of suspension for six months, stayed upon conditions. On September 25, 2007, respondent was appointed to represent a ten-year old juvenile on five delinquency counts of murder and one delinquency count of aggravated arson arising from a September 16, 2007 fire that killed the juvenile's mother and sister and three other children. On that day, the juvenile was remanded to the custody of West Central Juvenile Detention Center, in Troy, Ohio. The juvenile judge sealed the court file on September 26, 2007 and issued a verbal order prohibiting respondent and the prosecuting attorney from discussing the case with the media. The order was journalized on October 24, 2007. On October 5, 2007, respondent filed a motion seeking an order to compel the prosecuting attorney to promptly provide a response to respondent's discovery request; respondent also directed a member of his office staff to deliver a copy of the motion to the newspaper. The memorandum attached stated "Counsel for the minor child is also concerned by the failure of the State of Ohio to provide discovery in a timely manner due to the fact that the Assistant Prosecuting Attorney Phillip Hoover has already been admonished in prior \* \* \*cases for withholding discovery or springing surprise discovery immediately prior to trial." The October 9, 2007 edition of the newspaper included an article on the motion filed by respondent. On October 11, 2007, the judge conducted a hearing to address the newspaper article and determine whether respondent had violated the court's order regarding communication with the media. At the hearing respondent made false and misleading statements to the court, for example, he told the court that he said things to his staff that got misconstrued and that the motion got delivered to the newspaper without his knowledge but that he took responsibility for that. The prosecutor filed a grievance against respondent on November 7, 2007 and sent a copy to the judge. On November 29, 2007, the judge issued the entry pursuant to the October 11 hearing concluded respondent violated the court order prohibiting communication with the media and sanctioned respondent but ordered the sanction purged so long as no further violations of the court order. In March 2008, the judge found the juvenile not competent to face juvenile –delinquency charges against him and dismissed the pending charges. The board found in addition to the stipulated facts, that respondent's assistant had told the prosecutor's office that respondent had instructed her to send the motion to compel to the newspaper and that respondent had terminated the assistant because she violated his office policy against divulging confidential information about cases. The Board found that in a letter to the unemployment bureau concerning her termination, respondent again suggested she was responsible for sending the motion to the newspaper. (In footnote 2, the Supreme Court noted it did not agree with the board finding that the letter suggested that the employee was responsible for sending the motion to the newspaper. The court found that the records showed a different mistatement to the unemployment-compensation bureau.) The court found that in the letter to the unemployment-compensation bureau respondent indicated that he met with and informed the juvenile court judge that the violation was respondent's fault and that he took full responsibility. But, he admitted at the disciplinary hearing he had not accurately told the judge what had happened. Board found violations of Prof.Cond.R. 3.4(c) for his conduct in telling the staff member to deliver the motion to the local newspaper in violation of the court's order; violations of Prof.Cond.R. 3.3(a)(1) and 8.4(c) by knowingly telling the judge at the hearing that his staff misconstrued his directions, and by making false statement when he said it was delivered without his knowledge and it was not his intent; and a violation of Prof.Cond.R. 8.4(d) by deliberately violating a court order and lying to the court about it. The court also found these violations and that his letter to the unemployment-compensation bureau was misleading and violated Prof.Cond.R. 8.4(c). (In footnote 3, the court noted as did one panel member that respondent had a duty to report his own professional misconduct to a disciplinary authority.) The court agreed with the Board's conclusion that respondent's conduct violated Prof.Cond.R. 8.4(h), but the court noted that while "impulsiveness" is not the sole measure of whether conduct violated the rule, the board's findings are less than clear as to whether respondent's conduct was impulsive or not. The court found respondent's conduct in violating the gag order and making false statements to the juvenile court were deliberate, not

impulsive as respondent claimed. In mitigation, there was no prior discipline, he cooperated, the juvenile court had sanctioned him, and character witnesses were presented. The Board did not specifically find lack of selfish motive, but the Board opined that the same migrating factor as in *Carrol* (2005) were present and that case did include a lack of selfish motive. The court noted that lack of selfish motive and the aggravating factor of dishonest or selfish motive are opposite sides of the same coin. The court noted that the board found no aggravating factors. The court found that respondent committed multiple offenses. The court stated that it would not overturn the board's finding that there was no pattern of misconduct (see footnote 4) though "we think the board's conclusion that the aggravating factor of a pattern of misconduct was absent is debatable." The court did overturn the Board's finding that there was no dishonest or selfish motive. The court concluded that respondent exhibited a selfish or dishonest motive in misrepresenting to the juvenile court his role in violating the court's order, and later in writing a misleading letter to the unemployment-compensation bureau. BCGD Proc.Reg.10(B)(1)(b). Relator urged the court to conclude that respondent made false statements during the disciplinary process when he downplayed his misstatements to the juvenile court in a letter to relator. The board declined to find this as an aggravating factor. The court did not disturb this finding, because this would seem inconsistent with relator's stipulation that respondent displayed a cooperative attitude. BCGD Proc.Reg. 10(B)(2)(d). The court found that respondent, through his self-justification of his conduct by the results obtained, showed lack of remorse. BCGD Proc.Reg. 10(B)(1)(g). The court cited cases wherein the court held that it would not allow attorney who lie to courts to continue practice without interruption. *Herzog* (1999), *Batt* (1997), *Fowerbaugh* (1995). In addition to his lack of prior discipline, his prior sanction by the juvenile court, his cooperation, and testimonials, a judge and an attorney in a indigent legal assistance fund which respondent helped found testified regarding his representation of indigent clients. The court noted that respondent's service to indigent clients is a positive factor but it does not immunize a lawyer from discipline for misconduct, particularly conduct involving dishonesty or false statement to a tribunal. The court concluded that respondent's acting in defiance of a court order, followed by a material misrepresentation to the court in explaining his conduct, and other misleading statements to a state agency concerning the same situation merits an actual suspension. The court declined to adopt the board's recommended sanction and ordered a suspension for six months.

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**Rules Violated:** Prof.Cond.R. 3.3(a)(1), 3.4(c), 8.4(c), 8.4(d), 8.4(h)

<b>Aggravation:</b> (b), (d), (g)		<b>Mitigation:</b> (a), (d), (e), (f)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Six-month suspension		

*Rozanc, Lake Cty. Bar Assn. v.*

123 Ohio St.3d 78, 2009-Ohio-4207. Decided 8/27/2009.

Respondent failed to diligently represent and properly communicate with his client who was executor of a decedent's estate. Respondent initially met with the client to discuss the estate and probate process several times in March or April 2007 at respondent's apartment where he had his office. The client had never before hired an attorney. In mid-June 2007, the client paid \$500 in legal fees and \$161 for probate court filing fees and he signed papers seeking release of the estate from probate administration. Respondent did not file the papers and did nothing for the client. The client heard from respondent once or twice by phone, but then never heard from him again. Respondent did not answer calls from the client. After four and one-half months of trying to reach respondent, the client hired a new attorney. Respondent did not answer calls from the new attorney and he did not respond to the new attorney's letters. Respondent testified that he became uncertain whether the estate should be handled through a release from probate or a more summary procedure. He did not find an answer through research and had no one to ask so he panicked and failed to do anything. His inaction held up the probate proceedings until April 2008. Respondent claimed that the new attorney's message was "garbled" and that he did not receive her letters. The client's sisters, who became increasingly mistrustful of the lack of progress on the estate and also blamed the brother, called the new attorney and complained. The client filed a grievance. After receiving a letter of inquiry, respondent called the investigator and promised to drop off the will and related documents, but failed to do so. Respondent is disabled and unable to drive. The investigator called respondent's disconnected telephone three times in March 2008 and wrote two more letters, one certified. In early April 2008, the investigator received the original will by mail and a check to the client for \$686, which included an extra \$25 to compensate the client for having to find new counsel. Respondent attributed his delay to his desire to return the papers and refund at the same time and to having misplaced his client trust account checkbook for several weeks. Board adopted the panel's findings of violations of Prof.Cond. Rule 1.3 and 1.4(a)(3) and (4). In mitigation, there was no prior discipline, no dishonest or selfish motives, and there was restitution, and cooperation. BCGD Proc.Reg. 10(B)(2)(a), (b), (c), and (d). Despite respondent's testimony concerning his depressed mental state, which he referred to as a "general depression" that started after he lost his office in January 2007 for which he once saw a counselor, the board did not find a mitigating mental disability under BCGD Proc.Reg. 10(B)(2)(g)(i) through (iv). In aggravation, respondent delayed in returning the client's original papers to the investigator and then mailed them instead of delivering them as requested; did not make restitution until after the grievance was filed; engaged in a pattern of misconduct in his repeated failure to address inquiries of the client, the new lawyer, and the investigator; and harmed a vulnerable first-time client. BCGD Proc.Reg. 10(B)(1)(c), (h). Board adopted the panel's recommended sanction of a one-year suspension with six months stayed on conditions, including among other things that respondent complete a law-office management course, enter a contract with OLAP for a minimum of 24 months and obtain a mental health assessment and pursue treatment as determined by OLAP; and the Board added a condition that the reinstatement during the stayed portion of the suspension be monitored. Supreme Court of Ohio agreed with the findings, conclusions, and recommended sanction and so ordered.

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**Rules Violated:** Prof.Cond.R. 1.3, 1.4(a)(3), 1.4(a)(4)

<b>Aggravation:</b> (c), (h)		<b>Mitigation:</b> (a), (b), (c), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> One-year suspension, 6 months stayed		

*Russo, Disciplinary Counsel v.*

124 Ohio St.3d 437, 2010-Ohio-605. Decided 2/25/2010.

Respondent is a juvenile court judge who has been convicted twice on charges of disorderly conduct because of physical altercations with a girlfriend. The disciplinary case was initially considered by the board on a consent-to-discipline agreement to six-month suspension, all stayed, but the court rejected the recommendation and returned the case “for further proceedings including consideration of a more severe sanction.” A panel of the board heard the case and found violations of former Canons 1, 2, and 4 and recommended a stayed six-month suspension, this time enumerating specific conditions that respondent be placed on monitored probation for two years, maintain sobriety, comply with his OLAP recovery contract and commit no further misconduct. Board adopted the panel’s findings and recommended sanction. The court, citing Reid (1999), noted that judicial misconduct must be shown by clear and convincing evidence. In the early hours of September 6, 2006, respondent and his girlfriend got into an argument while driving home after dinner and drinks. They stopped at a gas station when the fight escalated into a physical altercation. The fight continued at the gas station and both were arrested and charged with “disorderly conduct-intoxicated” which is a minor misdemeanor. Respondent signed a waiver later that month admitting his guilt and paid a \$100 fine. In the early hours of July 4, 2007, at the couple’s condominium a physical altercation occurred after an argument. A neighbor called the police. By the time police arrive, respondent had left the condominium to check in at a hotel. The police interviewed both respondent and the girlfriend. The girlfriend asked for a domestic-violence temporary protection order. Respondent initially denied the fight but when told of the domestic-violence charge, he claimed his girlfriend had attacked him. The next day the municipal court granted a domestic-violence protection order against respondent. In early March 2008, the domestic-violence charge was amended to “disorderly conduct—persistent.” Respondent pleaded guilty to this misdemeanor of the fourth degree and was convicted. He received a 30 day suspended jail sentence and was ordered to continue counseling for alcohol abuse and anger management and placed on probation for one year and fined \$250. The Court agreed that he violated Canons 1, 2, and 4 by engaging in the foregoing criminal activity. The Court, citing *Franko* (1958) noted that judges are subject to the highest standards of ethical conduct. The board noted cases involving a range of sanctions for judges who committed misdemeanor offenses precipitated by substance abuse: *Ault* (2006), a stayed two year suspension of a municipal court judge; *Connor*, a stayed six-month suspension of a common pleas court judge; and *Resnick* (2005), a public reprimand of a supreme court justice. In this case, respondent conceded he suffers from alcohol dependency and has satisfied the test in BCGD Proc.Reg. 10(B)(2)(g)(i) through (iv) for attributing mitigating effect. Further, the Board found he is of good character and reputation; has no prior discipline; made a timely good faith effort to rectify the consequences of his misconduct; made full and free disclosure to and cooperated with relator; admitted guilt and paid fine assessed in the 2006 case. No aggravating factors were found. The Supreme Court disagreed with the board’s recommended sanction of a six-month suspension stayed on conditions of a two year probation and the obligation to manage his alcohol dependency. The court ordered a one-year suspension, stayed on condition of a two-year probation; compliance with the current OLAP contract, and refraining from the use of alcohol, and no further violations of the Code of Judicial Conduct or the Rules of Professional Conduct.

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**Rules Violated:** Code of Judicial Conduct Canons 1, 2, 4

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (g)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> YES	<b>Sanction:</b> One-year suspension, stayed		

*Rust, Toledo Bar Assn. v.*

124 Ohio St.3d 305, 2010-Ohio-170. Decided 1/28/2010.

Respondent agreed to file a wrongful-death action on behalf of a decedent's heir, but brought the suit on behalf of the administrator of the decedent's estate, the proper party-plaintiff, without obtaining the administrator's authority for the suit. In early 2007, Tillimon consulted with respondent about bringing a wrongful-death action, believing that his mother's nursing home and her former guardian had contributed to her death. Tillimon was the sole beneficiary of his mother's estate. In 2006, Tillimon was represented by another lawyer and had previously filed one wrongful-death complaint against the guardian and nursing home. In that action, the lawyer named the original administrator of the estate as the plaintiff. That administrator was replaced by a successor administrator due to a conflict and the complaint was amended to name the successor administrator as the plaintiff. The guardian's counsel obtained an affidavit from the successor administrator disavowing the wrongful-death claim and moved to dismiss, which led to Tillimon's previous lawyer voluntarily dismissing the complaint without prejudice. Tillimon contacted respondent about refiling the wrongful-death action with little time left of the statute of limitations. Respondent concluded that administrator would not consent to the refiling of the wrongful-death action, but filed the complaint anyway with the administrator named as plaintiff. The guardian's counsel obtained a second affidavit from the administrator indicating that the administrator did not authorize the refiling of the case. The administrator wrote the respondent, demanding dismissal of the wrongful-death action. Respondent responded by seeking to substitute Tillimon for the administrator in the action. This was initially granted by the court. The guardian moved for reconsideration of the substitution order. Respondent asked for a stay of the common pleas court proceeding to obtain an order from the probate court to substitute Tillimon as administrator. The common pleas court vacated its substitution order and reinstated the estate administrator as plaintiff, holding that the probate court had exclusive jurisdiction to replace an estate fiduciary. The guardian filed a memorandum opposing the motion to stay and moved for dismissal. The court dismissed the wrongful death action. The board adopted the panel's finding that respondent violated Prof.Cond.R. 1.16(a)(1) because he filed an action on behalf of a plaintiff who the respondent knew did not want to pursue the action. The board did not adopt the panel's recommendation of a one-year suspension, conditionally stayed on enrollment in OLAP, two years probation, and no further misconduct. The Board recommended a suspension for six months, stayed on conditions including a two-year monitored probation. Respondent objected to the Board findings; he claimed that he had to file the action as he did because Tillimon wanted the action filed and the statute of limitations was about to expire. Tillimon insisted that the filing was permissible under RC 2113.18 and *Douglas v. Daniels Bros. Coal Co.* (1939) and *Burwell v. Maynard* (1970). The court stated that because these authorities and precedent arguably permit respondent to file the action to avoid the statute of limitation and to then obtain his client's appointment as the administrator, the court sustain the objection and found no misconduct. The court noted that while the respondent did initially represent himself as the administrator's attorney, it was not the focus of either the relator's complaint or the Board's report and little harm came from it. The Court stated that it need not decide whether respondent correctly interpreted precedent. Under Prof.Cond.R. 3.1, lawyers are permitted to advance claims and defenses for which "there is a basis in law and fact for doing so that is not frivolous, which includes good faith argument for an extension, modification, or reversal of existing law." The Court also quoted the comments to Prof.Cond.R. 3.1 that served to embellish these standards. The court stated, "[r]espondent's strategy may have been flawed, but the fact that he had some arguable viable legal support for his actions is enough to avoid disciplinary sanction. We find no violation of the ethical standard incumbent upon Ohio lawyers. The complaint against respondent is dismissed." Justice Lanzinger dissented and would have imposed a stayed six-month suspension.

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**Rules Violated:** NONE

<b>Aggravation:</b> None		<b>Mitigation:</b> None	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Case Dismissed</a>		

*Ryan, Lake Cty. Bar Assn. v.*

123 Ohio St.3d 178, 2009-Ohio-4232. Decided 8/27/2009.

In 2006, respondent was suspended for two years with the second year stayed upon condition in *Lake Cty. Bar Assn. v. Ryan*, 109 Ohio St.3d 301, 2006-Ohio-2422 for misconduct including neglect and failure to keep clients informed. He did not fulfill the conditions for staying the second year and has not applied for reinstatement. In 2007, respondent was suspended for failing to comply with attorney-registration requirements in *In re Attorney Registration Suspension of Ryan*, 116 Ohio St.3d 1420, 2007-Ohio-6463. This disciplinary case arises from misconduct that occurred prior to his 2006 suspension. Respondent failed to diligently pursue a client's personal-injury claim and failed to advise the client he did not maintain professional liability insurance. In March 2000 respondent filed a personal-injury action for a family friend who was injured in an automobile accident. In August 2001, he voluntarily dismissed the action so that the client could complete her medical treatment. In September 2002, after refiled the action, respondent advised the client he needed expert medical reports to respond to discovery demands, but he did not obtain the reports in time to meet the discovery deadlines. Defense counsel filed a motion to compel discovery and for sanctions. In early November 2004, the court ordered respondent to provide the discovery within five days, but respondent did not comply and did not appear at the final pretrial hearing because he lacked the expert medical reports. In early December 2004, the court dismissed the action. After the dismissal, the client provided medical reports and respondent filed a motion for reconsideration and to reinstate the claim. In January 2005, the court denied the motion. Throughout 2005 and 2006, respondent continued to meet with the client and according to respondent they discussed alternative recovery strategies. The client testifies she did not realize her case had been dismissed until later May or early June 2006 when respondent advised her that his license was suspended and urged to consult another attorney. She learned of the dismissal when the new attorney checked the court docket. Respondent did not advise the client that he did not maintain malpractice insurance. Board adopted the panel's findings of violations of DR 1-104(A), 1-102(A)(5), 1-102(A)(6), 6-101(A)(2), 6-101(A)(3), 7-101(A)(1), 7-101(A)(2), 7-101(A)(3). In aggravation, there is a significant prior record of discipline, a continuing pattern of failing to communicate and neglecting matters; harm cause the client who lost the opportunity to recover damages for injuries and medical expenses in an amount estimated by the successor attorney to be between \$75,000 and \$150,000. In mitigation, he did not act out of dishonesty or selfish motives. He attempted to rectify the consequences by offering \$25,000—the amount the defense had offered to settle the personal injury action—in settlement of the malpractice claim by her. He cooperated. Board adopted the panel's recommended sanction of a two-year suspension with six months stayed on condition that respondent "submit to a mediation conducted by the Lake County Bar Association to determine the appropriate restitution for the client." Supreme Court adopted the findings, conclusions, and recommended sanction and so ordered. Three dissents in favor of an indefinite suspension. The dissenting justices noted among other things that respondent had three prior license suspensions, including one for neglect and failure to keep clients informed, and two for not complying with registration requirements.

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**Rules Violated:** DR 1-104(A), 1-102(A)(5), 1-102(A)(6), 6-101(A)(2), 6-101(A)(3), 7-101(A)(1), 7-101(A)(2), 7-101(A)(3)

<b>Aggravation:</b> (a), (c), (h)		<b>Mitigation:</b> (b), (c), (d)	
<b>Prior Discipline:</b> YES (x3)	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Two-year suspension, 6 months stayed		

**Sabol, Disciplinary Counsel v.**

118 Ohio St.3d 65, 2008-Ohio-1594. Decided 4/9/2008.

Respondent missed the deadline for refiling a client's personal injury lawsuit and failed to inform the client he did not have professional liability insurance. In July 1999, he agreed to file a lawsuit for a man injured in a motorcycle accident. He filed the action in July 2001, but the case proceeded slowly, in part because of respondent's failure to respond to defendant's discovery requests and the fact that the defendant's insurance company had filed bankruptcy. In August 2003, he and the client agreed to voluntarily dismiss the case and refile it after the bankruptcy stay was lifted and some of the client's medical problems were resolved. He notified opposing counsel in August 2003, but did not file a notice of dismissal until February 2004. He realized he had only one year to refile, but he incorrectly notated the deadline as February 2, 2006. He discovered his error in January 2006. He immediately told the client to consult another lawyer about the potential malpractice claim. He had no insurance and did not inform the client he lacked coverage. The clients sued and they settled for \$12,500 which respondent has paid in full. Panel and board found violations of DR 1-102(A)(5) and 6-101(A)(3) and recommended a six-month suspension stayed. In mitigation, respondent cooperated and made restitution. BCGD Proc.Reg. 10(B)(2)(c) and (d). In aggravation, respondent received a public reprimand for dismissing personal injury claims of a woman and her daughter without their consent in *Allen Cty. Bar v. Sabol* (1997), 79 Ohio St. 3d 387. The court adopted the findings of violations of DR 1-102(A)(5) and 6-101(A)(3) but disagreed with the recommended sanction because his history of unacceptable conduct and his impermissible action in this case warranted a stricter sanction than a fully stayed suspension. The court ordered a suspension for six months. Citations to *Rose* (2007) and *Gerren* (2006).

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**Rules Violated:** DR 1-102(A)(5), 6-101(A)(3)

<b>Aggravation:</b> (a)		<b>Mitigation:</b> (c), (d)	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Six-month suspension		

*Sabroff, Disciplinary Counsel v.*

123 Ohio St.3d 182, 2009-Ohio-4205. Decided 8/27/2009.

Respondent misappropriated clients' funds, settled a client's claim without consent, failed to maintain all client funds in a trust account, commingled client and personal funds in the trust account, practiced law under suspension, and failed to cooperate with relator's investigation. Respondent did not answer the complaint and upon relator's motion for default the matter was heard by a master commissioner whose findings, conclusions, and recommended sanction was adopted by the board. As to Count I, board found violations of DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 9-102(B)(3), 9-102(B)(4) for misappropriating the funds of a couple who engaged him to represent them in personal injury claims by presenting a settlement statement to them showing that he had withheld part of their share to pay for their medical treatment, but then did not pay the medical bills nor retain the funds in his trust account. The clients received collection notices and respondent informed them he had signed an agreement with the doctor to be responsible for the bills, but he could not produce a copy of the document, did not pay the doctor, and did not reimburse the couple. As to Count II, board found violations of Prof.Cond.R. 8.4(d) and 8.4(h), and Gov.Bar R. V(4)(G) for failing to respond to relator's first letter of inquiry; for responding to the second letter of inquiry but not fully addressing the specific allegations; for leaving a telephone message on the morning of his deposition stating he had suffered a physical injury that prevented his appearance, and for failing to reschedule the deposition after agreeing to do so. As to Count III, board found violations of DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 7-101(A)(3), 9-102(B)(3) and 9-102(B)(4) for misappropriating the money of a personal injury client. He filed a complaint, but a month before trial he voluntarily dismissed it without her consent. The client had already purchased a transatlantic ticket to appear at trial. He received a settlement offer and contrary to the client's directive he accepted it. He forged her name on the settlement check and deposited the funds into his trust account. The client refused to sign the settlement statement he prepared reflecting his 40% contingency fee of \$7,000, expenses of \$1,511.26, and disbursement of \$9,000 to the client. He mailed the check to her parents' house, but then stopped payment on the check after realizing he had not deducted the funds to pay medical expenses. He promised to issue a new check after he paid the medical bills. His trust account often was less than \$9,000 during this time. After not hearing from respondent, the client contacted the police. He pleaded guilty to one count of theft as a fifth-degree felony and was ordered to pay restitution to the client as a condition of his agreement to plead to a reduced charge. As to Count IV, board found violations of Prof.Cond.R. 8.4(b), 8.4(c), 8.4(d), and 8.4(h) for his felony conviction. At the sentencing hearing he admitted using cocaine and marijuana after his pleas hearing, resulting in his failing a court-ordered drug test and he admitted paying the ordered restitution late. He was sentenced to community control, in-patient drug treatment and community control and the court ordered him not to practice law. As to Count V, board found violations of Prof.Cond.R. 5.5(a) and Gov.Bar R. V(8)(E) for practicing law while under an interim suspension following his felony conviction for theft in *In re Sabroff*, 115 Ohio St.3d. 1435, 2007-Ohio-5636. Less than a month after his interim suspension he sent a letter to the municipal court on behalf of his son who had been charged with a traffic violation using letterhead referring to himself as "Attorney and Counselor at Law," and entering a plea of not guilty, waiving all statutory time requirements, and seeking scheduling of a pretrial hearing. When relator asked him if he had practiced law while under suspension, he sent a letter to the municipal court withdrawing because "of a plethora of physical problems." As to Count VI, board found violations of DR 1-102(A)(4), 1-102(A)(6), and 9-102(A) for his conduct during the time period of December 1, 2004 and February 28, 2006 of using his trust account to pay cable, credit card, telephone, electric, insurance premiums, college tuition, attorney registration fee, and check made payable to "Cash." During this time, he also deposited checks in the trust account for settling personal injury claims. Respondent's failure to cooperate prevents a determination of whether his health issues and chemical dependency mitigate his misconduct. BCGD Proc.Reg. 10(B)(2)(g). In aggravation, he acted with dishonesty or selfish motive, engaged in a pattern of misconduct, committed multiple offenses, failed to cooperate, refused to acknowledge his wrongful conduct, has not made restitution to the Count I clients, and paid restitution to the Count III client only after ordered to do so as a

condition of the plea agreement. BCGD Proc.Reg. 10(B)(1)(b), (c), (d), (e), (i). The court cited cases wherein the presumptive sanction is disbarment. The Supreme Court of Ohio agreed with the Board's findings and conclusions and recommended sanction of a permanent disbarment and so ordered.

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**Rules Violated:** Prof.Cond.R. [5.5\(a\)](#), [8.4\(b\)](#), [8.4\(c\)](#), [8.4\(d\)](#), [8.4\(h\)](#); DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 7-101(A)(3), 9-102(A), 9-102(B)(3), 9-102(B)(4); Gov.Bar R. [V\(4\)\(G\)](#)

<b>Aggravation:</b> (b), (c), (d), (e), (i)		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> <a href="#">YES</a>	<b>Criminal Conduct:</b> <a href="#">YES</a>	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Disbarment</a>		

*Sakmar, Mahoning Cty. Bar Assn. v.*  
127 Ohio St.3d 244, 2010-Ohio-5720. Decided 12/1/2010.

Respondent was repeatedly tardy or failed to appear at municipal court hearings and failed to cooperate in the disciplinary investigation. Respondent failed to file an answer to relator's complaint. A master commissioner considered relator's motion for default and made findings, conclusions, a recommended sanction of a suspension for 12 months, two years of monitored probation upon the return to practice and a requirement to complete eight hours of CLE in law office management in addition to the Gov.Bar R X CLE requirements. The Board adopted the findings and conclusions, but recommended a two- year suspension with one year stay, two years of monitored probation and eight hour of continuing legal education in law-office management. Relator submitted affidavits from two municipal court judges and the person assigned to investigate the misconduct. Based on these affidavits, from February 2006 to December 2008, respondent was either tardy or failed to appear for numerous hearings before the two judges. Respondent once left a hearing early against the judge's specific instruction to remain. Respondent was cited in contempt multiple times, found guilty of contempt, and fined on two separate occasions. In August 2007, one of the judges issued a *capias* for respondent's arrest when he failed to appear; the judge withdrew it when the respondent paid the *capias* fee. The board found violations of Prof.Cond.R. 1.3, 3.5(a)(6), 8.4(d), 8.4(h), and Gov.Bar R. V(4)(G). The court agreed. The court noted that although the master commissioner and board made not expressly make findings about a failure to cooperate in the disciplinary investigation, the relator's affidavit shows that four letters were sent to respondent, none of which was met with a response. The Court noted that tardiness and failing to appear demonstrates a lack of both diligence and respect not only for the tribunal, but for the other parties and attorneys and impedes the efficient administration of justice. In mitigation, the respondent had no prior disciplinary record and there was an absence of a dishonest or selfish motive. BCGD Proc.Reg. 10(B)(2)(a) and (b). In aggravation, there is a pattern of misconduct involving multiple offenses and a failure to cooperate in the disciplinary process. BCGD Proc.Reg. 10(B)(1)(c), (d), and (e). The Court noted that it had previously recognized that neglect coupled with failure to cooperate warrant an indefinite suspension as for example in *Gottehrer* (2010), *Hoff* (2010). The court considered the misconduct and sanctions in *Gottehrer* (2010) (indefinite suspension), *Rohrer* (2009) (six-month suspension), and *Nicks* (2010) (two year suspension with 18 months stayed), and found respondent's case most similar to *Nicks*. The Court adopted the board's recommended sanction, and so ordered that respondent be suspended for two years, with the second year stayed on condition of no further violations and that upon reinstatement he serve two years of monitored probation and eight hours of CLE credit in law office management in addition to the CLE requirements in Gov.Bar R. X.

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**Rules Violated:** Prof.Cond.R. 1.3, 3.5(a)(6), 8.4(d), 8.4(h); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> (c), (d), (e)		<b>Mitigation:</b> (a), (b)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Two-year suspension, 12 months stayed		

*Sanz, Cincinnati Bar Assn. v.*  
128 Ohio St.3d 373, 2011-Ohio-766. Decided 2/24/2011.

Respondent misappropriated money from a trust while acting as trustee and failed to cooperate in the ensuing disciplinary investigation, except to attend his deposition. In 2007, respondent was suspended for failure to register as an attorney for the 2007-2009 biennium. Respondent has been suspended since June 2008 for failing to meet CLE requirements. A master commissioner granted relator's motion for default and made findings of fact, conclusions of law, and a recommended sanction of a permanent disbarment. In 2002, respondent was appointed by a husband and wife to serve as trustee of an irrevocable trust. Respondent paid the client's living expenses out of the trust for their lifetimes. In 2006 the husband died, in 2008 the wife died. In 2008, the attorney for the four children who were beneficiaries of the trust sought an accounting of the assets. Respondent failed to respond to their requests. The beneficiaries filed a lawsuit and obtained a default judgment against respondent for \$284,272 plus interest and court costs. Respondent was removed as the trustee. In his disciplinary deposition, respondent testified that in 2004 and again in 2007 to 2008, he wrote checks totaling more than \$180,000 to businesses in which he had an ownership interest and to a business partner. He claimed these were "loans" that had been repaid "a little bit." He did not discuss the advisability of the loans with any of the beneficiaries or obtain court approval. Based on these findings, the master commissioner and board found that respondent violated Prof.Cond.R. 1.15(d), 8.4(c), and Gov.Bar R. V(4)(G). The Court adopted the findings of fact and the violations of Prof.Cond.R. 1.15(d) and 8.4(c). However, a violation of Gov.Bar R. V(4)(G) was not charged by relator, and thus the Court, citing *Simecek* (1998), rejected the finding. In aggravation, respondent engaged in a pattern of misconduct involving multiple offenses, failed to acknowledge the wrongful nature of his conduct, failed to cooperate in the disciplinary investigation, and caused harm to vulnerable victims to whom he failed to make restitution. BCGD Proc.Reg. 10(B)(1)(c), (d), (e), (g), (h), and (i). The board also noted respondent's suspensions for registration and CLE violations, but the court stated "[w]e do not, however, consider a sanction imposed for failure to comply with the CLE requirements of Gov.Bar R. X when we determine a sanction for attorney misconduct. See Gov.Bar R. X(5)(C)." In addition, the Court did find that respondent acted with a selfish motive. BCGD Proc.Reg. 10(B)(1)(b). There were no mitigating factors. Disbarment is the presumptive sanction for misappropriation. See *Kafantaris* (2009), *Dixon* (2002). The court adopted the recommended sanction and so ordered a permanent disbarment.

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**Rules Violated:** Prof.Cond.R. 1.15(d), 8.4(c)

<b>Aggravation:</b> (b), (c), (d), (e), (g), (h), (i)		<b>Mitigation:</b> NONE
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> Yes	<b>Criminal Conduct:</b> NO
<b>Public Official:</b> NO	<b>Sanction:</b> Disbarment	

**Sargeant, Disciplinary Counsel v.**

118 Ohio St.3d 322, 2008-Ohio-2330, Decided 5/20/2008.

Respondent has served as a common pleas court judge since 1979. He allowed six cases (an appeal of a child-support modification order, three divorce cases, a personal injury claim, and a workers' compensation appeal) to languish for an inordinate amount of time. In an appeal of a child-support modification order, he failed to timely take necessary action of the appeal for over 51 months after the final hearing. This unnecessary and unjustified delay violated Canons 3, 3(B)(8), and 3(C)(2). In one divorce case, he failed to make a decision for 20 months after the final hearing. This unnecessary and unjustified delay violated Canons 3, 3(B)(8), and 3(C)(2). In a second divorce case, he failed to issue a final decision until 20 months after the final hearing. This unnecessary and unjustified delay violated Canons 3, 3(B)(8), and 3(C)(2). In a third divorce case, there was a two-year delay from the order granting the divorce until the decision on spousal support. This unjustified and unnecessary delay violated Canons 3, 3(B)(8), and 3(C)(2). In the personal-injury claim lawsuit, respondent unnecessarily delayed proceedings over 18 months. This unjustified delay violated of Canons 3, 3(B)(8), and 3(C)(2). In the workers' compensation appeal, he assumed that parties were exploring settlement during a 22-month period but he failed to ascertain the parties' progress or lack thereof. This unjustified delay violated Canons 3, 3(B)(8), and 3(C)(2). The panel and board adopted the parties consent to discipline agreement which recommended a public reprimand. The Supreme Court of Ohio took judicial notice of statistics as to the judge's case-status reports filed with the Case Management Section. Evid. R. 201(B), (C), Sup.R. 37, 39(A). Respondent frequently kept cases pending for longer than the time guidelines prescribed by the rules of superintendence and he reported a far greater percentage of such pending cases than his peers. No aggravating factors were identified. In mitigation, there was no prior discipline, cooperation and persuasive testimonials. BCGD Proc.Reg. 10(B)(2)(a), (d), and (e). Respondent has hired a law clerk. The court noted that the case is unique because the court has not been presented previously with a recommendation to sanction a judge solely for the failure to manage the docket pursuant to deadlines in the Rules of Superintendence. Violations of Canon 3(B)(8) have been found before but the sanctions have been in response to combined violations of the Code. *Squire* (2007), *Medley* (2004), *Karto* (2002). The Supreme Court of Ohio adopted the consent to discipline agreement and so ordered a public reprimand. One justice dissenting would have remanded the case back to the board for a hearing.

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**Rules Violated:** Code of Judicial Conduct (former) Canons 3, 3(B)(8), 3(C)(2)

<b>Aggravation:</b> (c), (d), (e)		<b>Mitigation:</b> (a), (b), (d), (e), (g)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> YES	<b>Sanction:</b> Public Reprimand		

*Saunders, Greene Cty. Bar Assn. v.*

127 Ohio St.3d 241, 2010-Ohio-5708. Decided 11/30/2010.

Respondent failed to act with diligence, failed to keep his clients reasonably informed about their legal matters and did not cooperate in the disciplinary process. In November 2009, respondent was suspended from the practice of law for failure to register and pay the registration fees. In January 2010, he received an interim-felony suspension in *In re Saunders*, 124 Ohio St.3d 1435, 2010-Ohio-187. Relator charged respondent in a four- count complaint, which went unanswered. A master commissioner granted relator's motion for default and made findings, conclusions, and a recommendation which the Board adopted. In Count One, respondent was hired by a husband and wife to assist with estate-planning matters. He prepared the necessary documents, but kept them in his possession, even after the couple and later the couple's son requested in 2008 that the documents be forwarded to another attorney. Because the documents were never provided, the clients had to have new documents prepared. The board found violations of Prof.Cond.R. 1.4(a)(3), 1.4(a)(4), and 8.1(b). In Count Two, in 2009 a client retained respondent and paid \$1,500 for representation in a divorce. The client tried to contact respondent over 50 times, but respondent never responded, did not provide copies of any documents filed, and failed to attend court proceedings, including the final divorce hearing. The client's lacked funds to hire another attorney and had to represent himself. The board found violations of Prof.Cond.R. 1.3, 1.4(a)(3), and 8.1(b). In Count Three, in 2007, a woman who was attorney for her deceased father's estate hired respondent to prepare the 2006 income tax returns for the estate. Respondent did not return the woman's calls, even when she tried to contact him at the municipal court where he worked as an assistant prosecuting attorney. When she finally did get in touch with him, he said that he had requested an extension of time to file and that she would not have to pay any late fees; but the client avers these facts are untrue. The client retained an accountant to prepare the tax returns and another attorney to finalize the estate. The board found violations of Prof.Cond.R. 1.4(a)(2), 1.4(a)(3), 1.4(a)(4), and 8.1(b). As to Count IV, the board dismissed all but one charge because the relator submitted an affidavit from the grievant's attorney, who did not have personal knowledge of the facts, rather than from the grievant. The board found respondent violated Prof.Cond.R. 8.1(b) by failing to respond to the investigation of the grievance. In aggravation, there were prior disciplinary offenses, dishonest or selfish motive, a pattern of misconduct involving multiple offenses, harm to vulnerable clients, and failure to cooperate in the disciplinary process. BCGD Proc.Reg. 10(B)(1)(a), (b), (c), (d), (e), and (h). There were no mitigating factors. The court, citing *Hoff* (2010) and *Mathewson* (2007), noted that neglect and failure to cooperate generally warrant an indefinite suspension. The court adopted the findings of fact, conclusions of law and recommended sanction and so ordered an indefinite suspension.

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**Rules Violated:** Prof.Cond.R. 1.3, 1.4(a)(2), 1.4(a)(3), 1.4(a)(4), 8.1(b)

<b>Aggravation:</b> (a), (b), (c), (d), (e), (h)		<b>Mitigation:</b> NONE
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> YES
<b>Public Official:</b> YES	<b>Sanction:</b> Indefinite Suspension	

*Sawers, Toledo Bar Assn. v.*

121 Ohio St.3d 229, 2009-Ohio-778. Decided 3/3/2009.

Respondent charged a clearly excessive fee, accepted employment in a legal field in which she was not professionally competent, and failed to deposit unearned fees into a client trust account. Relator and respondent entered into a consent-to-discipline agreement, stipulating to the following facts, misconduct, and recommended sanction. Respondent was previously informally affiliated in the practice of law with Willard A. Johnson. Respondent met John G. and Nancy Mayer at a seminar presented by Willard Johnson & Associates titled “Elder Law Planning Strategies.” Concluding that the Mayers were good candidates for their services, respondent and Johnson met with the Mayers in February 2006 at Johnson’s office. They agreed to prepare for the couple a revocable trust and an irrevocable trust. The Mayers paid Johnson \$9,800. By agreement between themselves and without notice to the Mayers, Johnson kept 65 percent of the Mayers’ \$9,800 fee; respondent received 35 percent. Respondent prepared generic trust documents, making no effort to adapt the documents to the individualized legal needs. For this, Johnson and respondent charged nearly \$10,000. Respondent admitted that she and Johnson had charged an excessive fee. Respondent also admitted that in agreeing to represent the Mayers, she accepted employment for which she had insufficient knowledge and experience. Respondent conceded that she did not realize the adverse federal tax consequence for the Mayer trusts until she met with their financial planner, a revelation that caused the Mayers to ask that the trusts be terminated. Respondent admitted that she deposited \$3,430 directly into her general business account instead of an IOLTA. The panel and the board accepted the consent-to-discipline agreement to a public reprimand for violations of DR 2-106(A) for charging a clearly excessive fee, DR 6-101(A)(1) for accepting employment which she had insufficient knowledge and experience, and DR 9-102(A) for depositing her 35 percent directly into her operating account instead of her IOLTA account. The parties’ consent-to-discipline agreement took into account respondent’s cooperation and lack of a prior disciplinary record, see BCGD Proc.Reg. 10(B)(2)(a) and (d), and her acknowledgement of wrongdoing. Respondent reimbursed the Mayers for the legal fees she received. The Supreme Court accepted the consent-to-discipline agreement and so ordered a public reprimand. See related case, *Toledo Bar Assn. v. Johnson*, 121 Ohio St.3d 226, 2009-Ohio-777.

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**Rules Violated:** DR 2-106(A), 6-101(A)(1), 9-102(A)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Public Reprimand		

**Sayler, Cleveland Metro. Bar Assn. v.**  
125 Ohio St.3d 403, 2010-Ohio-1810. Decided 4/29/2010.

In 2002, respondent was suspended for six months, stayed upon condition of no further violation, for failing to keep clients' funds in an identifiable bank account and failing to appropriately account for the funds. *Cuyahoga Cty. Bar Assn. v. Sayler*, 97 Ohio St.3d 239, 2002-Ohio-5936. In 2006, respondent was suspended for failing to comply with CLE requirements and has not since been reinstated and has not paid sanctions. His registration status is listed as inactive. In this case, respondent committed various violations including practicing law while under suspension, failing to inform clients of no professional liability insurance, neglecting a legal matter, and failing to cooperate. Respondent did not answer relator's complaint and relator moved for default. A master commissioner made findings, conclusions, and a recommendation that the Board adopted. In 2009, respondent raised objections to the Board's report and he noted that he "has a history of depression for which he had been under medical care for some 14 years, of which relator is aware, and while there has been no affect on his practice of law, there has been an inability to face and answer to these disciplinary proceedings." The court granted relator's motion to remand to the board "to consider what effects, if any, Respondent's mental illness may have on his ability to practice law." Relator amended the complaint, respondent answered, and a disciplinary hearing was held. As to Count I, respondent was paid \$500 to represent a client in a divorce case, but he did not inform his client about his May 2006 suspension or that he did not maintain professional liability insurance. He filed an answer in January 2007, but then did not answer the client's messages for three months. Respondent filed a notice of withdrawal as counsel in April 2007, two months after he claimed he first learned about the suspension. The case was scheduled for trial the next day. The client learned of the divorce from his ex-wife. As to Count I, the board found violations of DR 1-104(A), DR 3-101(B), Prof.Cond.R. 1.4(a)(3), and Prof.Cond.R. 1.4(a)(4). In Count II, respondent was paid \$200 toward a total fee of \$500 for representation in a divorce in 2005, but did not inform the client he did not have professional liability insurance. He filed the complaint for divorce in May 2006. He did not sign for the wife's answer that was sent to him by certified mail, did not notify the client of the wife's filing of a motion for temporary support, and did not attend a hearing on the motion. He withdrew from the case in April 2007. He told the client he was dropping the case because of other allegations. He did not tell the client of his license suspension. As to Count II, the Board found violations of DR 1-104(A) and 6-101(A). As to Count III, the Board found violations of Gov.Bar R. V(4)(G) and V(6)(A)(1), as well as Prof.Cond.R. 8.1(b) for not signing for a certified letter sent by relator requesting his written response to allegation in the grievance and in response to another letter sent by regular mail requesting a response to the grievance, he did not submit one even when granted an extension to do so. Board recommended an indefinite suspension. In aggravation, there were previous disciplinary offenses and current CLE suspension, a pattern of misconduct, multiple offenses, and failure to cooperate. BCGD Proc.Reg. 10(B)(1)(a), (c), (d), and (e). There were no mitigating factors. He admitted at the hearing that he was not relying on any claimed medical or mental deficiency to mitigate the misconduct. "I am not coming before this Board and pleading any medical or mental deficiency as I had in the prior case. I believe these are my responsibilities and I will address them. I am under medication for depression I believe it controls my depression and I want to leave it at that." Citation to *Higgins* (2008) and cases cited therein where practice under suspension and failure to cooperate warrants an indefinite suspension; and to *Hoff* (2010) where neglect and failure to cooperate generally warrants an indefinite suspension. Like *Higgins* there are no mitigating factors to warrant a lesser sanction. Supreme Court adopted the Board's finding, conclusions, and recommended sanction and so ordered an indefinite suspension.

**Rules Violated:** Prof.Cond.R. 1.4(a)(3), 1.4(a)(4), 8.1(b); DR 1-104(A), 3-101(B), 6-101(A); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> (a), (c), (d), (e)		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Schiller, Disciplinary Counsel v.*

123 Ohio St.3d 200, 2009-Ohio-4909. Decided 9/23/2009.

Respondent committed multiple violations. Board adopted the panel's findings and recommendations. As to Count I, in three instances, respondent represented clients in filing Chapter 7 bankruptcy cases and failed, despite repeated orders from the bankruptcy trustee, to turn over client tax returns and tax refunds. From each client respondent obtained tax returns and took possession of tax refunds that constituted part of the bankruptcy estate, deposited those amounts into his client trust account, and failed to comply with the trustee and turn over the tax returns and the appropriate portion of the refund. He did not comply until the trustee either obtained a show cause order or conducted a debtor's examination that revealed respondent's possession of the items. He also misappropriated tax refunds in his client trust account and had diverted it to personal purposes or to the representation of other clients. He tried to conceal this by depositing other funds into the trust account at the eleventh hour and wrote checks to the trustee. Board found violations of DR 1-102(A)(4) and Prof.Cond.R. 8.4(c); DR 1-102(A)(5) and Prof.Cond.R. 8.4(d), DR 1-102(A)(6) and Prof.Cond.R. 8.4(h); DR 6-101(A)(3) and Prof.Cond.R 1.3; DR 7-101(A)(3), DR 9-102(B)(3) and Prof.Cond.R. 1.16(d), 1.15(a), and 1.15(d). As to Count II, there were two additional instances where respondent filed bankruptcies on behalf of clients and engaged in similar conduct as Count I and violated the same rules. As to Count III, respondent was paid \$1,199 to represent a couple in filing a Chapter 13 bankruptcy. The trustee filed a notice and ultimately moved to dismiss for failure to include employee income records in the filing. Respondent objected to the motion, but failed to appear at a hearing on the confirmation of the Chapter 13 plan. Court denied the plan and instructed a new one be submitted, but respondent did not submit an amended plan. The court dismissed the case. Respondent told the client he would refile, but did not. After the client filed a grievance, respondent promised to refile, but did not do so and did not return the fee. Board found violations of DR 1-102(A)(5), 1-102(A)(6), 2-110(A)(2), 2-110(A)(3), 6-101(A)(3), 7-101(A)(2), 7-101(A)(3), and 9-102(B)(4). As to Count IV, he was paid a \$1,000 retainer to file a Chapter 13 bankruptcy, but over a six-month period failed to do so. He filed the case after the home had been sold in a sheriff's sale. He told the client she had 60 days to reinstate and save the home. Respondent did not appear at a creditor's meeting, but the client appeared. The court granted the trustee's motion for respondent to disgorge a portion of his fee, but respondent did not comply. The court dismissed the Chapter 13 case, and granted the trustee's motion for contempt order against respondent for failing to disgorge the fee. The court imposed a daily fine until respondent purged the contempt. He purged himself of the contempt but at the date of the stipulation in the disciplinary case still owed \$800. Board found violations of DR 1-102(A)(5) and Prof.Cond.R. 8.4(d); DR 1-102(A)(6) and Prof.Cond.R. 8.4(h); DR 2-110(A)(3) and Prof.Cond.R. 1.16(e); DR 6-101(A)(3) and Prof.Cond.R. 1.3, DR 7-101(A)(2), DR 9-102(B)(4), and Prof.Cond.R. 1.15(d). As to Count V, respondent received \$1,420 for representation in a Chapter 13 bankruptcy case, but failed to provide updated wage information to the trustee, supplied erroneous information on client's earnings to the court which led to a greatly increased wage deduction, avoided client contact, failed to refund unearned fees, and when fired did not give file to the client's new lawyer. Board found violations of DR 1-102(A)(5), 1-102(A)(6), 2-110(A)(3), 6-101(A)(3), 7-101(A)(2), 9-102(B)(3), and 9-102(B)(4). As to Count VI, respondent accepted \$500 of a \$1,100 retainer to file a Chapter 7 bankruptcy, but did not file it by the time a credit card company filed suit against the client in a common pleas court. He promised the client he would appear for him in the suit, but failed to appear for a hearing and a default judgment was entered. The credit card company attached the client's bank account and caused an overdraft. Respondent, by fax, demanded a return of the attached funds. He did not return the client's calls. Board found violations of DR 1-102(A)(5) and Prof.Cond.R. 8.4(d); DR 1-102(A)(6) and Prof.Cond.R. 8.4(h); DR 2-110(A)(2) and Prof.Cond.R. 1.16(d); DR 2-110(A)(3) and Prof.Cond.R. 1.16(e); DR 6-101(A)(3) and Prof.Cond.R. 1.3; DR 7-101(A)(2) and DR 9-102(B)(4), and Prof.Cond.R. 1.16(d). As to Count VII, a client paid respondent \$1,399 to file a Chapter 7 bankruptcy petition, but he did not inform the client that he did not maintain insurance. He met with the client to complete paperwork and told the client it would be filed, but he did not file the petition, failed to respond to the client's inquiries, and failed to refund the fee. Board found violations of Prof.Cond.R. 1.3, 1.4(c),

1.5(a), 1.16(d), 8.4(d), 8.4(h). As to Count VIII, a couple paid respondent \$500 of a \$1,300 retainer to file a Chapter 7 bankruptcy petition file. When creditors started to sue, respondent said he would not represent the client until he received the entire fee, after which the client paid an additional \$900. He did not file the case, failed to return the clients' calls and refused to refund their money. He did not tell them he did not maintain insurance. Board found violations of Prof.Cond.R. 1.3, 1.4(c), 1.5(a), 1.16(e), 8.4(d), and 8.4(h). As to Count IX, he was paid a \$747 retainer and a \$274 filing fee to file a Chapter 7 petition. He never filed and did not return the fee. He failed to disclose he did not carry insurance. Board found violations of Prof.Cond.R.1.3, 1.4(c), 1.4(a), 1.16(d), 1.16(e), 8.4(d) and 8.4(h). As to Count X, he was paid \$1,000 to file a Chapter 7 petition, but did not file the case, did not return calls, and did not refund the unearned fee. He failed to inform the client that he did not maintain insurance. Board found violations of Prof.Cond.R. 1.3, 1.4(c), 1.5(a), 1.15(d), 1.16(d), 1.16(e), 8.4(d), and 8.4(h). In aggravation there is a pattern of misconduct, multiple offenses, and vulnerability and harm to victims. BCGD Proc.Reg. 10(B)(1)(c), (d), and (h). In mitigation there is no prior discipline and cooperation. BCGD Proc.Reg. 10(B)(2)(a) and (d). Supreme Court of Ohio agreed with the findings and the Board's recommended sanction of an indefinite suspension and so ordered an indefinite suspension with full restitution of \$6,945 to clients. The court quoted *Smith* (2008) in which the court observed that "accepting retainers or legal fees and failing to carry out contracts of employment is tantamount to theft of the fee from the client."

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**Rules Violated:** Prof.Cond.R. [1.3](#), [1.4\(a\)](#), [1.4\(c\)](#), [1.5\(a\)](#), [1.15\(a\)](#), [1.15\(d\)](#), [1.16\(d\)](#), [1.16\(e\)](#), [8.4\(c\)](#), [8.4\(d\)](#), [8.4\(h\)](#); DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 2-110(A)(2), 2-110(A)(3), 6-101(A)(3), 7-101(A)(2), 7-101(A)(3), 9-102(B)(3), 9-102(B)(4)

<b>Aggravation:</b> (c), (d), (h)		<b>Mitigation:</b> (a), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Schmaltz, Cincinnati Bar Assn. v.*

123 Ohio St.3d 130, 2009-Ohio-4159. Decided 8/29/2009.

Respondent and relator entered a consent-to-discipline agreement which the panel and board adopted. Respondent was appointed to represent a criminal defendant on two separate indictments. In March 2007, both cases were tried to a jury. As to the first indictment, the jury acquitted the defendant. As to the second indictment, the jury acquitted the defendant on all but two charges on which the jury could not reach a verdict. The defendant declined the prosecutor's offered plea bargain with respect to those remaining charges that would have required him to serve two years. Respondent consistently advised the client to accept the offer. In November 2007, at a second trial, the defendant was convicted and sentenced to five years and five months in prison. Respondent then filed a grievance stating that respondent had engaged in a romantic relationship with him, that the relationship left him vulnerable, created a conflict of interest, and motivated the respondent to seek acquittal so the two could be together rather than accept the plea bargain. During relator's first investigation, respondent was unrepresented and stated she had a "friendship" with the client. Later, an attorney investigating the defendant's allegations for the trial judge gave a CD with recordings of over 50 hours of respondent's and defendant's phone calls that had been monitored by the sheriff's department with the knowledge of the participants. The calls contained explicit descriptions of sexual acts and professions of love between respondent and defendant, including at least three calls in which respondent requested and/or engaged in telephonic sexual activity with the client. In response to relator's interrogatories, respondent admitted she engaged in "personal conversations" that were "inappropriate." After the CD was given to respondent's counsel, relator conducted a second interview with respondent and she acknowledged the sexual component of the relations and admitted she discussed the possibility of pursuing the relationship following his release from custody and she stated "I screwed up. I got too close." As part of the consent-to-discipline agreement the parties stipulated that respondent's initial minimization of the relationship as an aggravating factor, and her full disclosure and no prior discipline as mitigating factors. BCGD Proc.Reg. 10(B)(1)(f), 10(B)(2)(a) and (d). Under the consent-to-discipline agreement respondent admits violations of the oath of office, Prof.Cond.R. 1.7(a)(2), and 1.8(j) and agrees to a public reprimand. The Supreme Court of Ohio adopted the consent-to-discipline agreement and so ordered a public reprimand. The court found this case more similar to sexual misconduct cases in which attorneys have been publicly reprimanded [DiPietro (1994) and Engler (2006)] than sexual misconduct cases in which attorneys have been suspended [Krieger (2006)] and permanently disbarred [Sturgeon (2006)]. The court noted that respondent, in spite of improprieties, effectively performed her function as an attorney and a public reprimand will adequately deter her from further violations.

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**Rules Violated:** Prof.Cond.R. 1.7(a)(2), 1.8(j)

<b>Aggravation:</b> (f)		<b>Mitigation:</b> (a), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Public Reprimand		

*Schram, Dayton Bar Assn. v.*

122 Ohio St.3d 8, 2009-Ohio-1931. Decided 4/30/2009.

Respondent failed to file federal, state, and municipal income taxes for over 20 years, failed for much of that time to pay federal withholdings for her employees, and has been convicted of federal tax crimes as a result. On August 30, 2007, the court suspended respondent pursuant to Gov.Bar R. V(5)(A)(4) upon receiving notice that she had been convicted of a felony, failing to pay federal withholding for her employees. *In re Schram*, 114 Ohio St.3d 1517, 2007-Ohio-4425, 872 N.E.2d 956. Respondent's license is also under suspension for failure to register as an attorney for the 2007-2009 biennium. *In re Atty. Registration Suspension of Schram*, 116 Ohio St.3d 1420, 2007-Ohio-6463, 877 N.E.2d 305. For most of her career, respondent has been a domestic relations lawyer in solo practice. From 1979 through 2001, respondent did not file federal, state, and municipal tax returns. For roughly the same period, respondent did not withhold federal income taxes or pay FICA contributions for her employees. In 2002, she turned herself in to federal tax authorities and later filed delinquent returns for 1989 through 2001. On June 5 2007, respondent pleaded guilty to a violation of 26 U.S.C. § 7202 (willful failure to collect or pay over tax), a felony, for failing to pay \$8,451.97 in withholdings for the second quarter of 2002. She also pleaded guilty to a violation of 26 U.S.C. § 7203 (failing to file tax return), a misdemeanor, for failing to report her \$250,485 gross income in 1999. Respondent has completed her sentence of one year's imprisonment. As part of her sentence, respondent is required to pay restitution to the Internal Revenue Service and she still owed approximately \$200,000 at the date of the hearing. The board found violations of DR 1-102(A)(4) and (6). The Supreme Court accepted the Board's findings. In aggravation, the court discussed respondent's long, 20-year history of breaching duties owed to the public and the legal profession. The court also discussed her willful intent to evade tax and withholding obligations, denying her employees their Social Security contributions, while she enjoyed the advantages of living tax-free. In comparing prior cases, the court noted that respondent defaulted for far longer than any lawyer in prior cases. Citations to *Freedman* (2005), *Lewis* (1999), *Veneziano* (2008), *Abood* (2004), *Bruner* (2003). Other aggravating factors include respondent's previous disciplinary record in *Dayton Bar Assn. v. Schram*, 98 Ohio St.3d 512, 2003-Ohio-2063 (a public reprimand for collecting a nonrefundable legal fee in a divorces case) and incomplete restitution. BCGD Proc.Reg. 10(B)(1)(a) and (i). In mitigation, respondent offered letters commending her competence and dedication to clients and her philanthropic contributions to the community. She cooperated with the disciplinary investigation, and penalties have been imposed for her misconduct. BCGD Proc.Reg. 10(B)(2)(d), (e), and (f). The board recommended permanent disbarment. The Supreme Court adopted this recommendation and so ordered.

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**Rules Violated:** DR 1-102(A)(4), 1-102(6)

<b>Aggravation:</b> (a), (i)		<b>Mitigation:</b> (d), (e), (f)	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> NO	<b>Sanction:</b> Disbarment		

*Schramski, Allen County Bar Assn. v.*  
124 Ohio St.3d 465, 2010-Ohio-630. Decided 3/2/2010.

Respondent commingled her funds with clients' funds and failed to notify clients she had no professional malpractice insurance. Respondent filed a lawsuit in April 2008 alleging that she purchased several vehicles, made payments, but never received the titles. Respondent attached copies of checks to her complaint in the matter; the checks were from both her personal account and her IOLTA. The checks were dated for September, October, and November of 2003. Relator and respondent stipulated that respondent used earned fees still deposited in her IOLTA, not client funds to purchase the vehicles. Respondent did not maintain appropriate record keeping of her IOLTA. During the investigation, relator found that respondent had never maintained proper liability insurance and failed to notify clients of this. Respondent admitted she violated DR 9-102 and Prof.Cond.R. 1.15 and DR 1-104 and Prof.Cond.R. 1.4(c). The board adopted the panel's findings of violations of Prof.Cond.R. 1.15 and 1.4(c). The panel omitted the DR violations, viewing the violations as continuing and constituting only one rule violation in each count. The court found violations of DR 9-102 and Prof.Cond.R. 1.15 and DR 1-104 and Prof.Cond.R. 1.4(c). The court noted that the board cited *Halliburton-Cohen* (2002) and *Croushore* (2006), which involved similar misconduct to that of the respondent. Both cases ordered a one-year suspension conditionally stayed, and involved lawyers who failed to properly account for and maintain their IOLTA. Further, in both cases and at present, the lawyer's failure to maintain the IOLTA was not done out of dishonesty, but rather ignorance of professional bookkeeping responsibilities. Respondent's case was different because she failed to notify her clients that she lacked liability insurance, and she failed to file various tax returns for the past several years. Like *Halliburton-Cohen* (2002) and *Croushore* (2006), respondent's lack of prior disciplinary record and cooperation during the disciplinary process are mitigating factors. BCGD Proc.Reg. 10(B)(2)(a) and (d). The Court found *Halliburton-Cohen* and *Croushore* instructive, and ordered that respondent be suspended for one year, stayed on the conditions that respondent: 1) commit no further misconduct, 2) complete an additional 6 hours of CLE in law-practice management and the proper use of an IOLTA, 3) conform her office and accounting procedures to professional standards acceptable to relator, 4) submit an independent audit of her IOLTA to the relator, 5) provide proof to the relator that she filed her delinquent tax returns, and 6) complete a two-year probationary period under the oversight of the relator pursuant to Gov.Bar R. V(9). So ordered.

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**Rules Violated:** Prof.Cond.R. 1.4(c), 1.15; DR 1-104, 9-102

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> One-year suspension, stayed		

*Scott, Toledo Bar Assn. v.*

129 Ohio St.3d 479, 2011-Ohio-4185. Decided 8/25/2011.

Respondent misused his trust account, requested a notary to improperly notarize a document, provided false information to a disciplinary authority, failed to notify his client that he lacked professional liability insurance, and failed to maintain adequate client financial records. The parties stipulated to the facts and misconduct. In Count 1, respondent was hired to try an aggravated murder case; respondent had never tried a murder case before. Respondent obtained a power of attorney and made several ATM withdraws, which he did not deposit into his trust account. Respondent closed his client's 401(k) and deposited it into respondent's operating account, despite not earning that fee. Respondent also obtained tickets from respondent's home and used them. Respondent obtained possession of two of his client's cars by having a notary improperly notarize the client's signature. During the investigation, respondent fabricated bills that were purported given to his client, but were actually prepared solely to give to relator. Respondent received ~\$21,900 from his client that is unaccounted for. In Count 2, respondent failed to tell a second client that he lacked professional liability insurance. In Count 3, respondent allowed for an automatic deduction to come out of his IOLTA account, and these automatic debits caused the account to become overdrawn, even though it should have contained clients' money. The conduct in these counts violated Prof.Cond.R. 1.4 (failure to notify of lack of liability insurance), 1.15(a) (safeguard of client's property), 1.15(c) (fees must be separate until earned), 8.1(a) (false statements to a disciplinary authority), and 8.4(h) (conduct adversely reflecting on fitness to practice law). The Court agreed with the above findings. In aggravation, respondent acted with dishonest or selfish motive, engaged in multiple offenses, and fabricated evidence during the disciplinary process. BCGD Proc.Reg. 10(B)(1)(b), (d), (f). In mitigation, respondent lacked a prior disciplinary record, made timely restitution, and cooperated with the disciplinary process. BCGD Proc.Reg. 10(B)(2)(a), (c), (d). The parties agreed to a one-year suspension with 6 months stayed, on the conditions of one year of mentoring, and 3 hours of CLE in law office management, and the board so recommended. The Court noted that the violations seemed in line with the recommended sanction, however, noted that the facts of this case "depict misconduct of a very serious nature." Citing *McMahon* (2007), *Blair* (2011), *Gross* (1991), *Farrell* (2008), and *Archer* (2011), the Court rejected the board's recommendation and instead imposed a two-year suspension with 12 months stayed on the conditions that he submit to 6 months of monitoring and obtain 3 hours of CLE in law office management.

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**Rules Violated:** Prof.Cond.R. [1.4](#), [1.15\(a\)](#), [1.15\(c\)](#), [8.1\(a\)](#), [8.4\(h\)](#)

<b>Aggravation:</b> (b), (d), (f)		<b>Mitigation:</b> (a), (c), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Two-year suspension, 12 months stayed</a>		

*Shaver, Disciplinary Counsel v.*

121 Ohio St.3d 393, 2009-Ohio-1385. Decided 4/1/2009.

Respondent failed to properly dispose of confidential client files and other materials. A panel of the board considered the case on the parties' joint stipulations of fact and misconduct and a joint recommendation for a public reprimand. Respondent served as the mayor of Pickerington at all times relevant to this case. In the spring of 2007, respondent moved his law office from a Columbus Street location to another location in the city. He continued to lease the garage behind the Columbus Street address, storing an estimated 500 boxes of records in that space on a month-to-month basis. In late June 2007, the owner of the Columbus Street property sold the garage and advised respondent to remove the records. The new owner and her tenant took possession shortly thereafter and began preparing the space for their businesses. In early July 2007, respondent brought a crew to assist him in removing the many boxes. He took some boxes with him, placing them in a moving truck, but he put some boxes in a nearby dumpster and left approximately 20 other boxes beside the dumpster. The new tenant, who had worked as a paralegal, had misgivings about respondent's disposal method. She examined the contents of several of the boxes left by the dumpster and realized the boxes contained client materials including confidential information. Concerned that those boxes beside the dumpster might not be taken away with those in the dumpster and that client confidences might be compromised, the tenant and her husband returned them to the garage. The former owner of the garage, upon receiving notice that respondent had left the boxes of client records and also furniture and computers in the garage, paid to have those items hauled away. Neither the property owners nor the new tenant contacted respondent again about his failure to remove all the contents of the garage. An anonymous tipster contacted a television station and the tip led to television and newspaper stories. A television reporter took two boxes of the files to her office for the story, but has since turned them over to relator. In his agreed stipulations, respondent admitted that he failed to ensure the proper disposal of client files, records, and related materials. The board adopted the panel's findings and recommendation. The board recommended a public reprimand for respondent's violation of Prof.Cond.R. 1.6(a) prohibiting a lawyer from revealing information relating to the representation of a client and 1.9(c)(2) prohibiting a lawyer who has formerly represented a client from revealing information relating to that representation. No aggravating factors were found. Mitigating factors were respondent's history of public service and the absence of a prior disciplinary record. BCGD Proc.Reg. 10(B)(2)(a). The Supreme Court agreed and so ordered a public reprimand.

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**Rules Violated:** Prof.Cond.R. [1.6\(a\)](#), [1.9\(c\)\(2\)](#)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> YES	<b>Sanction:</b> <a href="#">Public Reprimand</a>		

*Shaw, Disciplinary Counsel v.*

126 Ohio St.3d 494, 2010-Ohio-4412. Decided 9/23/2010.

Respondent named his children as beneficiaries to a client's trust, borrowed money from the same client without advising her of the conflict of interest and failed to repay the loan, and accepted attorney's fees in a guardianship matter involving an elderly woman without the appropriate court approval. In Count I, respondent's elderly client asked him to draft a power of attorney and revocable trust which he prepared naming himself as attorney-in-fact, co-trustee, and first successor trustee to the trust. Purportedly at the client's behest, respondent named his five children as beneficiaries of the trust, each to receive \$5,000. He admitted he did not inform the client of the inherent conflict of interest and never suggested she get advice from a disinterested person or have another attorney prepare the documents. The board adopted the panel's findings of violations of DR 1-102(A)(5), 1-102(A)(6), 5-101(A)(1), and 5-101(A)(2). In Count II, respondent in 2000 borrowed \$13,000 from the same client in Count I; he was to repay the loan in six months at 6% interest. Respondent failed to pay the loan as agreed; he later agreed to repay the loan in \$250 monthly installments, for which he made only three payments. In 2002, the client sued respondent and got a default judgment for \$13,000 plus interest. Respondent admitted to not advising the client to get outside counsel, not explaining to her the risks of making an unsecured loan, and not discussing the inherent conflict of interest. The board adopted the panel's findings of violations of DR 1-102(A)(5), 1-102(A)(6), 5-101(A)(1), and 5-104(A). The court agreed with these violations. But, the court noted that there was no evidence in the record to support the board's finding that the debt was discharged in a bankruptcy proceeding. The court rejected the finding that the debt was discharged in bankruptcy. The court noted the probate court concluded that pursuant to Section 523(a)(4), Title 11, U.S.Code, the debt was nondischargeable because "it arose from the debtor's defalcation while acting in a fiduciary capacity." The probate court ordered respondent to pay \$12,240 to the trust. *Miller v Lagos* (Feb. 8, 2008), Trumbull C.P. No. 2007 CVA 0045. The court of appeals affirmed the probate court's judgment against respondent. *Miller v. Lagos*, Trumbull App. No. 2008-T-0014, 2008-Ohio-5863. In Count III, respondent failed to respond to two letters of inquiry, but later responded to relator, appeared for deposition, and fully cooperated. The panel recommended dismissal of Count III which charged violations of Prof.Cond.R. 8.4(h) and Gov.Bar R. V(4)(G). The board did not expressly dismiss Count III, but did adopt the panel's findings of fact and conclusions. Because the Court also adopted the findings of fact it dismissed Count III. In Count IV, two clients sought guardianship of their grandmother in January 2007. She died in May 2007, just days after the guardianship was obtained. In May 2007, respondent accepted \$800 for "attorney fees" and another \$1,200 for "legal fees: expenses" without prior probate court approval. In October 2007, respondent filed an application for attorney's fees in probate court, seeking \$4,668, in addition to the \$2,000 the clients had already paid. The court found respondent "guilty of concealment of assets" for receiving the \$800 and \$1,200. The court approved only \$800 of the attorney-fee request and ordered respondent to reimburse \$1,200 to the ward's estate. *Smith v. Thornton* (Dec. 8, 2008), Trumbull P.C. No. 2008-CVA-38, at 2. Respondent admitted at the disciplinary hearing that he had not complied with the court's order. The board adopted the panel's findings of violations of Prof.Cond.R. 3.4(c), 8.4(d), and 8.4(h). The court agreed. In mitigation, respondent had no prior discipline in 30 years. BCGD Proc.Reg. 10(B)(2)(a). In aggravation, respondent: engaged in multiple offenses and a pattern of misconduct, harmed a vulnerable client, and failed to make restitution. BCGD Proc.Reg. 10(B)(1)(c), (d), (h), and (i). He attempted to minimize the misconduct by claiming to have a "close personal relationship." He claimed the client was "very sharp mentally" and he was not trying to take advantage of her, but he also acknowledged the client was vulnerable and that he was trying to protect her from others who were trying to take advantage of her. The panel recommended a two-year suspension with one year stayed on condition of restitution to the client in Count IV, but expressly refused to recommend restitution to the first client because of the bankruptcy discharge and refused to recommend he complete his OLAP contract because it was unclear which issues that contract was intended to address. The board recommended a two-year suspension with no stay and reinstatement conditioned on restitution to the client in Count IV. Respondent, who now has obtained counsel, requested a remand to present evidence of character and reputation, community

involvement, payment of restitution, and furtherance of his OLAP contract. He contended that he was not capable of either obtaining counsel or presenting mitigation because of emotional distress, extreme financial difficulties, and inexperience in dealing with disciplinary matters. The court cited cases where respondent was permitted to supplement the record. But, the court noted that respondent has had two opportunities to present evidence-when he failed to appear at the first date of the panel hearing, the panel delayed ruling and he was given a second chance to present his case. He was advised by an OLAP employee to obtain counsel, but he appeared pro se. Respondent also contended that the sanction from the Board was too severe and that the board erroneously departed from the panel's recommended sanction based upon its finding that he had committed "serious acts of fraud." The court agreed that the board's finding of "serious acts of fraud" is not supported by the record and cannot support its upward deviation the panel's recommended sanction. The court agreed with the panel's recommended sanction and ordered a suspension for two years, with one year stayed on the conditions that he commit no further misconduct, pay restitution of \$1,200 to the client in Count IV, and either pay restitution of \$12,250 to estate of the client in Count II, or submit evidence that the financial obligation was discharged in bankruptcy. One justice dissented and would have suspended the respondent for two years.

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**Rules Violated:** Prof.Cond.R. 3.4(c), 8.4(d), 8.4(h); DR 1-102(A)(5), 1-102(A)(6), 5-101(A)(1), 5-101(A)(2), 5-104(A)

<b>Aggravation:</b> (c), (d), (h), (i)		<b>Mitigation:</b> (a)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Two-year suspension, 12 months stayed		

*Shea, Columbus Bar Assn. v.*

117 Ohio St.3d 55, 2008-Ohio-263. Decided 1/30/2008.

Respondent and another attorney (Masello) left a law firm and formed their own firm. There was animosity between respondent and the former employer/partner of the firm. Respondent and Masello began practicing in the area of crime-victims compensation law, directly competing with the former firm. Respondent was owed money for work performed while with the firm. Respondent and Masello believed the former employer engaged in unethical and unprofessional conduct and they attempted to build a disciplinary case against the former employer. They searched the Licking County Website and found that a child-support action was pending against the former employer. Masello traveled to the county child support enforcement agency to request a copy of a notice of default filed against the former employer for failure to pay child support. The CSEA attorney refused to give him a copy, explaining that the notice was confidential. Masello told respondent he was unable to obtain the default notice. Respondent went to the CSEA the next day and tried to get a copy of the notice. Respondent falsely told the CSEA that he represented the ex-wife in the child support litigation. Respondent denied knowing Masello and the former employer. The CSEA attorney was suspicious of his story and told respondent he would need a signed form from the ex-wife or a notice of appearance. Respondent indicated he would provide proof. The CSEA attorney subsequently learned respondent did not represent the ex-wife and that he had lied about not knowing Masello and the former employer. The CSEA attorney, on advice of Disciplinary Counsel, filed this grievance. Respondent, after forming the law firm with Masello, did not carry malpractice insurance and failed to notify his client that he was not covered. Panel and Board found a violation of DR 1-102(A)(4), 1-102(A)(6), and DR 1- 104(A). In aggravation, respondent acted dishonestly. BCGD Proc.Reg. 10(B)(1)(b). But, his misconduct was short-lived and harmed no one. Cf. BCGD Proc.Reg. 10(B)(1)(h). In mitigation, there was no prior disciplinary record and he cooperated fully in the disciplinary proceedings. BCGD Proc.Reg. 10(B)(2)(a) and (d). He has a good reputation in his area of practice and people attested to his professionalism and competence. BCGD Proc.Reg.(10)(B)(2)(e). Board adopted panel's recommendation of a public reprimand. Supreme Court of Ohio agreed with the findings of violations of DR 1-102(A)(4), 102(A)(6), and DR 1-104(A) and sanction of a public reprimand and so ordered. The court noted that violations of DR 1-102(A)(4) usually require an actual suspension. Respondent's conduct, while not condoned, involved only a brief conservation and he did not engage in a course of conduct. The mitigation evidence weighs against an actual suspension. Citation to *Fumich* (2007), *Fowerbaugh* (1995).

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**Rules Violated:** DR 1-102(A)(4), 1-102(A)(6), DR 1- 104(A)

<b>Aggravation:</b> (b)		<b>Mitigation:</b> (a), (d), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Public Reprimand		

*Sherman, Cleveland Metro. Bar Assn. v.*  
126 Ohio St.3d 20, 2010-Ohio-2469. Decided 6/9/2010.

Respondent dismissed a cause of action without his client's consent and failed to notify another client that he lacked professional liability insurance. Relator and respondent entered into a consent-to-discipline agreement. In January 2007, respondent agreed to represent a client in a personal injury case and filed a complaint. In November 2007, respondent dismissed the client's case without notifying the client or obtaining the client's consent; respondent believed the dismissal was in the best interest of the client. The parties stipulated that this violated Prof.Cond.R. 1.2(a), 1.3 and 1.4(a)(3). In May 2007, respondent mistakenly failed to inform a second client that he did not maintain professional-liability insurance. The parties stipulated that this violated Prof.Cond.R. 1.4(c). The parties stipulated that there were no aggravating factors; in mitigation, there were lack of a prior disciplinary record, no dishonest or selfish motive, full and free disclosure and cooperation with the disciplinary process, and the respondent's temporary disability due to two major surgeries during the time of the misconduct. BCGD Proc.Reg. 10(B)(2)(a), (b), and (d). Pursuant to the consent-to-discipline agreement respondent would be suspended for nine months, all stayed. This sanction is consistent with the six-month stayed suspensions imposed in *Drain* (2008) and *Thomas* (2010). The Board recommended adoption of the consent-to-discipline agreement. The court accepted the consent-to-discipline agreement and so ordered that respondent be suspended for nine months, all stayed on the condition that he abstain from any further misconduct.

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**Rules Violated:** Prof.Cond.R. 1.2(a), 1.3, 1.4, 1.4(a)(3)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (b), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Nine-month suspension, stayed</a>		

*Shuler, Disciplinary Counsel v.*

129 Ohio St.3d 509, 2011-Ohio-4198. Decided 8/30/2011.

Respondent failed to act with reasonable diligence, keep the client informed about the matter, promptly deliver property to his client, respond to the ensuing disciplinary investigation and engaged in conduct that adversely reflects on his fitness to practice law. The parties stipulated to the facts, exhibits, and misconduct. In Count One, respondent received a \$10,000 retainer, which he billed against without sending the client billing statements. Respondent later stopped communicating with the client and failed to return unused retainer funds. Respondent failed to respond to relator's letter of inquiry, but later cooperated and made restitution to his client. This conduct was found to have violated Prof.Cond.R. 1.3 (reasonable diligence and promptness); 1.4(a)(2), (3), and (4) (consult with a client concerning objectives, keep the client reasonably informed and comply with reasonable requests for information); 1.15(d) (promptly deliver client's property); 8.1 (failing to respond in a disciplinary investigation); 8.4(h) (conduct that adversely reflects on the lawyer's fitness to practice law). In Count Two, respondent agreed to represent a client in a defective materials case regarding the repair of a car. Respondent received no fees, but eventually stopped communicating with his client. Respondent initially failed to respond to the letter of inquiry regarding this misconduct. This conduct was found to have violated Prof.Cond.R. 1.3 (reasonable diligence and promptness); 1.4(a)(2), (3), and (4) (consult with a client concerning objectives, keep the client reasonably informed and comply with reasonable requests for information); 1.15(d) (promptly deliver client's property); 8.1 (failing to respond in a disciplinary investigation); 8.4(h) (conduct that adversely reflects on the lawyer's fitness to practice law). The Court adopted these findings. There were no aggravating factors. In mitigation, respondent had no prior disciplinary record, no dishonest or selfish motive, presented evidence of good character and had a diagnosed mental illness. BCGD Proc.Reg. 10(B)(2)(a), (b), (e), (g). Respondent and relator agreed on a six-month suspension, stayed on successful completion of a three-year OLAP contract. The panel, board, and Court agreed. Citing *Chambers* (2010) and *Rutherford* (2006), the Court ordered the six-month suspension, but stayed it on the conditions of completion of a three-year OLAP contract and no further misconduct.

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**Rules Violated:** Prof.Cond.R. 1.3, 1.4(a)(2), 1.4(a)(3), 1.4(a)(4), 1.4(c), 1.15(d), 8.1, 8.4(h)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (b), (e), (g)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Six-month suspension, stayed		

*Siehl, Disciplinary Counsel v.*

123 Ohio St.3d 480, 2009-Ohio-5936. Decided 11/18/2009.

Respondent deserted an incarcerated client seeking post-conviction relief and failed to respond to the disciplinary investigation. Upon granting relator's motion for default, a master commissioner made findings, conclusions, and a recommendation all of which the Board adopted. As to Count I, in January 2008, respondent was appointed to represent an incarcerated client in post-conviction proceedings, but when the client wrote to respondent in January and February asking to discuss the case, respondent filed to respond and never filed anything on the client's behalf. Board found violations of Prof.Cond.R. 1.3 and 1.4(a)(3) and (4) for doing nothing for the client and a violation of Prof.Cond.R. 8.4(d) and (h) by failing to honor his court appointment. As to Count II, during the disciplinary investigation respondent ignored virtually all notice of that proceeding. He replied once in mid-August 2008 by promising to "take care of it" when relator's investigator personally delivered notice of the grievance. Board found a violation of Prof.Cond.R. 8.1(b) and 8.4(d) and (h). In mitigation, there was no prior discipline. BCGD Proc.Reg. 10(B)(2)(a). The Board found that this one mitigating factor did not warrant a departure from *Boylan* (1999) in which an indefinite suspension was ordered for similar misconduct of neglect and failure to cooperate by a court appointed attorney. The Supreme Court of Ohio agreed with the findings, conclusions, and recommended sanction and so ordered an indefinite suspension.

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**Rules Violated:** Prof.Cond.R. 1.3, 1.4(a)(3), 1.4(a)(4), 8.1(b), 8.4(d), 8.4(h)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Siewert, Disciplinary Counsel. v.*

130 Ohio St.3d 402, 2011-Ohio-5935. Decided 11/23/2011.

Respondent engaged in a sexual relationship with one of his clients. Respondent was previously suspended for two years with 18 months stayed in 1988. The parties entered into a consent-to-discipline agreement and jointly recommended a six-month stayed suspension. Respondent took a divorce case; he paid for chemical dependency treatment for the client and later engaged in a sexual relationship with her. This conduct violated Prof.Cond.R. 1.7(a)(2) (personal interests limit ability to practice), 1.8(j) (sexual activity with a client), 8.4(d) (conduct prejudicial to the administration of justice), 8.4(h) (conduct adversely reflecting on fitness to practice law). The Court agreed with the above findings. In aggravation, respondent has a prior disciplinary history. BCGD Proc.Reg. 10(B)(1)(a). In mitigation, respondent lacked a dishonest or selfish motive, provided full and free disclosure to disciplinary counsel, and presented evidence of good character. BCGD Proc.Reg. 10(B)(2)(b), (d), (e). Respondent had also recently lost his wife to cancer before he met his client and was suffering from depression. The board accepted the consent-to-discipline agreement. The Court noted that usually this conduct deserves a public reprimand. *See DePietro* (1994), *Paxton* (1993), and *Ressing* (1990). However, since respondent has a prior disciplinary record, the Court agreed with the board and accepted the consent-to-discipline agreement.

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**Rules Violated:** Prof.Cond.R. 1.7(a)(2), 1.8(j), 8.4(d), 8.4(h)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a)	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Six-month suspension, stayed		

*Simmons, Disciplinary Counsel v.*

120 Ohio St.3d 304, 2008-Ohio-6142. Decided 12/3/2008.

Respondent represented two clients in Michigan, while under suspension from the practice of law in Ohio and not licensed in Michigan. Respondent was suspended from the practice of law in Ohio for failing to comply with the registration requirements of Gov.Bar R. VI(6)(B) in December 2005. *In re Attorney Registration Suspension*, 107 Ohio St.3d 1431, 2005-Ohio-6408, 838 N.E.2d 671. He was reinstated in June 2006. *In re Reinstatement of Simmons*, 110 Ohio St.3d 1424, 2006-Ohio-3648, 850 N.E.2d 1217. Respondent and relator waived a hearing on the two count complaint and submitted this matter to the panel on their stipulations of fact and law, including a recommended sanction. In Count I, respondent represented a client in the family division of a Michigan court in April 2006. At that time, he was suspended from the practice of law in Ohio and did not have a license to practice in Michigan. He submitted a request for a hearing that identified himself and his sister, Jessica R. Simmons, as the attorneys of record, affiliated with "Simmons & Simmons, LPA" in Detroit. Although Jessica R. Simmons is licensed to practice law in Michigan, at no time did she participate in a law firm known as "Simmons & Simmons," represent that client, or approve respondent's use of her name and bar number on any of the pleadings. Respondent appeared in the Michigan court on January 16, 2007, without informing the court that he was not licensed to practice law in Michigan. Respondent negotiated a settlement with the client's former spouse and submitted the amended order for parenting time to the court for signature. The court discovered respondent's lack of license before the amended order was signed. The judge refused to sign the amended order until the client appeared on his own behalf to sign the document or hire a licensed attorney. On January 25, 2007, Jessica Simmons wrote to respondent asking him to stop using her name and noting that "Simmons & Simmons" never existed. In Count II, respondent filed a motion for substitution of counsel and an entry of appearance on behalf of a different client in a criminal matter pending before another court in Michigan in January 2006. Respondent again falsely represented that Jessica Simmons of "Simmons & Simmons" was the counsel of record. He also falsely represented that Jessica Simmons was requesting the court permit him to act as counsel for the client in the pending matter and signed her name to the request. The county prosecutor filed a motion requesting respondent be removed as counsel, indicating that respondent had been suspended from the practice of law in December 2005, and that he and Jessica Simmons be found in contempt of court. Respondent informed the court that Jessica Simmons was unaware that his license had been suspended when he filed the motions using her name. Respondent was fined \$1,150 for contempt and ordered to pay \$250 in restitution to the county prosecutor's office. Per the stipulations, the board found violations of DR 1-102(A)(4), DR 1-102(A)(5), and DR 3-101(B). The Supreme Court agreed. In mitigation, the parties stipulated that respondent had paid fines for his misconduct. BCGD Proc.Reg. 10(B)(2)(f). The board in adopting the panel's findings and recommendations found the parties joint recommendation of a one-year suspension with six months stayed acceptable and recommended it to the Court. The court, citing to *Fowerbaugh* (1995), noted that violations of DR 1-102(A)(4) warrant an actual suspension. The Supreme Court agreed with the Board's recommended sanction and so ordered a one-year suspension with six months stayed.

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**Rules Violated:** DR 1-102(A)(4), DR 1-102(A)(5), DR 3-101(B)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (f)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> One-year suspension, 6 months stayed		

*Simon, Disciplinary Counsel v.*

128 Ohio St.3d 359, 2011-Ohio-627. Decided 2/16/2011.

Respondent misused his client trust account as a personal bank account and law-office operating account and failed to respond to relator's request for information during the disciplinary investigation. The parties entered a consent-to-discipline agreement which the Board adopted. From March 2007 to December 2008, respondent deposited into client trust account both personal and client funds, including attorney fees and retainers, and money from his PERS account. From June 2005 to March 2009, respondent wrote checks to himself, his wife, and his creditors from his client trust account. Respondent, during the disciplinary investigation, assured relator he would provide but failed to timely provide relator with copies of his 2005 through 2008 income tax returns. He did provide them prior to the consent-to-discipline agreement. Relator stated that there is no evidence that respondent used his IOLTA account as an IRS tax shelter. Respondent's conduct violated DR 1-102(A)(6), DR 9-102(A); Prof.Cond.R. 1.15(a) and 8.4(h); and his failure to provide information requested by relator violated 8.1(b); 8.4(d), 8.4(h); and Gov.Bar R. V(4)(G). Neither the parties nor the board found any aggravating factors, but the court noted a pattern of misconduct. BCGD Proc.Reg. 10(B)(1)(c). In mitigation, there is a lack of prior disciplinary record, a lack of a dishonest or selfish motive, and good character and reputation. BCGD Proc.Reg. 10(B)(2)(a), (b), and (e). The parties stipulated to a one-year, stayed suspension, to which the board agreed. The court, in comparing this case to *Johnson (2009)*, found the sanction appropriate. The court adopted the consent-to-discipline agreement and so ordered a one-year suspension stayed on condition of no further misconduct.

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**Rules Violated:** Prof.Cond.R. [1.15\(a\)](#), [8.1\(b\)](#); [8.4\(d\)](#), [8.4\(h\)](#); DR 1-102(A)(6), 9-102(A); Gov.Bar R. [V\(4\)\(G\)](#)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (b), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">One-year suspension, stayed</a>		

*Slavin, Cleveland Bar Assn. v.*

121 Ohio St.3d 618, 2009-Ohio-2015. Decided 5/6/2009.

Respondent has been in private practice since 1980 mostly representing clients in juvenile and domestic-relations matters, but occasionally taking personal-injury, bankruptcy, criminal, probate, collections, and landlord-tenant cases. In 2003, he agreed to represent Pinkie McClinton in a personal-injury action arising from an accident in Michigan where she fell in the aisle of a bus that stopped suddenly. In 2004, he sent her medical records and bills to the bus company. He then neglected her case, not filing the case until March 2006. In May 2006, the Cuyahoga County Court of Common Pleas granted the bus company's motion to dismiss, finding the applicable statute-of-limitations had expired. On appeal, the case was dismissed by the Eight District Court of Appeals when respondent failed to file the appeal brief. The court of appeals granted reconsideration and respondent argued that Michigan's three-year statute of limitation applied, but the appeals court affirmed the trial court's dismissal, holding the two-year deadline in R.C. 2305.10 applied. Respondent falsely told McClinton the parties had reached a settlement and gave her a \$2500 check drawn from his client trust account, an amount that he thought represented as much as if not more that she realistically could have recovered. His trust account contained client funds' as well as more than \$170,000 of his own money. She expressed concern over medical bills, so he paid her \$2300 more from his trust account to cover the medical bills. Respondent initially lied to relator's investigator that he had settled the case, but later admitted his neglect and his lie to the client to conceal the neglect. Respondent admitted to the investigator that he had not withdrawn his earned funds from the trust account and that the money paid to the client came from the earned funds. He has now rectified the situation and keeps client funds separate from his funds. Board adopted panel's findings that respondent violated DR 1-102(A)(6) for failing to inform the client the case had been dismissed; 6-101(A)(3) for failing to conscientiously pursue the case, Prof.Cond.R. 8.4(c) because of untrue statements to the client, and 1.15 because of the commingling of client funds with personal funds. In mitigation, there is no prior discipline, full and free disclosure and cooperation after the initial misrepresentation to the investigator payment to the client, and establishment of good character and reputation. BCGD Proc.Reg. 10(B)(2)(a), (c), (d), and (e). Also, he was genuinely remorseful, he implemented office procedures to better track his clients' cases, and he remedied the situation with his trust account. In aggravation are his lie to the client and initially to relator, his selfish motive, and pattern of misconduct. BCGD Proc.Reg. 10(B)(1)(b), (c). Board adopted panel's recommended sanction of a one-year suspension with the last six months stayed on condition of no further misconduct. The Supreme Court of Ohio agreed with the findings and recommended sanction and so ordered. Two dissents for a stay of the entire suspension.

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**Rules Violated:** Prof.Cond.R. 1.15, 8.4(c); DR 1-102(A)(6), 6-101(A)(3)

<b>Aggravation:</b> (b), (c)		<b>Mitigation:</b> (a), (c), (d), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> One-year suspension, 6 months stayed		

*Smith, Disciplinary Counsel v.*

124 Ohio St.3d 49, 2009-Ohio-5960. Decided 11/19/2009.

Respondent charged two clients excessive fees and represented them in matters for which he was not competent, while under the supervision of the owner of the law firm with which he was associated. Board adopted the panel's findings and recommended sanction. Respondent was admitted to the bar in 2002 and was employed as an associate at the Chapman Law Firm. Louis and Florence Reiger, who were passengers injured in an automobile driven by Marvin Stelzer, contacted the law firm. Both of the Reigers required medical treatment and hospitalization. Respondent was assigned to the case and he visited Florence at the hospital and presented a contingent fee agreement for 33 1/3% of the gross amount if settled without filing a lawsuit, 40 % of the gross settlement or judgment if suit was filed, and 45 % of gross settlement or judgment following trial or appeal. Respondent signed the agreement for the law firm and Florence signed the agreement on her own behalf and on behalf of Louis although she did not show respondent any documentation that she held her husband's power of attorney. Louis was at another hospital and respondent did not meet with him. Seltzer was insured by Geico with a policy of \$100,000-per-person limit for personal injury. Louis and Florence are residents of New York and were insured by State Farm and their policy included personal injury protection (PIP) coverage of \$175,000 per person. Under New York Law PIP is no-fault insurance paid without a determination of liability and the claims are paid directly to medical service providers. New York law does not permit an attorney to collect a contingent fee on PIP payments. Respondent filed suit on behalf of Louis and Florence against Selzer, but neither insurance company was named. Geico paid the full 100,000 limit for Florence. Respondent endorsed the check by signing the names of both clients and his own name. Later, Geico paid the full \$100,000 policy limit for Louis, respondent endorsed this check by signing both clients' names and adding "POA after each. Respondent did not have a power of attorney for either, but he testified that he was doing what Chapman instructed. Respondent applied for PIP coverage for both Louis and Florence; but, a hospital had already applied for PIP coverage on behalf of Louis and State Farm had paid the hospital the policy limit of \$175,000. Upon respondent's application State Farm also paid \$33,152.91 PIP coverage to another hospital for Florence. The law firm received none of the money paid by State Farm. Respondent testified that he collected fees on the PIP recovery because after he questioned Chapman regarding fees on PIP recovery, Chapman instructed him to do so. Respondent stated he did not feel it was his responsibility to research the issue on whether fees could be collected from the PIP recovery because even thorough he was the attorney for Florence and Louis, Chapman set the fees for the Chapman law firm. Three disbursement sheets were sent to Florence and Louis, the first itemized recovery for Florence listing a net recovery at \$35,839, but enclosing no check. The second disbursement sheet listed jointly the recovery for Florence and Louis with no separate itemization for each. Respondent had prepared separate disbursement sheets, but Louis' resulted in a negative disbursement and Chapman did not approve the disbursement sheets. He told respondent to make them work by combining Florence's and Louis' disbursements. Respondent informed Chapman that Florence and Louis would receive less than the amount denoted in the first disbursement sheet to Florence, but Chapman rebuffed him. In both the first and the second disbursement sheets, even though no suit had been filed against State Farm, legal fees were charged on 40% of the gross amount that included PIP recovery payments. Along with the second disbursement sheet, Florence and Louis were sent a check for a joint disbursement of \$8,207.46. The children complained and respondent sent them a follow-up letter with greater detail. After a grievance was filed, respondent sent a revised disbursement sheet deducting \$6,000 subrogation settlement from the State Farm PIP payments for Florence, rather than subtracting it as an expense. This change reduced total recovery, thus reducing the attorney fees and resulting in an increased disbursement of \$2,400 to Florence and Louis. Florence and Louis sued Chapman and the Chapman Law Firm for legal malpractice and excessive fees. The case was settled when the law firm agreed to disgorge the attorney fees received on the \$83,261.17 PIP coverage. The clients also received \$18,738.83 under the law firm's malpractice insurance policy. Board found a violation of DR 2-106(A). The court rejected respondent's arguments that he cannot be disciplined because Chapman had control of the fees and the firm's check book. The court noted that even though

Chapman was his superior, respondent had a responsibility to his clients. The court cited from *Johnson* (2005) that “new lawyers are just as accountable as more seasoned professional for not complying with the Code of Professional Responsibility. The court stated “The same general rule applies to lawyers who are directly supervised by their superiors within a law firm. A lawyer’s obligations under the ethics rules are not diminished by the instruction of a supervising attorney.” The court rejected respondent’s argument that had his conduct occurred more recently it would have fallen with the safe harbor of Prof.Cond.R. 5.2. Board also found a violation of DR 6-101(A)(1). In mitigation, respondent had no prior discipline, cooperated, and presented four witness testifying as to good character and to the fact that Chapman made all financial decisions of the law firm. BCGD Proc.Reg. 10(B)(2)(a), (d), (e). Board recommended a public reprimand. The court considered respondent’s inexperience and the fact that Chapman controlled the finances’ as mitigating. *Mullaney* (2008) was cited as an example of a case in which the court noted an attorney’s inexperience and a law firm’s practices constraining his conduct. Three cases were cited as particularly relevant to the court’s determination as to sanction: *Sawers* (2009), *Johnson* (2005), *Mullaney* (2009). The Supreme Court agreed with the board’s findings of misconduct and recommended sanction and so ordered a public reprimand.

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**Rules Violated:** DR 2-106(A), 6-101(A)(1)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (d), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Public Reprimand		

*Smith, Disciplinary Counsel v.*

128 Ohio St.3d 390, 2011-Ohio-957. Decided 3/9/2011.

On April 24, 2009, respondent received an interim suspension pursuant to Gov.Bar R. V(5)(A)(4) based upon his felony conviction for conduct in failing to accurately report income to the IRS, conspiring to defraud the IRS, and corruptly endeavoring to obstruct and impede the ensuing IRS investigation. Respondent employed by the Catholic Diocese of Cleveland from 1983 through February 17, 2004. He began as treasurer, was promoted to chief financial officer, and was finally named financial and legal secretary. A jury found him guilty of one count of conspiracy to defraud the IRS, four counts of making false tax returns, and one count of corruptly endeavoring to obstruct and impede an IRS investigation, but was acquitted of mail fraud and conspiracy to commit mail fraud, and the court dismissed the money-laundering charges. In the late 1990s, respondent received a series of offers to go into private or public practice, and in order to keep him, the priest who oversaw his employment offered to pay him \$250,000 per year, but said that the money could not go through the diocese payroll. To conceal this money, respondent and his co-defendant whose company provided comptroller services for the diocese moved the money from the church through the company into two businesses owned by respondent. Respondent did not pay taxes on the compensation. The co-defendant while representing respondent in a 1999 audit presented fraudulent documentation of expenses incurred by respondent and falsely stated respondent had no other sources of income than those reported on his tax return. Respondent admitted to engaging in conduct to conceal assets and failing to report income to the IRS. Respondent was sentenced to one year and one day in federal prison, 150 hours of community service, and \$395,154 in restitution to the IRS. Respondent was released from federal prison to a half way house for two months. He is currently on a two-year supervised release until January 2012. As of the disciplinary hearing he has paid \$2000 in restitution and upon conclusion of supervised release will enter into a plan for continued restitution with the IRS. The panel and board found violations of DR 1-102(A)(3), 1-102(A)(4), 1-102(A)(5), and 1-102(A)(6). The Court adopted the findings of fact and misconduct. In aggravation, respondent acted with a dishonest or selfish motive and engaged in a pattern of misconduct. BCGD Proc.Reg. 10(B)(1)(b) and (c). In mitigation, respondent had no prior disciplinary record, made full and free disclosure and cooperated during the disciplinary proceedings, presented evidence of good character and reputation, including letters from an auxiliary bishop of the diocese, and has been subject to other penalties, including incarceration. BCGD Proc.Reg. 10(B)(2)(a), (d), (e), and (f). The board recommended that respondent be indefinitely suspended with credit for time served under his interim suspension. However, the board also recommended that any petition for reinstatement be conditioned on respondent's completion of his federal supervised release and consummation of a final restitution agreement with the IRS. The court considered *Brunner* (2001) and *Kellogg* (2010). The Court adopted the board's recommended sanction and so ordered an indefinite suspension with credit for time served under the interim suspension, but respondent shall not be permitted to petition for reinstatement until he has completed his federal supervised release and entered into a final agreement with the federal government for payment of restitution.

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**Rules Violated:** DR 1-102(A)(3), 1-102(A)(4), 1-102(A)(5), 1-102(A)(6).

<b>Aggravation:</b> (b), (c)		<b>Mitigation:</b> (a), (d), (e), (f)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Smith, Cleveland Bar Assn. v.*

120 Ohio St.3d 298, 2008-Ohio-6138. Decided 12/3/2008.

Respondent abandoned six separate clients' cases and failed to cooperate in two different disciplinary proceedings. A master commissioner heard the two disciplinary cases against respondent from two bar associations (Cleveland and Cuyahoga County), after both failed to successfully contact respondent at the address on file with the Office of Attorney Services, resulting in the board serving the complaint on the Clerk of the Supreme Court pursuant to Gov.Bar R. V(11)(B). Respondent failed to answer the complaints; and the relators moved for default pursuant to Gov.Bar R. V(6)(F). The board adopted the master commissioner's findings and recommendations. The Supreme Court consolidated the cases and agreed with the Board's findings and recommended sanctions. Regarding case 2008-0760 respondent abandoned four clients' cases and failed to cooperate. Respondent represented Glenda Johnson-Butler and Pamela Finch in separate divorce actions. Each client paid respondent \$800 in fees. After preparing some documents for each case, respondent stopped communicating with them, failed to file the divorce paperwork as promised, vacated her office without informing her clients, and failed to return their case files or fees. One of these clients could not afford another attorney to handle her divorce. The board found violations of DR 1-102(A)(6), 6-101(A)(3), 7-101(A)(2), 9-102(B)(4), Gov.Bar R. V(4)(G) in both Johnson-Butler's and Finch's cases. Further, respondent represented the Johnsons and the Respresses in separate bankruptcy proceedings beginning in 2005. Respondent received fees from the Department of Veterans Affairs on behalf of the Johnsons and kept all or part of a \$1700 fee the bankruptcy trustee had approved for her services. Respondent appeared in court no less than five times on the Johnsons' behalf, but then lost contact, forcing them to risk their home as they filed an objection and appeared at a hearing pro se. The Respresses received a letter from the bankruptcy court explaining respondent's filing privileges were revoked and suggesting they retain other counsel. The Respresses were unable to find other counsel or contact respondent, because she had vacated her office. The board found violations of DR 6-101(A)(3) in the Johnsons' case and Prof.Cond.R. 1.3, 1.4(a)(3), 1.4(a)(4), 8.4(d), and 8.4(h) in both Johnsons' and Respresses' cases. Regarding case 2008-0763, respondent represented Jennifer Testruth and Cathy Davis in separate divorce proceedings. Testruth initially paid respondent \$800, but saw no action on her behalf in her divorce and custody matter. Eventually respondent told Testruth the court rejected the initial filing for insufficiency, and promised to immediately refile the complaint. Testruth paid \$100 more to prepare an affidavit to support a request for a restraining order. Respondent did neither. Testruth tried to see respondent, but found her vacant office instead. Testruth eventually dismissed respondent, requested a partial refund of her fees, retained new counsel, and proceeded with her divorce without a refund, her original file, or the protections of a restraining order. The board found violations of DR 1-102(A)(5), 1-102(A)(6), 6-101(A)(3), and 9-102(B)(4) in Testruth's case. Davis retained respondent in 2006, paying her \$250 of an agreed-upon \$2500 fee. Respondent left Davis to obtain continuances on her own, failed to attend a pretrial conference, and forced Davis to appear unrepresented at a May 2007 hearing, despite repeated phone calls from Davis. The board found violations of DR 1-102(A)(5), 1-102(A)(6), and 6-101(A)(3) and Prof.Cond.R. 1.3, 8.4(d), and 8.4(h) in Davis' case. The Supreme Court agreed with the findings of misconduct. In mitigation, respondent has no prior disciplinary record, except for an attorney-registration suspension. BCGD Proc.Reg. 10(B)(2)(a). In aggravation for both cases, there is a pattern of misconduct, multiple offenses, lack of cooperation in the disciplinary process, vulnerability of and resulting harm to victims of her misconduct, and failure to make restitution. BCGD Proc.Reg. 10(B)(1)(c), (d), (e), (h), and (i). In addition, in case 2008-0760, respondent failed to acknowledge the wrongfulness of her conduct. BCGD Proc.Reg. 10(B)(1)(g). The board recommended concurrent suspensions of respondent: in case 2008-0760 an indefinite suspension and in case 2008-0763 a two-year suspension with one year stayed on the condition that respondent pay restitution to Testruth and Davis. The Supreme Court agreed and so ordered. The Supreme Court also ordered respondent pay restitution of her fees with interest to the four divorce clients within 30 days. Three justices concurring, would require the sanctions be served consecutively.

**Rules Violated:** Prof.Cond.R. 1.3, 1.4(a)(3), 1.4(a)(4), 8.4(d), 8.4(h); DR 1-102(A)(5), 1-102(A)(6), 6-101(A)(3), 7-101(A)(2), 9-102(B)(4); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> (a), (c), (d), (e), (g), (h), (i)		<b>Mitigation:</b> (a)	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Two-year suspension, 12 months stayed		

*Smithern, Akron Bar Assn. v.*

125 Ohio St.3d 72, 2010 Ohio-652. Decided 3/3/2010.

Respondent converted retainer fees from more than 30 clients by depositing them in her personal account rather than her firm's trust account. In 2007, respondent was indicted for aggravated theft of at least \$100,000. Respondent plead guilty to a lesser charge of theft, a fourth degree felony and was sentenced to a 12 month prison sentence, suspended upon condition of successful completion of five years of community control. Respondent was a partner at a law firm. From 2004 to 2006, respondent deposited retainer fees from her clients into her personal bank account. This occurred more than 30 times and amounted to approximately \$108,000. Respondent was caught when a client complained to respondent's firm about the retainer fee, and the firm found no record of any retainer payment. Relator charged respondent with 33 counts of misconduct, alleging in each count violations of DR 1-102(A)(4), 1-102(A)(6), 7-101(A)(3), 9-102(A), and 9-102(B)(3). Relator withdrew one count. The hearing panel found insufficient evidence to prove that respondent violated DR 7-101(A)(3) and dismissed the violation; the panel found clear and convincing evidence for the other rule violations. Board adopted the panel's findings as to violations of DR 1-102(A)(4), 1-102(A)(6), 9-102(A), and 9-102(B)(3) in each of 32 counts. Board adopted the panel's recommended sanction of an indefinite suspension with credit for time served under the interim suspension. In mitigation, respondent had no prior disciplinary record; had cooperated with the investigation, had entered an agreement with the law firm's insurer to pay full restitution for the money stolen. Respondent's psychologist testified that her gambling and drinking addictions were the cause of the misconduct. She is receiving treatment for these addictions which she can overcome with continued treatment. She submitted letters of support from two attorneys and a judge. In aggravation, respondent had a dishonest and selfish motive, committed 30 thefts over a two-year period, and she did not admit to the thefts until faced with discrepancies in one of her client's bills. Respondent attempted to use *Washington* (2006) to justify a two-year suspension with 18 months stayed, instead of the sanctions proposed by the Board. However, the Supreme Court distinguished *Washington* from the present situation, as respondent in this matter had yet to enter into an OLAP contract, had yet to make restitution, and had engaged in 30 separate occasions of theft over a two-year period, whereas *Washington* had signed an OLAP contract, made restitution, and engaged in significantly fewer rule violations. The court cited *Crossmock* (2006), *Yajko* (1997), *Crowley* (1994), and *Osipow* (1994) and noted that indefinite suspension is appropriate when an attorney undertakes a pattern involving numerous acts of misconduct in converting law-firm funds. The Supreme Court adopted the Board's findings and recommended sanction of an indefinite suspension with conditions for reinstatement, except the board's condition that respondent be in compliance with the terms of probation, instead the court requires that respondent complete all court-imposed probation prior to reinstatement. The court ordered an indefinite suspension with credit for time served under the February 17, 2009 interim suspension and that upon petitioning for reinstatement the respondent show that (1) she has entered an OLAP contract and is in compliance, (2) she has completed all court-imposed probation, (3) she is in compliance with the settlement agreement with the Federal Insurance Company and is current on payment of restitution, and (4) she had received a prognosis from a qualified health care professional or alcohol/substance abuse counsel that she is able to return to competent, ethical, professional practice of law.

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**Rules Violated:** DR 1-102(A)(4), 1-102(A)(6), 9-102(A), 9-102(B)(3)

<b>Aggravation:</b> (b), (c), (d)		<b>Mitigation:</b> (a), (c), (d), (f)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Spector, Cleveland Metro Bar Assn. v.*  
121 Ohio St.3d 271, 2009-Ohio-1109. Decided 3/18/2009.

Respondent promised to do work for a client, failed to do so, lied to cover up his failure, and then failed to return the client's fees and file. Respondent's license to practice has been under suspension since December 3, 2007, for failing to comply with attorney registration requirements. *In re Atty. Registration Suspension of Spector*, 116 Ohio St.3d 1420, 2007-Ohio-6463. The board attempted to serve respondent with the complaint at the address listed on his attorney-registration record, but it was returned as undeliverable. Respondent received notice of the complaint at a different address, but did not answer. Relator moved for default. A master commissioner appointed by the board granted the motion, made findings of fact and conclusions of law, and recommended an indefinite suspension. In July 2007, Crystal Szell paid respondent \$320 to file a motion for relief from a judgment entered against her for approximately \$7,000. She provided all original documents needed for the case. She called respondent some time later to ask why the court had not yet rendered a decision and he replied that the Parma Municipal Court had lost her paperwork. Szell learned from the court that respondent had never filed a motion for relief from judgment. When she called respondent's office for an explanation, he returned her call and left a voicemail advising that one of his associates had failed to file the motion. Respondent promised to file the motion immediately, but never did. He never completed the promised services and he failed to return Szell's fees or her original documents or case file. Szell filed her own motion for relief from judgment. The outstanding judgment against Szell has prevented her from securing a mortgage. In agreement with the master commissioner, the board found violations of Prof.Cond.R. 1.3 for failing to act diligently and promptly in his representation of Szell, 1.5(a) for collecting a legal fee that was clearly excessive as he did no work for his client, 1.15(d) for failing to return the client's funds and documents, and 8.4(c) for blatantly lying to his client in order to conceal his failure. In addition, the board found violations of Prof.Cond.R. 8.1(b) and Gov.Bar R. V(4)(G) for ignoring the complaint and letters of inquiry that were not returned when sent by regular mail and failing to reply as promised in a phone conversation after he acknowledged receipt of a letter of inquiry that an investigator hand-delivered to him, and Gov.Bar R. VI(1)(D) for failing to update his attorney-registration records complicating service of process in this case. No mitigating factors were found. In aggravation, respondent impeded the service of the underlying complaint through his indifference to his duty to register as an attorney and was indifferent to his duty to cooperate in the disciplinary investigation. BCGD Proc.Reg. 10(B)(1)(e). Further, respondent failed to acknowledge the wrongfulness of his conduct, failed to make restitution, and his acts and omissions harmed a vulnerable client. BCGD Proc.Reg. 10(B)(1)(g), (i), and (h). The board recommended an indefinite suspension. The Supreme Court agreed with the findings and recommended sanction and so ordered.

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**Rules Violated:** Prof.Cond.R. 1.3, 1.5(a), 1.15(d), 8.1(b), 8.4(c); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> (e), (g), (h), (i)		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Squire, Disciplinary Counsel v.*

130 Ohio St.3d 368, 2011-Ohio-5578. Decided 11/3/2011.

Respondent misappropriated and mishandled client funds, failed to maintain adequate financial records, and engaged in business relationships with clients. In Count One, respondent received money to work on a case, did not deposit it in his IOLTA account, and instead spent it on personal matters. Respondent then was late repaying the money and issued a bad check as repayment. The money was eventually repaid. This conduct violated Prof.Cond.R. 1.15(a) (holding property separate), 1.15(c) (depositing unearned fees into a trust account), 1.16(e) (prompt refund of unearned fees), 8.4(h) (conduct adverse to fitness to practice law). The board recommended dismissal of Prof.Cond.R. 1.7(a)(2), 1.7(b)(2), 1.8(a), and 8.4(c). In Count Two, respondent and his client engaged in business dealings for 15 years. He borrowed money from the client, and did not advise the client to seek outside counsel. During the investigation, respondent stated the terms of the loan incorrectly and failed to initially acknowledge the presence of a promissory note. This conduct violated Prof.Cond.R. 1.8(a) (failing to advise client to seek outside counsel in a business transaction with attorney). The board recommended dismissal of Prof.Cond.R. 8.4(h). In Count Three, respondent borrowed money and gave that person a security interest in his client accounts containing confidential information. Respondent placed all of the money in his client trust account. During the investigation, respondent was evasive about how much money he borrowed and the nature of the money he received. Respondent has not repaid the money owed. This conduct violated Prof.Cond.R. 1.15(a), 1.15(c), 8.4(c) (dishonest, fraud, deceit, or misrepresentation), and 8.4(h). The board recommended dismissal of Prof.Cond.R. 1.6(a), 1.7(a), and 1.7(b), to which the Court agreed with the qualification that it does so solely based on the board's recommendation and inadequate briefing on the issue of whether a lawyer may use his accounts receivable in a security agreement. Respondent also served as trustee of a client's defense fund. He wrote several checks to cover his own personal expenses, failed to keep adequate records of the fund or the payments made out of it, and comingled defense funds, other client's funds, and his own funds. This conduct violated 1.5(b) (communicating the nature and scope of fees), 1.15(a), 1.15(c), 8.4(c), and 8.4(h). Relator objected to the board's not finding that respondent converted funds. The Court analyzed the record and found that respondent did convert insurance proceeds but did not convert defense fund money, and thus found an additional violation of Prof.Cond.R. 8.4(c). The Court did find that respondent's conduct could have violated Prof.Cond.R. 1.8, but that was not charged. In Count Four, respondent work with attorneys from other firms on a probate matter. He failed to apply for a contingent fee as required by local rule and changed his story during the disciplinary process about whether the fee was contingent or flat. Respondent was found to have violated Prof.Cond.R. 8.4(c); the board dismissed violations of Prof.Cond.R. 1.5(a), 1.5(e), and 8.4(c). The Court noted that the board's finding that the client knew about the use of attorneys from other firms has no bearing on Prof.Cond.R. 1.5(e). In Count Five, respondent borrowed money from a company while representing the company's CEO. However, since there was insufficient evidence as to how the client and the company are aligned, the board found no violation of Prof.Cond.R. 1.8(a) or 8.4(h). The Court agreed with the above findings. In aggravation, respondent acted with dishonest or selfish motive, engaged in a pattern of misconduct involving multiple offenses, submitted false statements and evidence during the disciplinary proceeding, failed to acknowledge the wrongful nature of his conduct or make restitution, and harmed vulnerable clients. BCGD Proc.Reg. 10(B)(1)(b), (c), (d), (f), (g), (h), (i). In mitigation, respondent lacked a prior disciplinary record and presented evidence of good character. BCGD Proc.Reg. 10(B)(2)(a), (e). The board did not find that respondent converted funds, and thus recommended a two-year suspension with 12 months stayed on conditions that respondent account to his client for any funds, pay restitution, and serve probation during the stayed part of the suspension. Relator objected and requested an indefinite suspension. The Court noted that the presumptive sanction for misappropriation is disbarment. However, citing *Smithern* (2010), *Harris* (2002), *Brown* (1996), *Gerren* (2004), *Smith* (2003), *Brown* (1996), *Claflin* (2005), *Blair* (2011), and *Hunter* (2005), as well as respondent's lack of evidence of recent good character, the Court sustained relator's objection and indefinitely suspended the respondent, with the added condition of a full accounting to his client and restitution. Justice

O'Donnell, joined by Justices Pfeifer and Stewart (for McGee Brown), believed the precedent required the Court to follow the board's recommended sanction.

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**Rules Violated:** Prof.Cond.R. 1.5(b), 1.8(a), 1.15(a), 1.15(c), 1.16(e), 8.4(c), 8.4(h)

<b>Aggravation:</b> (b), (c), (d), (f), (g), (h), (i)		<b>Mitigation:</b> (a), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

**Stafford, Disciplinary Counsel v.**

128 Ohio St.3d 446, 2011-Ohio-1484. Decided 4/5/2011.

Respondent unlawfully obstructed the discovery process before a domestic relations court and failed to fulfill his duty of candor toward both a trial and appellate court. Respondent was publicly reprimanded in 2000. Respondent was originally charged in a five-count complaint, but the panel and board recommended dismissal of Counts III, IV, and V in their entirety, as well several charges in Counts I and II. In Count I, respondent represented the wife in an 18-month divorce action. The husband was represented by a series of four attorneys. Respondent failed to respond to discovery requests propounded by the first attorney and used the line of future attorneys to continue to avoid responding to the discovery requests. Upon questioning by relator, respondent was uncooperative in establishing what really happened during the divorce action, instead “erect[ing] a smokescreen” to hide his lack of compliance. This conduct was found to have violated DR 1-102(A)(5) and 1-102(A)(6), and Prof.Cond.R. 3.4(a), 3.4(c), 8.4(d), and 8.4(h). The board recommended dismissal of Prof.Cond.R. 4.1, 8.4(c), and 3.3(a)(1) on the merits, and Prof.Cond.R. 3.4(d) because the conduct giving rise to this violation occurred before the effective date for the rule. In Count II, respondent was hired to pursue a negligence action against the client’s former attorney. The client sought damages that included attorney’s fees. At a deposition, the opposing side sought to question the client about expenses and attorney’s fees the client had incurred. Respondent objected to this, asserting a blanket privilege, which was rejected by the presiding judge. Respondent later received both a second and third request for these fee-related documents, but refused to disclose them both times under attorney-client privilege. Opposing counsel filed a motion to compel these responses, and respondent responded with a motion for a protective order. The motion for a protective order was denied by the trial judge and affirmed on appeal. Opposing counsel then requested the documents a fourth time; respondent did respond with some documents, but no attorney-fee bills. After over two years of this back-and-forth, respondent disclosed that no fee bills were ever sent to the client. Respondent’s law firm then sent copies of the bills prepared and sent after this disclosure to the judge, who disseminated them to opposing counsel. The board found respondent violated DR 1-102(A)(5) and 1-102(A)(6) for misleading opposing counsel and the court by claiming privilege on fee-bills that did not actually exist. As to both counts, respondent objected that the board lacked clear and convincing evidence to find the violations; relator also objected, arguing that the board had clear and convincing evidence to find the violations they dismissed, and that he made a “good faith” legal argument as to Count II. The Court deferred to the board’s assessment of the truth and weight of the evidence, noting the thoroughness of the 22-day hearing, the review of the evidence by both the panel and the board, and the persistence and pattern of respondent’s deceptive practices during the discovery processes. The Court found that it was clear from the record that respondent acted in anything but good faith, and showed a pattern of indifference to the discovery process. The Court overruled both sides’ objections and adopted the board’s findings of fact and conclusions of law in their entirety. In aggravation, the board found that respondent had a prior disciplinary record which had similarity to the currently alleged violations, engaged in a pattern of misconduct involving multiple offenses, displayed a dishonest or selfish motive, and was periodically disrespectful to assistant disciplinary counsel throughout the 21 days of hearings on this matter. BCGD Proc.Reg. 10(B)(1)(a), (b), (c), and (d). In mitigation, the board noted that respondent behaved “appropriately” over the course of 22 days of intense pressure during the hearings, but could not say he was cooperative based on his disrespectful attitude to a fellow officer of the court during the hearing. The board, relying on *Wallace* (1998), *Marsick* (1998), and *Finneran* (1997) recommended an 18-month suspension with 12 months stayed and monitoring. Both parties objected; relator asked for an 18-month suspension, no stay and respondent asked that the charges be dismissed. In an opinion written by Justice Lanzinger, the Court overruled both parties’ objections, but, upon its independent review of the evidence, concluded that the appropriate sanction for respondent was an 18-month suspension with 6 months stayed on the condition that respondent engage in no further misconduct.

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**Rules Violated:** Prof.Cond.R. 3.4(a), 3.4(c), 8.4(d), 8.4(h); DR 1-102(A)(5), 1-102(A)(6)

<b>Aggravation:</b> (a), (b), (c), (d)		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Eighteen-month suspension, six months stayed		

*Stahlbush, Toledo Bar Assn. v.*

126 Ohio St.3d 366, 2010-Ohio-3823. Decided 8/24/2010.

Respondent inflated her billable hours for work as a court-appointed attorney in the juvenile and general divisions of the Lucas County Court of Common Pleas. In 2007, the court personnel realized her billings were very high: On at least three occasions, she billed more than 24 hours for a given day; on at least five other occasions, she billed more than 20 hours for a given day; in several other occasions. Further investigation revealed that on numerous other occasions she billed in excess of 14 and up to 19 hours a day. When respondent failed to provide documents supporting her hours, the administrative judge referred the matter to relator. On the third day of the disciplinary panel hearing, respondent and relator stipulated that respondent had billed the county 3451.4 hours for court appointed counsel services in 2006, a portion of which were false and fraudulent, and that this conduct violated DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), and 2-106(A). The panel accepted the stipulations and found that in addition to billing more than 24 hours in a day, her submissions to the court aver that on numerous occasions she worked 14 to 24 hours. In one 96 hour period, she billed 90.3 hours. In another 144-hour period she billed 139.5 hours. Additionally, she admitted she had double-billed the general division of the court for work in a capital case and she returned the unearned portion of those fees. The panel and board concluded that respondent violated DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), and 2-106(A). Relator also originally charged respondent with Prof.Cond.R. 8.1(b), but the parties did not stipulate to and the panel and board made no finding. In light of relator's apparent abandonment of the Prof.Cond.R. 8.1(b) claim and respondent's eventual cooperation, the court dismissed that count, but adopted the board's findings of violations of DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), and 2-106(A). Board recommended suspension for two-years with one year stayed on conditions of one year monitored probation and commit no further ethical violations. In aggravation, there are dishonest or selfish motive, a pattern of misconduct, and multiple offenses. BCGD Proc.Reg. 10(B)(1)(b), (c), and (d). In mitigation, the board found that respondent lacks a prior disciplinary record; is known by clients, peers, judges, and magistrates as competent, hard-working, and represents clients zealously; and made restitution to the general division for double billing in one case, has agreed to forgo any claim for \$12,000 in attorney fee applications submitted to the court in 2007; and has been denied court appointments in juvenile court, her primary source of income. BCGD Proc.Reg.10(B)(2)(a), (e), (f). Relator sought a one-year suspension with six months stayed; respondent argued for a two-year suspension, all stayed. The panel and board, relying on *Agopian* (2006), *Holland* (2005), and *Rohrer* (2009), recommended a two-year suspension with one year stayed on the condition of a one-year term of monitored probation. Respondent objected to this recommended sanction on the grounds that it was excessive in view of the facts and case law. The court noted that respondent had maintained that she worked every hour billed until relator confronted her with the fact that she would have had to work an average of almost ten hours per day, 365 days a year to work all of the hours she billed. The court noted that "[d]espite respondent's arguments, poor record keeping alone cannot explain overbilling of such magnitude." The court agreed with the board's recommended sanctioned and so ordered suspension a for two-years with one year stayed on conditions of one year of monitored probation and commit no further ethical violations, with the additional condition that respondent refrain from any further ethical violations.

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**Rules Violated:** DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 2-106(A)

<b>Aggravation:</b> (b), (c), (d)		<b>Mitigation:</b> (a), (e), (f)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Two-year suspension, 12 months stayed		

*Stoll, Erie-Huron Grievance Commt. v.*  
127 Ohio St.3d 290, 2010-Ohio-5985. Decided 12/14/2010.

Respondent neglected legal matters entrusted to him in 21 different clients' probate and guardianship proceedings in which he failed to file necessary documents despite requests from the court and in one client's bankruptcy matter. In Counts 2 through 21, respondent was retained by separate clients in estate proceedings in probate court between 1998 and 2007, but failed to file the necessary documents to close the estates despite repeated requests from the court. Counts 1 and 22 also arose from respondent's failure to file documents. In Count 1, respondent failed to file an accounting in a guardianship matter or seek an extension despite repeated requests by the court. In Count 22, respondent failed to submit a settlement entry for approval in a bankruptcy proceeding, after such a settlement had been reached, which led to dismissal of the case and prejudice to the client. The board adopted the panel's findings of violations of DR 6-101(A)(3) in each of the estate matters in Counts 2 through 21 (the board found them to be continuing violations since the misconduct began before February 1, 2007 and continued thereafter); a violation of DR 6-101(A)(3) in the bankruptcy matter in Count 22; and a violation of Prof.Cond.R. 1.3 for failing to file a requested accounting in the guardianship matter in Count 1. The Court adopted the board's findings of fact and conclusions of law. In aggravation, the board found a pattern of misconduct and multiple offenses involving 20 or more clients. BCGD Proc.Reg. 10(B)(1)(b), and (c). In mitigation, respondent tried to attribute his misconduct to poor physical and mental health, but presented no testimony from a medical professional. At the panel's request, he did provide medical records from his family doctor since 1998 showing sporadic visits for assorted ailments and general malaise. The records did not substantiate an ongoing chronic condition as respondent implied. Respondent testified that he suffered from depression and anxiety for several years, but he did not present evidence of a diagnosis or treatment, although an OLAP counselor testified that respondent had visited her a few days prior to the hearing. She noted that respondent did suffer from anxiety and depression, but did not opine that it led to his misconduct. Respondent testified that his depression interfered almost exclusively with his estate practice, which he said constituted only about 20% of this total caseload. The board was concerned by respondent's inability to halt his neglect despite repeated attempts by the probate court assist him. The board did not explicitly find his depression and anxiety to be mitigating factors. In mitigation, the board found no prior disciplinary record, a cooperative attitude, and respondent's overall reputation in mitigation. BCGD Proc.Reg. 10(B)(2)(a), (d), and (e). The board adopted the panel's recommendation of a two-year suspension with one year stayed on the conditions that respondent submit medical proof that he is competent to practice law, continue to maintain his OLAP contract, and successfully complete two years of monitored probation after reinstatement. In adopting the board's recommended sanction, the court relied on *Bowman* (2006) and *Ellis* (2008) and so ordered a two-year suspension with one year stayed, and reinstatement contingent upon the three above-listed conditions.

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**Rules Violated:** Prof.Cond.R. 1.3; DR 6-101(A)(3)

<b>Aggravation:</b> (b), (c)		<b>Mitigation:</b> (a), (d), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Two-year suspension, 12 months stayed		

*Stridsberg, Cincinnati Bar Assn. v.*  
123 Ohio St.3d 69, 2009-Ohio-4182. Decided 8/26/2009.

Respondent's misconduct arose out representation of Dawn Haggard regarding two workers' compensation claims. Respondent filed a motion in July 2000 requesting temporary total disability benefits (TTD) for Haggard. The motion was heard on September 1, 2000 by an Industrial Commission district hearing office and the order, which was mailed on September 6, 2000, allowed for TTD from December 23, 1998 to January 31, 2000, and from February 11, 2000 to June 1, 2000. The employer appealed. A staff hearing officer modified the order changing the commencement date from December 23, 1998 to December 23, 1999 and the order was mailed on November 3, 2000. Before the staff hearing officer's order, BWC issued three checks on October 16, 2000 payable to respondent and Haggard totaling \$12,820.85 (\$2,859.52, \$8,243.65, \$1,717.68) based on the September 6 order which allowed an extra year of TTD payments. Respondent deposited the checks into his trust account. On October 24, 2000, he and the client signed a disbursement agreement for the \$2,859.52 check. Respondent issued a check to Haggard for \$1,906.35 and a check to himself for his contingent fee of \$953.17. They left the two other checks in his trust account because the balance of the award paid in these two checks seemed too high. On November 4, 2000, respondent received notice of the order reducing the compensation previously ordered, then five days later the BWC mailed a notice of overpayment to respondent and Haggard individually. On November 10, 2000, respondent received his copy of the notice stating that an overpayment of \$9,454.44 would be recovered from future payments unless Haggard sent a check for the overpayment to BWC. At the client's insistence, respondent executed a second disbursement agreement for the remaining two checks which totaled \$9,961.33, giving \$6,640.89 to Haggard and \$3,320.44 contingency fee to himself. \$3,151.48 of the \$3,320.44 contingency fee represented funds from overpayment. Respondent advised the client that most of the money was the result of overpayment and that the client would be required to pay the money back out of future claim awards, if there were any. Respondent appealed the order declaring overpayment, but it was affirmed. Haggard discharged him in 2001 and hired new counsel. In 2007, Haggard contacted the bar association because BWC was withholding 40% of each payment and she could not reach respondent. After relator contacted respondent, he issued a check for \$991.52 as partial reimbursements to Haggard through her new counsel. Board adopted panel's finding that respondent's taking of the second contingency fee from the overpayment with knowledge it was overpayment violated DR 1-102(A)(6) and 2-106(A). In aggravation, respondent failed to acknowledge the wrongfulness of his conduct, and failed to make timely full reimbursement for the wrongfully taken fee. In mitigation, respondent had no prior disciplinary history; made full and free disclosure to the board and cooperated in the investigation; issued a check for partial reimbursement after being contacted by relator; and when it was apparent that Haggard did not cash that check, he deposited money into his trust account in anticipation of issuing a check to Haggard or BWC. Board adopted the panel's recommended sanction of a six-month suspension stayed on condition that he pay restitution to BWC in the amount of \$2,159.96 within 30 days of the court's order and that he commit no further misconduct. Supreme Court of Ohio agreed with the findings, conclusions, and recommended sanction and so ordered.

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**Rules Violated:** DR 1-102(A)(6), 2-106(A)

<b>Aggravation:</b> (g), (i)		<b>Mitigation:</b> (a), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Six-month suspension, stayed		

*Stuard, Becker, and Bailey, Disciplinary Counsel v.*  
121 Ohio St.3d 29, 2009-Ohio-261. Decided 1/29/2009.

Respondents, Judge Stuard of the Trumbull County Court of Common Pleas and Assistant Prosecutor Becker, communicated ex parte in the writing of a sentencing order by Becker on behalf of the judge, warranting a public reprimand for both. Respondent Bailey, also an assistant prosecutor, merely reviewed the sentencing order and did not participate in the ex parte communication, warranting dismissal of the charges against him. In May and June 2003, Judge Stuard presided over the capital murder trial of Donna Roberts. Becker and Bailey represented the state. A jury found Roberts guilty of two counts of aggravated murder, among other crimes, and recommended a sentence of death. On June 18, 2003, between the penalty-phase hearing and the sentencing hearing, Judge Stuard communicated ex parte 4 times with Becker. Judge Stuard asked Becker and Becker agreed to prepare a sentencing opinion. Judge Stuard gave Becker two pages of the judge's notes weighing the aggravating and mitigating factors in deciding the death sentence was appropriate. Because the notes did not relate the history or facts of the Roberts case, Judge Stuard instructed Becker to refer to the sentencing opinion in the companion case of Nathaniel Jackson, Robert's codefendant. The second ex parte communication occurred the next day, when Judge Stuard found a 17-page draft of the sentencing opinion on his desk. Judge Stuard reviewed the draft, noted one or more corrections to be made, and then made his third ex parte communication by asking Becker to make the corrections. Becker made the corrections and incorporated Bailey's editorial suggestions. The fourth communication occurred when the judge received the corrected version of what became his sentencing opinion. Judge Stuard had an informal practice of enlisting prosecutorial assistance in drafting journal entries in criminal cases. He used this process in the Roberts case; however, he failed to include defense counsel in the process. Defense counsel discovered what had happened when they noticed that one of the prosecutors seemed to be silently "reading along" and turning pages in unison with Judge Stuard as he read his opinion from the bench. Defense counsel objected. In a sidebar discussion, Judge Stuard acknowledged that he gave his notes to and instructed the prosecution to draft the sentencing order. Defense counsel then challenged the process by which the court had prepared Robert's death sentence order as an impermissible collaboration and ex parte communication. On appeal, the Supreme Court held that "the court committed prejudicial error by delegating responsibility for the content and analysis of its sentencing opinion." The Court vacated Roberts' death sentence and remanded the cause with instructions for Judge Stuard to personally review and evaluate the appropriateness of the death penalty. The board adopted the panel's findings and recommendations. The board found Judge Stuard violated Canon 2 and 3(B)(7) of the Code of Judicial Conduct and Becker violated DR 1-102(A)(5) and DR 7-110(B) of the Code of Professional Responsibility. The board recommended dismissal of all charges against Bailey, as he did not exchange any information about the merits of the case with the judge. The Supreme Court agreed. The board found no aggravating factors present. In mitigation, both Judge Stuard and Becker lacked a prior disciplinary record, cooperated with the disciplinary process, and established good character and reputation through letters of recommendation and testimony. BCGD Proc.Reg. 10(B)(2)(a), (d), and (e). The board recommended public reprimands for both. The Supreme Court agreed and so ordered.

**Rules Violated:** (Stuard) Code of Judicial Conduct Canons 2 and 3(B)(7); (Becker) DR 1-102(A)(5), DR 7-110(B); (Bailey) NONE

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (d), (e) (Stuard & Becker)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> YES (x3)	<b>Sanction:</b> Public Reprimand (Stuard & Becker); Dismissal (Bailey)		

*Stubbs, Disciplinary Counsel v.*

128 Ohio St.3d 344, 2011-Ohio-553. Decided 2/15/2011.

Respondent improperly used her client trust account as a business account, failed to maintain adequate records of client funds held in the trust account, failed improperly withheld money from a client, and failed to cooperate in the disciplinary investigation. Respondent failed to respond to relator's complaint, so a master commissioner granted relator's motion for default. In November 2008, relator attempted to communicate with respondent regarding overdrafts on her client trust account. Respondent did not respond to several letters sent to her office and she missed a scheduled deposition for which a subpoena had been delivered to her secretary. Later, when she did appear and testify, she failed to submit all requested documents, including her client ledgers, canceled checks, and her trust account check register. Respondent admitted that she failed to maintain accurate records, had deposited earned fees and payments for court appointed cases into the account, and used the account to pay personal and office expenses. The trust account was overdrawn or checks were transferred for insufficient funds at least 17 times from October 2008 to August 2009. In addition, she agreed to pay a client's medical bills from the settlement funds of a personal injury case, but advised the client she used the money to pay her own bills. Respondent kept \$5,489 to pay the client's medical bills, but later told the client she used the money to pay her own bills. She promised to return the money to the client by January 4, 2010, but failed to do so. She failed to respond to relator's investigation of the grievance. The board adopted the master commissioner's findings and conclusions that respondent's conduct with respect to her trust account violated Prof.Cond.R. 1.15(a)(2) and 1.15(a)(3), 8.4(d) and 8.4(h); that her handling of the settlement proceeds violated 1.15(d), 8.4(c), 8.4(d), and 8.4(h); and that her failure to cooperate in the disciplinary investigations violated Prof.Cond.R. 8.4(d) and (h) as well as Gov.Bar R. V(4)(G). The master commissioner, because of a lack of clear and convincing evidence, recommended dismissal of allegations that respondent engaged in improper fee sharing, and failed to pay the medical expenses of other clients. In aggravation, respondent had a prior disciplinary record in 2006, consisting of a six-month stayed suspension and one year of monitored probation for falsifying a document to convince the OBMV that she was insured at the time of an accident. Respondent also had two attorney registration suspensions in 2007 and 2009. Also in aggravation; respondent engaged in a pattern of misconduct involving multiple offenses; failed to cooperate in the disciplinary investigation; caused harm to a vulnerable client and failed to make restitution to the client. BCGD Proc.Reg. 10(B)(1)(a), (c), (d), (e), (h), and (i). No mitigating factors were present. Although respondent's past participation in OLAP was noted, she no longer participates and produced no evidence that she suffered from a mental disability. The board adopted the master commissioner's recommended sanction of an indefinite suspension. The court considered the sanction imposed for comparable conduct in *Torian* (2005). The court adopted the board's recommended sanction and so ordered an indefinite suspension conditioned on restitution to the affected client.

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**Rules Violated:** Prof.Cond.R. 1.15(a)(2), 1.15(a)(3), 1.15(d), 8.4(c), 8.4(d), 8.4(h); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> (a), (c), (d), (e), (h), (i)		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> YES (x2)	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Taylor, Disciplinary Counsel v.*

120 Ohio St.3d 366, 2008-Ohio-6202. Decided 12/4/2008.

For over 20 years Juan Rios (Juan) and his wife Piccola were respondent's good friends and clients. In May 2004, Juan consulted respondent. Juan was concerned that Piccola's daughter Joann had stolen money from his bank account. Juan and Piccola were both terminally ill. He did not want Joann to inherit anything upon either's death. Juan wanted his own daughter Elizabeth who was living in Puerto Rico to receive everything. Respondent prepared a will for Juan, designating Elizabeth as sole beneficiary. To defeat the surviving-spouse election that would allow his wife to take against the will, he prepared a quit claim deed with a dower clause, transferring the couple's home to Elizabeth. He prepared a durable power of attorney for Juan, giving Elizabeth complete authority over his affairs. On June 2, 2004, respondent went with his secretary to the the Rios home to execute the will, power of attorney, and quitclaim deed. The couple was bedridden. Respondent did not know that Piccola also suffered from dementia. Neither Juan nor Piccola could read English. Respondent spoke no Spanish. Elizabeth could not speak or read English, but a relative Elba Torres (Torres) interpreted for her. No one interpreted for Juan or Piccola. Without discussing the significance of the instruments, respondent obtained Juan's signature on the will and the power of attorney. Respondent and his secretary signed as witnesses. He obtained Piccola's signature on the quitclaim and had Elizabeth sign the deed on Juan's behalf. Juan died two days later on June 4, 2004. The next day Piccola, who had been in and out of hospices, was readmitted to hospice as an emergency placement. Respondent prepared a will for Piccola devising all her property to Elizabeth and designating her executor and he drafted a power of attorney giving Torres, because she spoke English, complete authority over Piccola's affairs. On June 8, 2004, respondent took the will and power of attorney to Piccola. Neither he nor the hospice staff told her Juan had died. At some point she told respondent she wanted to leave everything to Juan. Respondent had her sign the will and power of attorney, despite her incapacitation and probable incompetence. Torres later withdrew all the funds from Juan and Piccola's bank account and none were used for Piccola's welfare. While purporting to act in a fiduciary capacity representing potentially diverse interests of Juan and Piccola, he drew up papers to defeat Piccola's ownership for the benefit of Juan's daughter. He could not have had Piccola's knowing consent which would have required a translator and likely appointment of a guardian. Board adopted panel's finding of a violation of DR 5-105(B). While purporting to act in a fiduciary capacity, he had Piccola sign an instrument giving away all interest in her home, without her knowing consent to the transfer. Board adopted panel's findings of a violation of DR 1-102(A)(4), 5-105(A) and 5-105(B). Supreme Court of Ohio so found these violations. As to Count II, in preparing the quitclaim deed he was required to identify the grantee's tax mailing address. He listed Elizabeth's address as the Rioses' residence, although she resided in Puerto Rico and he recorded the deed on July 1, 2004. Panel and board did not find evidence of a violation of DR 1-102(A)(4) and (5), nor did the Supreme Court of Ohio find these violations, despite relator's objections. As to Count IV, in July 2008, Joann's daughter applied to become her grandmother's guardian. Respondent still trying to accomplish what he thought were the Rioses' wishes, entered an appearance in the guardianship case as an amicus curiae, asking the probate court to continue the hearing that was to determine Piccola's competence. He advised the court he represented Juan, but did not tell the court Juan was dead. The probate court denied the request and did not allow respondent to participate further. Board adopted panel's findings of a violation of DR 7-102(A)(5). Supreme Court of Ohio so found this violation. Mitigating factors include that respondent typically represents clients of modest means for little or no fees as he did in the Rioses' case, has a 50 year career of representing clients with integrity; has no prior disciplinary record, no dishonest or selfish motive, cooperated with full and free disclosure and acknowledged wrongfulness. BCGD Proc.Reg. 10(B)(2)(a), (b), and (d). Board adopted panel's recommendation of a six-month suspension stayed. The court noted that the disciplinary process exists not to punish the offender, but to protect the public and to allow the court to ascertain a lawyer's fitness to practice. The court noted that given his good faith in the case and history of competent practice, the appropriate remedy here is to ensure he strictly observes ethical standards, and that placing him on probation with a monitoring attorney will achieve these ends. The court

ordered a one year suspension stayed on conditions of a one-year probation period in accord with requirements of Gov.Bar R. V(9) which include a monitor and no further misconduct. Three justices dissented in favor of a stricter sanction, a one year-suspension with six months stayed. The dissenting justices noted no reason to depart from the general rule (*Fowerbaugh*, 1995) that violations of DR 1-102(A)(4) require actual suspension.

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**Rules Violated:** DR 1-102(A)(4), 5-105(A), 5-105(B), 7-102(A)(5)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (b), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> One-year suspension, stayed		

*Theisler, Mahoning Cty. Bar Assn. v.*

125 Ohio St.3d 144, 2010-Ohio-1472. Decided 4/8/2010.

Respondent was convicted of 98 felonies, including aggravated trafficking in drugs, illegal processing of drug documents, engaging in a pattern of corrupt activity, and practicing medicine or surgery without a certificate, that stemmed from his conduct in writing prescriptions for patients on blank prescriptions presigned by a doctor. He served a three year prison term which ended in September 2008 and is on probation until September 2011. On October 27, 2005, respondent received an interim felony suspension from the practice of law in *In re Thiesler*, 106 Ohio St.3d 1560, 2005-Ohio-5665. He was found in contempt of that order for failing to file an affidavit of compliance in *In re Thiesler*, 110 Ohio St.3d 1483, 2006-Ohio-4877. Respondent was a licensed attorney and also a licensed chiropractor. He graduated from a medical school in St. Kitts, but did not complete U.S. licensing examinations. Respondent associated himself with two medical doctors, who did business under the name Pain Management Associates. Patients initially consulted with the medical doctors, but would have follow-up visits with respondent, who wrote prescriptions for them on a doctor's pre-signed blank prescription pad. Respondent testified that he did not practice chiropractic services while acting as a "medial assistant" and that prior to accepting the job he reviewed R.C. Chapter 4730 and former OAC 4731-4-04 addressing physician assistant prohibitions. From the research, he erroneously concluded he could perform medical examinations, give injections, and undertake any other clinical work that the physician might delegate to him under supervision. He admitted that he had the option to earn his certificate as a "medical assistant" but failed to do so. The board adopted the panel's findings that respondent violated DR 1-102(A)(4) and 1-102(A)(6) and the recommendation that he be indefinitely suspended from the practice of law with no credit for time serves. In aggravation, respondent engaged in a pattern of misconduct and multiple offenses. BCGD Proc.Reg. 10(B)(1)(c) and (d). In mitigation, the parties stipulated to respondent's lack of dishonest or selfish motive, absence of harm to victims and aversion to committing further offenses, cooperation in the disciplinary process, and criminal sanctions received and served. BCGD Proc.Reg. 10(B)(2)(a), (b), (d), and (f). The panel noted its doubts about the stipulation to a lack of a dishonest motive and also noted the lack of letters attesting to respondent's good character. The respondent objected to the recommended sanction, arguing that it was too harsh, punishes the respondent disproportionately to others, and is not necessary to protect the public. Respondent relied on *Margolis* (2007) in which the attorney received a two year suspension. The court found respondent's reliance on *Margolis* misplaced. The court cited *Linnen* (2006) (indefinite suspension for misdemeanors) and *LoDico* (2008) (indefinite suspension with no credit for an interim felony suspension). The Supreme Court adopted the Board's recommendation of an indefinite suspension with no credit for time served during respondent's interim felony suspension; the Court also required that respondent complete his term of probation before applying for readmission, and so ordered.

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**Rules Violated:** DR 1-102(A)(4), 1-102(A)(6)

<b>Aggravation:</b> (c), (d)		<b>Mitigation:</b> (a), (b), (d), (f)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Thomas, Columbus Bar Assn. v.*

124 Ohio St.3d 498, 2010-Ohio-604. Decided 2/25/2010.

Respondent misappropriated at least \$32,600 in entrusted funds. Respondent practiced in the field of creditors' rights and debt collection for 12 years as a salaried employee for various law firms and companies and then in 2000 opened his own law practice. In 2003, he contracted with Winona Holdings, Inc. to provide legal services related to processing debt-collection claims. Winona was a check-cashing company doing business as Checkcare Systems. Respondent was paid by Checkcare \$200 per week to review and sign prepared collection notices and legal complaints. He also represented Checkcare in litigation to resolve contested claims for which he received a 30% contingent fee of the amount collected. He deposited money collected on Checkcare's behalf into his client trust account and disbursed the proceeds to Checkcare on a weekly basis. He was to periodically report to the client the deposits and disbursements from the account. In October 2004, respondent began experiencing cash-flow problems resulting from a large California client's delay in paying his \$7,500 monthly salary for collection work in Ohio. Respondent wrote himself a check from the Checkcare funds in the trust account to cover the shortfall the delay caused on his family budget. When the California company paid respondent, he did not reimburse the trust account. Such delayed payments by the California client and the writing of checks by respondent from trust account funds of Checkcare continued. From October 2004 and ending in mid-June 2006, respondent made 38 illegal disbursements of varying amounts, misappropriating at least \$32,600 in Checkcare funds. He concealed his theft initially by misleading Checkcare as to the amounts collected, but Checkcare eventually suspected the theft and sued for an accounting. Checkcare and respondent resolved this by having respondent execute a cognovit note for \$44,000 and by agreeing to add to the value of the cognovit note the misappropriated sums discovered after execution of the note. Respondent also agreed to buy a life insurance policy naming Checkcare the beneficiary. Respondent defaulted on the cognovit note after paying a few installments. Checkcare obtained a judgment on the note for \$57,599 in November 2007. Respondent has not paid the judgment and has not purchased the life insurance policy. Board adopted the panel's findings of violations of DR 1-102(A)(4) and Prof.Cond.R. 8.4(c); DR 1-102(A)(6) and Prof.Cond.R. 8.4(h); DR 7-101(A)(3); DR 9-102(B)(3) and Prof.Cond.R. 1.15(a); and Prof.Cond.R. 1.15(d). Aggravating factors were found: dishonest and selfish motive; pattern of misconduct in failing to remit funds and procrastinating in providing an accounting to buy time and hide his pilfering; multiple offenses spanning eighteen months; though not charged in the complaint he admitted he did not have the required malpractice insurance and did not provide the required notice; the corporate client was in a vulnerable position because respondent was acting in a fiduciary capacity; he made only a negligible amount (approximately \$800) of restitution. BCGD Proc.Reg. 10(B)(1)(b), (c), (d), (h), (i). Mitigating factors were found: no prior discipline; full and free disclosure and cooperation with realtor's investigation and prosecution (relator remarked that he had never encountered a more cooperative respondent). BCGD Proc.Reg. 10(B)(2)(a), (d). Board adopted the panel's recommended sanction of an indefinite suspension and that as a condition of reinstatement he make full restitution to Winona holdings and pay the costs of this proceeding. The board, citing *Rothermel* (2004) and *McCauley* (2007) reasoned that an indefinite suspension rather than disbarment was appropriate because of the mitigating factors. Respondent convinced the panel his theft was born more of financial necessity than greed, that his law practice was only marginally successful and he wrote the checks to alleviate cash flow problems that were not of his making. He had a wife and four minor children, a mortgage and other payment to be made and the non-payment of the client put pressure on him to make up the deficit. This was a first offense, he fully cooperate, and was truly sorry. The Supreme Court agreed with the findings and recommended sanction and so ordered.

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**Rules Violated:** Prof.Cond.R. 1.15(a), 1.15(d), 8.4(c), 8.4(h); DR 1-102(A)(4), 1-102(A)(6), 7-101(A)(3), 9-102(B)(3)

<b>Aggravation:</b> (b), (c), (d), (h), (i)		<b>Mitigation:</b> (a), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Thomas, Cleveland Metro. Bar Assn. v.*  
125 Ohio St.3d 24, 2010-Ohio-1031. Decided 3/24/2010.

Respondent improperly took a fee in a client's bankruptcy case, and in another client's action failed to appear at a hearing and subsequently failed to notify the client that the case was dismissed. Respondent was hired to represent a client in a bankruptcy proceeding. Respondent filed the bankruptcy petition, but not the rights-and-responsibilities form which is required to be signed by both the debtor and the debtor's attorney. Without the form, counsel fees are not allowed unless approved by the court, or provided for in a specific written agreement with the client. The client paid respondent \$500 to file the bankruptcy. Respondent retained \$125 as his fee. The bankruptcy case was later dismissed because the client did not follow the repayment plan, paying \$300 rather than the required \$600 monthly payment. Respondent was paid \$200 to file a second bankruptcy petition this time including the rights-and-responsibilities form. The client contacted the bankruptcy trustee to get a refund of the \$300 payment in the first bankruptcy. Initially, the client was informed that the trustee filed a motion to compel the respondent to disgorge his fees from the first case for failing to file a rights-and-responsibilities form. Later, the client was told that in response to the trustee's motion to compel, respondent filed the rights-and-responsibilities form, thus allowing him to collect the \$300 from the first filing as fees. However, respondent's staff had simply filed a duplicate copy of the rights-and-responsibilities form from the second bankruptcy case, with only the case number and dollar amount changed. Upon discovery of this, respondent was not awarded attorney fees from the first filing and the refund from the first filing was returned to the client. At the disciplinary hearing, he admitted that he had not returned the \$126 fee and that it should be disgorged. Board adopted the panel's findings of violations of Prof.Cond.R. 3.3(a)(1). Another client hired respondent for personal injury representation. Respondent filed a lawsuit for the client after the client rejected a \$1,981 settlement offer. Respondent later told the client the insurer had offered \$6,000 to resolve the claim, which the client agreed to take. Respondent subsequently found out from the insurance adjuster that the settlement offer was only for \$3,000. He told the client of this mistake. The client said she would settle only for \$6,000, but later sent respondent a letter stating that she did not wish to go to trial and for respondent to "do what you need to do to resolve and finalize." The Board concluded that the respondent believed that this letter gave him the authority to settle, so he accepted the \$3000. The client refused to sign the release or negotiate the check. Respondent did not withdraw from the case. He failed to appear at the final pretrial conference and at the trial. The case was dismissed without prejudice, which respondent did not timely reveal to his client. Respondent's motions to vacate the judgment and reinstate the case were denied, but the client was not advised of the denial of these motions. Counsel for respondent in the disciplinary matter informed the client of the dismissal and that she could refile it within the statute of limitations. Board adopted the panel's findings of violations of Prof.Cond.R. 1.3, 1.4(a)(1), and 1.4(a)(3). There were no aggravating factors—there was no finding that he acted with selfish motive, he took responsibility for his actions and staff, he informed the person injury client of the procedure to refile the case. In mitigation, there was a lack of prior disciplinary record, and full cooperation in the disciplinary proceedings. BCGD Proc.Reg. 10(B)(2)(a) and (d). Two cases, *Henderson* (2002) (six-month suspension, all stayed) *Cox* (2003) (public reprimand), were considered by the board in making its recommendation. The Board recommended a six-month suspension, with the suspension conditionally stayed. The Supreme Court considered the cases cited and the mitigating factors albeit weak. The Supreme Court adopted the Board's findings, conclusions, and recommended sanction and so ordered a suspension for six months; stayed conditionally on respondent engaging in no further disciplinary misconduct during the stayed suspension and repaying the \$126 to the bankruptcy client within 30 days of this order.

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**Rules Violated:** Prof.Cond.R. 1.3, 1.4(a)(1), 1.4(a)(3), 3.3(a)(1)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Six-month suspension, stayed		

*Tomlan, Disciplinary Counsel v.*,  
118 Ohio St.3d 1, 2008-Ohio-1471. Decided 4/3/2008.

Respondent transferred an elderly client's assets to joint and survivorship accounts without informed consent. He befriended a 90-year old wealthy, unmarried and childless woman (Rice) shortly after her admission to a nursing home in 1993. She suffered from Parkinson's disease and, as early as July 1997, had signs of dementia or organic brain syndrome. He began doing some legal work for her in 1997. He then started helping her pay her bills. He prepared a will for her in May 1998, naming himself as executor and his wife the alternate executor. She made bequests to a nephew, a niece, two acquaintances, three churches, two fraternal organizations, perpetual care of her cemetery plot, alumni association, and specified hospitals and philanthropic organizations. In Spring 1999, Rice told respondent she wanted to revise the will to leave him money, but he told her she would have to hire another attorney. She did not want another attorney and did not revise her will. Purportedly at her direction, he began transferring her assets into joint and survivorship accounts that they shared. The first transfer was in June 1999 when he arranged for her to endorse four \$100,000 checks with which he obtained four certificates of deposit in both of their names. In July 1999, Rice signed a healthcare power of attorney and a durable power of attorney. The healthcare power of attorney named Rice's nephew as attorney-in-fact for health care decisions and respondent as first alternate attorney-in-fact. The durable power of attorney designated respondent as attorney-in-fact giving him broad authority which he used during Rice's lifetime to correspond with banks, creditors, and other entities about her legal affairs, and to open bank accounts, manage funds, and create and renew numerous certificates of deposit. The second conveyance of Rice's assets occurred in June 2000 when he arranged for her to sign papers transferring 28,800 shares of stock valued at approximately \$1,000,000 to himself and herself jointly. In January 2002, her treating physician recommended she enter hospice care. Her impaired decision-making ability prompted hospice staff to consult her healthcare fiduciary about her admission. Respondent consented to her admission. Her doctor prescribed among other medication, drugs for Parkinson's disease, dementia, and depression. The third conveyance of her property occurred a month after her admission to hospice, when respondent obtained a fifth certificate of deposit for \$250,000 with the proceeds from two of the previous certificates of deposit. Panel and board found a violation of DR 1-102(A)(6) and 5-101(A)(1). After Rice died in 2002, respondent notified her niece and arranged for the funeral. Although he had been appointed executor of her estate and controlled all of her primary assets by operation of the joint survivorship accounts, he took no action on behalf of the estate for over 16 months. In December 2003, the nursing home hired attorney Semple to collect an outstanding bill of \$11,500. Semple applied to the probate court for authority to administer the estate. In February 2004, Semple talked to respondent about the pending administration application and respondent told him he had the will and untruthfully said there were no living relatives. Semple was appointed administrator of the estate. Respondent did not reply to his requests for a list of assets, her will, and keys to the house. Respondent used \$112,154.86 in proceeds from a certificate of deposit to obtain a new certificate of deposit in his name and his wife's name. Semple moved the probate court for an order requiring respondent to produce the will and also filed a concealment action. Respondent moved the court to appoint him as executor and discharge Semple. In respondent's application, he listed the assets at \$190,000. The court denied respondent's application, finding him not suitable because of his delay in administering the estate and the resulting detriment to beneficiaries. On appeal, the order denying Semple's discharge and respondent's appointment was affirmed. Respondent continued to refuse to give Semple information. In August 2004, respondent's wife applied for authority to administer the estate and estimated the estate's value at \$1,000,000. In November 2004, responding to interrogatories asking him to identify all assets he had acquired from Rice, he identified three of the four nonprobate assets that he held with Rice at her death. He did not identify a \$100,000 check made payable to Rice and him which he received from cashing in a joint certificate of deposit he had obtained in June 1999 and which he used in March 2004 to obtain a new certificate of deposit. In December 2004, Semple moved the court again to enjoin respondent from accessing the nonprobate assets. At a hearing on the motion in January 2005, respondent while testifying under oath again disclosed just the three nonprobate assets. The probate

court entered an injunction in February 2005. In December 2004, Semple had also filed an action in common pleas court for undue influence, breach of fiduciary duty, conversion, unjust enrichment, and negligence in overseeing Rice's affairs. At the pretrial, respondent's attorney disclosed the \$100,000 previously not identified. In August 2006, Semple dismissed the case pursuant to the parties' settlement agreement. Respondent agreed to return the stock, then valued at over 1.4 million, the \$250,000 certificate of deposit, then valued at \$276,951.41. He was allowed to retain certificates of deposit and all interest accrued, then valued at \$222,944.75. In August 20, 2006, when Semple filed an amended inventory, including the over \$1,600,000 in assets returned by respondent the estate was valued at \$2,158,931.93. Panel and board found violations of DR 1-102(A)(4) and 7-109(A) by failing to disclose evidence he had a duty to reveal; violations of DR 1-102(A)(5) and (A)(6) by his undue delay in performing duties as executor; and DR 7-110(B) by speaking to the probate court judge after a hearing on the concealment allegations about the merits of the pending proceeding. The panel recommended a two-year suspension, but the Board recommended an indefinite suspension. In mitigation, there was no prior discipline, he cooperated, and he had persuasive testimonial as to his character and reputation. BCGD Proc.Reg. 10(B)(2)(a), (d), (e). In aggravation, he compromised a vulnerable client and her named beneficiaries and did so in a series of wrongful acts. BCGD Proc.Reg. 10(B)(1)(b), (d), and (e). His windfall was also considered an aggravating factor. The court adopted the board's findings and ordered an indefinite suspension for violations of DR 1-102(A)(4), (A)(5), (A)(6), 5-101(A)(1), 7-109(A), and 7-110(B). Two justices dissented in favor of requiring him to return the proceeds he was permitted to retain in the settlement. The court cited many past disciplinary cases.

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**Rules Violated:** DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 5-101(A)(1), 7-109(A), 7-110(B)

<b>Aggravation:</b> (b), (d), (e)		<b>Mitigation:</b> (a), (b), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Thompson, Cincinnati Bar Assn. v.*

129 Ohio St.3d 127, 2011-Ohio-3095. Decided 6/30/2011.

Respondent notarized two unsigned documents. This matter was brought before the board under a consent-to-discipline agreement. The stipulated facts show that respondent notarized two documents presented to him by his former partner which had not been signed by a party to the documents. This conduct violated Prof.Cond.R. 8.4(c) (conduct involving dishonest, fraud, deceit, or misrepresentation). There were no aggravating factors; in mitigation, respondent had no prior disciplinary record, fully and freely self-reported the misconduct, cooperated in the disciplinary process, and presented evidence of good character. BCGD Proc.Reg. 10(B)(2)(a), (c), (d), and (e). The parties and the board, citing *Dougherty* (2005), recommended a public reprimand. The Court accepted the consent-to-discipline agreement, and issued a public reprimand.

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**Rules Violated:** Prof.Cond.R. [8.4\(c\)](#)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (c), (d), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Public Reprimand</a>		

*Trainor, Cincinnati Bar Assn. v.*  
129 Ohio St.3d 100, 2011-Ohio-2645. Decided 6/7/2011.

Respondent failed to promptly return funds that a client was entitled to receive and failed to notify the client that respondent lacked professional liability insurance. Respondent has previously been disciplined by the Court; he received a conditionally stayed six- month suspension in 2003 and public reprimand in 2006. The Court also ordered a 30- day reciprocal stayed suspension for respondent's violation of Kentucky's disciplinary rules. The parties submitted stipulations as to findings of fact and conclusions of law. Respondent was retained to represent a client against her homeowner's insurer in a civil action. Respondent lacked professional liability insurance and failed to notify the client of that fact. He later sent the client a letter acknowledging that he did not have insurance and requested that she sign a release, but the client never did. Respondent tried the client's case, returned a favorable result, and made all appropriate disbursements. However, the client later learned that the clerk had refunded her filing fee to respondent, but that respondent had not refunded the fee to the client. Respondent initially ignored the client's calls and then attempted to keep the filing fee for himself as payment for additional work he performed. The client filed a grievance and then respondent returned the fee. The parties stipulated that this conduct violated Prof.Cond.R. 1.4(c) and 1.15(d). The board also noted that respondent lacked professional liability insurance prior to the adoption of the Ohio Rules of Professional Conduct, and thus also found a violation of DR 1-104(A). The Court adopted the findings of fact and conclusions of law. In aggravation, respondent had a prior disciplinary record, acted with a dishonest and selfish motive, and engaged in a pattern of misconduct involving multiple offenses. BCGD Proc.Reg. 10(B)(1)(a), (b), (c), and (d). The board also found that respondent's practice of verbally disclosing his lack of liability insurance and then later sending written waivers to the client does not comport with Prof.Cond.R. 1.4(c), and is therefore also an aggravating factor. In mitigation, respondent made restitution (albeit untimely), cooperated throughout the disciplinary process, made full and free disclosure to the board, and acknowledged the wrongful nature of his conduct. BCGD Proc.Reg. 10(B)(2)(c) and (d). The Court noted that it usually imposes a public reprimand for such misconduct, but that respondent's previous instances of similar misconduct call for a harsher sanction in this case. The Court adopted the board's recommended sanction of a two-year suspension with 18 months stayed on the conditions that respondent complete 18 months of probation with a monitor and that respondent engage in no further misconduct.

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**Rules Violated:** Prof.Cond.R. [1.4\(c\)](#), [1.15\(d\)](#); DR 1-104(A).

<b>Aggravation:</b> (a), (b), (c), (d)		<b>Mitigation:</b> (c), (d)	
<b>Prior Discipline:</b> <a href="#">YES</a> (x2)	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Two-year suspension, 18 months stayed</a>		

*Trivers, Ohio State Bar Assn. v.*

123 Ohio St.3d 436, 2009-Ohio-5285. Decided 10/13/2009.

Respondent notarized nine documents without personally witnessing the signatures. The board adopted the panel's findings and conclusions, but did not adopt the panel's recommended sanction of a one-year suspension, all stayed on condition of no further violations. Respondent was contacted by a former employee (Welch) who indicated that an acquaintance (Harper) wanted deeds prepared that would transfer ownership of several properties to Welch. Respondent met with Welch and Harper in respondent's office on January 26, 2007 and they gave him seven quitclaim deeds that were partially completed. Harper signed the deeds in respondent's presence and gave them to respondent for completion. Respondent gave them to his secretary and then left the room. When he returned, the deeds were completed. He assumed the deeds were the same deeds that he had watched Harper sign, but they were not. His secretary, rather than typing in the missing information, prepared seven new deeds, but Harper left without signing them. Welch believing that time was of the essence and that he had Harper's authorization, signed Harper's name to the deeds. Respondent was not present when Welch signed Harper's name and Welch did not tell him. Respondent notarized the deeds and Welch took them to be filed. Welch, hoping to exempt the transfers from conveyance fees, had prepared two affidavits and signed Harper's name to them. The affidavits were allegedly notarized by respondent claiming that the properties were being conveyed to Welch for the purpose of quick resale. Respondent denied signing either document, but Welch testified that respondent notarized one of the documents and a handwriting expert testified that the signatures on both affidavits were respondent's. On February 6, 2007, two men confronted respondent. The men were in a property dispute with Harper and they claimed the deeds were forged. They informed respondent they had initiated a lawsuit against him. Respondent contacted Harper and he, Welch, and another individual (Lanier) went to Harper's home. Harper took control of the meeting and prepared a power of attorney that, among other things, gave Welch authority to sign Harper's name to any documents necessary to transfer real estate. The document was backdated to January 26, 2007. Respondent was not certain he had paid attention to the date when he saw the document. Board found violations of DR 1-102(A)(4) and (6) agreed with the panel's recommendation that a violation of DR 1-102(A)(5) be dismissed. In aggravation, there were multiple violations; participation in a meeting where a power of attorney was backdated to cover up earlier misconduct; and failure to acknowledge wrongfulness of conduct. In mitigation, there was no prior disciplinary record; cooperation at hearing; and a history of community service. Because of respondent's repeated acts of fraud and failure to acknowledge wrongdoing, the Board recommended a suspension for one year, with six months stayed on condition of no further misconduct. The Supreme Court of Ohio agreed and so ordered a suspension for one year, with six months stayed on condition of no further misconduct. The court noted that he abused his notary power on nine document and was present when another fraudulent document was created as a cover-up. The court noted that his conduct constitutes multiple acts of fraud that distinguish this case from those in which a public reprimand or fully stayed suspension was imposed for an isolated instance of notary abuse. *Thomas* (2001), *Heffter* (2003), *Dougherty* (2005), *Freedman* (2006). Two justices dissented that a one-year suspension all stayed would be appropriate given his 49 years of practice without a blemish and that he, believing he was helping made mistakes in notarizing documents that he had not seen the affiant sign, and the record did not demonstrate any financial loss.

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**Rules Violated:** DR 1-102(A)(4), 1-102(A)(6)

<b>Aggravation:</b> (d), (f), (g)		<b>Mitigation:</b> (a), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> One-year suspension, 6 months stayed		

*Troxell, Columbus Bar Assn. v.*

129 Ohio St.3d 133, 2011-Ohio-3178. Decided 7/6/2011.

Respondent neglected client matters, failed to provide competent representation, failed to reasonably communicate with clients, failed to promptly disburse funds, and failed to cooperate in the disciplinary investigation. This case was brought for default judgment and referred to a master commissioner. In Count One, respondent negotiated a settlement for his client in 2004 and retained a portion to cover any potential liens on the settlement. Respondent has never provided an accounting for, or a refund of, the money. Respondent failed to respond to letters of inquiry from relator and promised to provide documentation relating to the case, but never did. This conduct violated Prof.Cond.R. 1.4 (reasonable communication with a client), 1.15(d) (requiring prompt delivery of funds to the client), 8.1(b) (knowingly failing to respond to a demand for information by a disciplinary authority), 8.4(b) (illegal act that reflects adversely on the lawyer's honesty or trustworthiness), and 8.4(h) (conduct that adversely reflects on the lawyer's fitness to practice law). In Count Two, respondent negotiated a settlement with a tortfeasor's insurance company, but never informed his client, cashed the check, or returned an executed release. The client eventually settled the claim with different counsel. Respondent never responded to relator's letters of inquiry. This conduct violated Prof.Cond.R. 1.1 (requiring competent representation), 1.3 (requiring reasonable diligence), 1.4, 1.15(d), and 8.4(h), as well as 8.1(b) and Gov.Bar R. V(4)(G) (cooperation with a disciplinary investigation). In Count Three, respondent failed to respond to relator's letters of inquiry involving a third grievant. Although relator dismissed the underlying misconduct in this count, respondent's actions violated Prof.Cond.R. 8.1(b) and Gov.Bar R. (V)(4)(G). In aggravation, respondent acted with a dishonest or selfish motive, engaged in multiple offenses, failed to cooperate in the disciplinary process, refused to acknowledge the wrongful nature of his conduct, caused harm to vulnerable clients, and failed to make restitution. BCGD Proc.Reg. 10(B)(1)(b), (d), (e), (g), (h), and (i). In mitigation, respondent has no prior disciplinary record. BCGD Proc.Reg. 10(B)(2)(a). Relying on *Kaplan* (2010), *Goodlet* (2007), and *Mathewson* (2007), the board adopted the master commissioner's recommendation of an indefinite suspension. The Court adopted the findings of fact, conclusions of law, and the board's recommended sanction of an indefinite suspension.

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**Rules Violated:** Prof.Cond.R. [1.1](#), [1.3](#), [1.4](#), [1.15\(d\)](#), [8.1\(b\)](#), [8.4\(b\)](#), [8.4\(h\)](#); Gov.Bar R. [V\(4\)\(G\)](#)

<b>Aggravation:</b> (b), (d), (e), (g), (h), (i)		<b>Mitigation:</b> (a)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Indefinite Suspension</a>		

*Troy, Lake Cty. Bar Assn. v.*

121 Ohio St.3d 51, 2009-Ohio-502. Decided 2/12/2009.

Respondent agreed to defend a client in a civil action, deposited the client's unearned fees into his business operating account, and then neglected the case resulting in default judgment and damages against the client. Respondent was served notice of the disciplinary complaint, but did not answer. Relator moved for default. The board appointed a master commissioner to consider the motion pursuant to Gov.Bar R. V(6)(F)(2). The master commission conducted a hearing on relator's motion for default via video conference. Respondent appeared for the disposition of relator's motion for default and did not contest the default, instead he stipulated to the allegations and charges. The stipulations freed the master commissioner from the obligation to refer the matter for a formal panel hearing. The master commissioner thus proceeded to the merits of the motion for default, which he granted, making findings of misconduct. In late July 2006, Lacroica Barritt engaged respondent to defend in a civil action filed by a former tenant. Respondent reviewed the complaint, advised Barritt that her answer was due within a few days, and promised to promptly file it. Respondent also promised to inquire about settling the case for a few hundred dollars, because he knew the plaintiff's counsel. Barritt paid \$250 of respondent's quoted \$500 fee. Respondent never filed the answer. Further according to respondent, several days after his engagement, he doubled his quoted fee without Barritt's consent and sent a letter to advise her that he would not take formal action on her behalf until she had paid the fee in full. He claimed that he sent another letter early the next month reiterating his demand and advising Barritt that because the answer period had expired, he would need to seek leave to file an answer on her behalf. Respondent's letter also advised that the plaintiff had filed a motion for default judgment. Barritt testified that she did not receive either letter, but did pay respondent \$250 more on August 15, 2006. Respondent deposited both checks from Barritt into his business operating account. Respondent did not seek leave to plead and he did not respond to the motion for default judgment. The court entered default judgment against Barritt on August 9, 2006. Respondent then failed to attend a damages hearing. The court awarded damages in excess of \$9,000 against Barritt, who did not learn of this until January 2007, by which time \$10,291 had already been garnished from her bank account. Respondent did not account to Barritt for or repay her \$500. She has since filed a malpractice claim against him. The board found violations of DR 6-101(A)(3), 9-102(A), and 9-102(B)(3). The Supreme Court agreed. In aggravation, the client suffered losses from respondent's misconduct. Respondent did ultimately appear for the disposition of relator's motion for default and accepted responsibility for his wrongful actions and omissions. The master commissioner recommended a six-month suspension, stayed on the condition of no further misconduct. The board adopted the master commissioner's findings and conclusions of law, but recommended a one-year suspension with the last six months stayed on the conditions that he pays \$500 in restitution and commit no further misconduct. The Supreme Court agreed and so ordered.

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**Rules Violated:** DR 6-101(A)(3), 9-102(A), 9-102(B)(3)

<b>Aggravation:</b> (h)		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> One-year suspension, 6 months stayed		

*Troy, Lake Cty. Bar Assn. v.*

130 Ohio St.3d 110, 2011-Ohio-4913. Decided 9/29/2011.

Respondent neglected client matters, failed to provide competent representation, failed to keep his clients informed, engaged in dishonest conduct, and failed to cooperate in the disciplinary investigation. Respondent failed to file an answer, so the case was assigned a master commissioner who made the following findings of fact, conclusions of law, and recommended an indefinite suspension. In Count 1, respondent took a retainer and additional money in a divorce case, but failed to file any of the necessary paperwork or motions for the case. He failed to respond to inquiries and later told the client that he had referred the case to another attorney, which was untrue. In Count 2, respondent stopped communicating with a client after receiving full payment, and failed to file any of the necessary paperwork in her case. In Count 3, respondent lost a malpractice claim, but the insurer refused to pay because respondent had let the policy lapse and had not reported the claim prior to the policy lapsing. Respondent did not notify his client of this fact. This conduct violated Prof.Cond.R. 1.1 (competent representation), 1.3 (diligence and promptness), 1.4 (keep client reasonably informed), 8.4(c) (dishonesty, fraud, deceit, or misrepresentation), and Gov.Bar R. V(4)(G) (failure to cooperate). The Court adopted these findings. Although the board found no prior discipline as a mitigating factor, respondent had both an attorney registration suspension and a prior board suspension. In aggravation, respondent engaged in a pattern of misconduct involving multiple offenses, harmed vulnerable clients, failed to cooperate, and failed to make restitution. BCGD Proc.Reg. 10(B)(1)(c), (d), (e), (g), (h), (i). The board adopted the master commissioner's recommended sanction. Citing *Kaplan* (2005), *Troxell* (2011), and *Van Sickle* (2011), the Court agreed and issued an indefinite suspension with an order to pay restitution to all three clients within 30 days.

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**Rules Violated:** Prof.Cond.R. [1.1](#), [1.3](#), [1.4](#), [8.4\(c\)](#); Gov.Bar R. [V\(4\)\(G\)](#)

<b>Aggravation:</b> (c), (d), (e), (g), (h), (i).		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> <a href="#">YES</a> (x2)	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Indefinite Suspension</a>		

*Van Sickle, Columbus Bar Assn. v.*  
128 Ohio St.3d 376, 2011-Ohio-774. Decided 2/24/2011.

Respondent practiced law while his license was under registration suspension, neglected client matters, failed to communicate with his clients, and failed to cooperate in the ensuing disciplinary investigation. The panel granted the parties joint motion to dismiss a number of violations and the panel dismissed several stipulated violations not charged in the complaint. The board adopted the panel's findings and recommended sanction. In Count One, respondent's license was suspended for failure to register for the 2007-2009 biennium. While suspended, respondent sent a letter to his wife's former landlord and identified himself as a "Counselor and Attorney at Law" stating he his wife in a security deposit dispute. The board found a violation of Prof.Cond.R. 5.5(a). The court agreed. In Count Two, a client retained respondent to prepare a will. Respondent failed to prepare the will and failed to respond to client's telephone inquiries about the will, as well as the client's new attorney's requests for return of the client's documents. The board found violations of DR 7-101(A)(2), and 9-102(B)(4), and Prof.Cond.R. 1.15(d), 1.3, and 1.4(a)(3). The court agreed. In Count Three, respondent failed to prepare and file certain bankruptcy documents for his clients, a husband and wife, even after the bankruptcy court instructed him to do so. Respondent did not access his files or his mail for three months after the locks to his office were changed, and made no effort to have his mail forwarded elsewhere. As a result, respondent failed to receive notice of a scheduled hearing and subsequent show cause order, and failed to appear. Respondent was found in contempt, sanctioned, and ordered to return received fees in the bankruptcy case, and he failed to certify to the court that he complied with its order. The board found violations of DR 1-102(A)(5), 1-102(A)(6), 2-110(A), 6-101(A)(3), 7-101(A)(1), 7-101(A)(2), and 9-102(B)(4). The court agreed, but in footnote 1, the court noted that although the parties stipulated to a violation of 2-110(A), the Court found no evidence of a violation of 2-110(A)(1), and thus made its finding solely on 2-110(A)(2). In Count Four, respondent orally agreed in June 2005 to represent a group of partners in some tax matters, reorganization of certain business entities, and a possible bankruptcy. However, respondent has not communicated with these clients since 2005 and failed to complete the work. Although respondent did not return all of their documents to them, he did deliver the entire file to relator in June 2007. The board found violations of DR 7-101(A)(2) and 9-102(B)(4). The court agreed. The panel did dismiss the stipulated violations of several Rules of Professional Conduct, because they were not alleged in the complaint. In Count Five, respondent failed to submit a written response to any of the grievances alleged in Counts One through Four. He was subpoenaed and appeared at a deposition and agreed to provide various documents and information, but failed to do so. Respondent, despite being advised at the deposition of his obligation to cooperate and expressing remorse for not doing so, continued to ignore letters from relator. The board found violations of Prof.Cond.R. 8.1(b) and 8.4(h). The court agreed. In aggravation, respondent had a prior disciplinary record, engaged in a pattern of misconduct involving multiple offenses, was initially uncooperative in the disciplinary investigation and was slow to produce requested documents, harmed several clients, and failed to make prompt restitution. BCGD Proc.Reg. 10(B)(1)(a), (c), (d), (e), (h), and (i). In mitigation, respondent lacked a dishonest or selfish motive and was eventually cooperative in the disciplinary process. BCGD Proc.Reg. 10(B)(2)(b) and (d). The panel also found that respondent was dealing with several significant stressors (including divorce, financial problems, lack of health insurance, a major depressive disorder), but not to the extent of mental health mitigation in BCGD Proc.Reg. 10(B)(2)(g). Relator recommended an indefinite suspension, while respondent argued for a six-month suspension. The board recommended respondent be suspended for two years, with the second year stayed on conditions that he comply with the requirements of Gov.Bar R. V(10)(C) through (G), that he refrain from further misconduct, and that he make restitution to the clients in Count Three. The panel expressed concern about respondent's depression which was first diagnosed in 2006 and its treatment. Respondent submitted a report by Donald J. Tosi, Ph.D., diagnosing him with severe, single episode, major depressive disorder that was causally connected to his misconduct, but not offering any prognosis as to whether respondent will be able to return to competent, ethical, and professional practice of law at the completion of treatment. Respondent had stopped treatment with two other mental health

professionals in 2008. He met with Dr. Tosi, one-and- a-half months before the disciplinary hearing. The timing and nature of Dr. Tosi's involvement in the case led the panel to believe he was a "hired gun" brought in to influence the panel to minimize the sanction. Citing *Gottelhrer* (2010), *Hoff* (2010), *Davis* (2009), *Ridenbaugh* (2009), *Wolanin* (2009), *Young* (2004), the Court noted that neglect and failure to cooperate warrants an indefinite suspension, and that indefinite suspension are imposed on attorney who suffer from mental illness or substance abuse but fail to present sufficient evidence to qualify as mitigation. Indefinite suspension protects the public and still leaves open the possibility of proper rehabilitation. Because they found that respondent's depression was still not under control, the Court ordered respondent be indefinitely suspended from the practice of law, with reinstatement conditioned on participation in OLAP, treatment of his depression and fulfillment of all follow-up care and reporting requirements of OLAP and his treating professionals, restitution to the clients in Count Three, and reinstatement conditioned upon testimony from a qualified mental health professional that he is capable of returning to the competent, ethical, and professional practice of law.

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**Rules Violated:** Prof.Cond.R. 1.3, 1.4(a)(3), 1.15(d), 5.5(a), 8.1(b), 8.4(h); DR 1-102(A)(5), 1-102(A)(6), 2-110(A), 6-101(A)(3), 7-101(A)(1), 7-101(A)(2), 9-102(B)(4)

<b>Aggravation:</b> (a), (c), (d), (e), (h), (i)		<b>Mitigation:</b> (b), (d)	
<b>Prior Discipline:</b> YES (x2)	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Veneziano, Cuyahoga Cty. Bar Assn. v.*  
120 Ohio St.3d 451, 2008-Ohio-6789. Decided 12/30/2008.

Respondent failed to pay federal and state employee tax withholdings for the employees of her law office for seven years and has been subject to 17 tax liens for failing to timely file returns and pay her own federal and state income taxes. Relator initially charged respondent with seven counts, numbered 1 through 8, inadvertently omitting number 4. At the hearing the panel chair granted relator's motion to dismiss Counts 2, 3, 6, and 8 were dismissed. The panel found violations in Counts 1, 5, and 7, recommending a one-year stayed suspension on conditions. The board adopted the panel's findings as to Counts 1 and 7 and the recommended sanction, but dismissed as unfounded Count 5 which charged a violation of DR 9-102(A). Respondent objected to the board's report, arguing her misconduct was not deliberate and warrants no more than a public reprimand and that the panel erred in rejecting the parties' stipulations and her testimony of excusable ignorance. Respondent urged the court to rely on the parties' stipulation that she did not deliberately fail to pay withholding. But, relator observed that the court is the final arbiter in disciplinary cases [*Reid* (1999)] and is not bound by parties' stipulation to facts or misconduct [*Donlin* (1996)]. The Supreme Court rejected respondent's explanation and overruled her objection. In Count 1, respondent did not report income or pay required withholding taxes for employees of her law office for tax years 1995 through 2001. Since her 1995 bar admission, respondent practiced primarily on her own. She testified that she had no knowledge of an employer's obligation to withhold employee compensation for income tax purposes prior to 2002 when she consulted a tax attorney. She had left the financial affairs of her law office to her husband, a certified public accountant. Respondent has a bachelor's degree in psychology, a master's degree in social work, was briefly enrolled in a master's degree program in tax law, spent four years in medical school, and is currently pursuing a doctorate in clinical psychology, in addition to her law degree. Therefore, her professed obliviousness to laws requiring employer withholding carried little weight. The court adopted the board's finding that respondent violated DR 1-102(A)(6). In Count 7, respondent had 17 tax liens filed against her for her failure to timely file federal and state income tax returns and pay taxes owed for the years 2001 through 2005. The court adopted the board's finding that she violated DR 1-102(A)(6) for failure to withhold federal payroll taxes from her employer's earnings for seven years. In mitigation, respondent voluntarily reported to tax authorities and has been negotiating a payment schedule to satisfy her federal and state tax delinquency. Further, respondent has no prior disciplinary record and demonstrated her overall good character and reputation. BCGD Proc.Reg. 10(B)(2)(a) and (e). The court noted that the parties agreed that respondent's deficiencies were not willful, but that respondent's claim of complete ignorance does not, as respondent seems to assert, have the mitigating effect of a causally related mental disability or chemical dependence on her misconduct. The court noted the purpose of discipline process is to protect the public and allow the court to assess the lawyer's fitness to practice. The Supreme Court agreed with the board's recommended sanction and so ordered a one-year suspension stayed on conditions that respondent successfully complete a two-year term of probation, during which she must complete at least 12 hours of continuing legal education relating to law-office management, allow a monitoring attorney to oversee the office management of her practice, and engage in no further professional misconduct.

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**Rules Violated:** DR 1-102(A)(6), 9-102(A)

<b>Aggravation:</b> (a), (e)		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> One-year suspension, stayed		

**Vivyan, Disciplinary Counsel v.**

125 Ohio St.3d 12, 2010-Ohio-650. Decided 3/3/2010.

Respondent withdrew unearned settlement proceeds of \$1535 from his IOLTA for personal use. Respondent, a sole practitioner, had his IOLTA and personal account at Huntington Bank. In December 2007, respondent settled a personal injury claim for \$7700 on behalf of three clients. He agreed to reduce his contingent fee from one-third to the amount equal to his clients' shares. Respondent also obtained one doctor's consent to reduce a medical bill, but agreed with his clients to keep the remaining settlement proceeds in trust as he continued to negotiate with the doctor. Respondent distributed \$910 in settlement proceeds to each of his clients. However, respondent withdrew \$1535 in unearned proceeds from his IOLTA (via eight checks payable to cash) during January and February 2008 for personal expenses. Respondent admitted he violated Prof.Cond.R. 1.15(a), (b), and (c). Board adopted panel's findings of violations of Prof.Cond.R. 1.15(a), (b), and (c) and adopted the panel's recommended sanction of a public reprimand. Mitigating factors include respondent's 40 year practice of law without incident; cooperation and honesty during the investigation; good character other than this event; and the fact that respondent made timely and full restitution by replenishing the IOLTA when notified of the overdraft. BCGD Proc.Reg 10(B)(2)(a), (c), (d), and (e). The board further found that respondent may not have specifically intended to misuse his IOLTA. However, the Supreme Court concluded that respondent knew he had withdrawn client funds to which he was not entitled and that conduct calls for the standard disposition. The court noted that examples of cases cited by the Board included *Fletcher* (2009) (six month stayed suspension), *Johnston* (2009) (one year suspension, all stayed), *Nance* (2008) (6 months suspension stayed with conditions), *Peden* (2008) (six month suspension, all stayed), and *Newcomer* (2008) (six month suspension, stayed). The Supreme Court rejected the board's recommended public reprimand. Instead, the court suspended the respondent for six months, all stayed on the condition that respondent engage in no further misconduct, and so ordered. Justice O'Donnell dissented, as he agreed that a public reprimand was appropriate.

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**Rules Violated:** Prof.Cond.R. [1.15\(a\)](#), [1.15\(b\)](#), [1.15\(c\)](#)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (c), (d), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Six-month suspension, stayed</a>		

*Vogel, Columbus Bar Assn. v.*  
117 Ohio St.3d 108, 2008-Ohio-504. Decided 2/14/2008.

As to Count I, respondent represented a defendant against a series of armed-robbery charges. The court had appointed Attorney Ezell to represent the defendant, but respondent volunteered to assist as co-counsel, but was never appointed as counsel. After the trial began in November 2004, the assistant prosecutor assigned to the case informed the court and defense counsel of the existence of fingerprint evidence that should have been disclosed to the defense, but had not been. The judge declared a mistrial. At a hearing on respondent's motion to suppress the fingerprint evidence, respondent alleged that the assistant prosecutor was either lying or incompetent concerning the failure to disclose the fingerprint evidence. At the hearing, the judge vacated Attorney Ezell's appointment after observing that the defendant was charged with first-, second-, and third-degree felonies and Ezell was qualified only for appointment on fourth- and fifth-degree felonies. The judge also removed respondent from the case after discovering that he was not on the appointed-counsel list. The judge appointed Attorney Thomas as counsel. At a hearing in the matter in February 2005, respondent accosted Attorney Thomas outside the courtroom, behaving in a threatening and intimidating manner. Respondent, having entered into a retainer agreement with the defendant, filed a notice of appearance and substitution of counsel in each of the defendant's cases. At a March hearing at which respondent did not appear, the judge struck respondent's filing because it contained a certificate of service falsely stating the date of mailing. It appears the judge had no knowledge of the retainer agreement. Despite the court's rejection of his notice of appearance and substitution of counsel, respondent appeared at a hearing in April 2005 and disrupted the proceedings by insisting he was counsel for defendant. When the judge informed him he had not entered a proper appearance and would be jailed if he failed to sit down, respondent extended his wrists to a deputy sheriff to be handcuffed and said "If that's what you've got to do, Ma'am." The judge found him in contempt and he was taken into custody and incarcerated. From the jail, he gave an interview to the newspapers and was quoted as saying "Courtrooms get a little rough-and-tumble sometimes. A judge has to be able to accept that or pass the robe on to another judge." Three days later, the judge held a hearing so he could purge his contempt by assuring the court he would no longer interfere in the proceedings. At the hearing, he was again found in criminal contempt and sentenced to 40 days in jail, after he offered to apologize to the court, but only if he was allowed to represent the defendant and engaging in a colloquy with the judge in which he stated "This is an attempt to force this young man to make a plea for ten years to something that he didn't do. And forgive me, but this is a result of collusion between yourself and the prosecutor's office." As to Count I, board adopted panel's findings that respondent violated Gov.Bar R. IV(2), DR 1-102(A)(5), 1-102(A)(6), 7-106(C)(6), and 8-102(B). As to Count II, the charges arise out of his representation of a criminal defendant in a trial in late January and early February 2007 before another judge. During the trial, respondent, in anticipation of a separation-of-witnesses order, prepared subpoenas for two persons to prevent them from attending the trial. The trial court learned of respondent's strategy and prohibited him from serving the subpoenas. When asked, he informed the judge that the subpoenas were destroyed. But later when the judge reconsidered and allowed respondent to subpoena the two persons, respondent used the same subpoenas that he told the judge had been destroyed. When confronted, he claimed he though he had destroyed them, but found them shortly after he was told he could call the persons as witnesses. Despite admonitions from the court, he repeatedly engaged in demonstrative and melodramatic reactions to adverse rulings and certain witnesses' testimony. After the trial, the judge found that in connection with the subpoenas, respondent had committed a fraud on the court and the judge found him in contempt and gave him the option of spending two days in jail or paying a \$500 fine. He paid the fine. He gave an interview with the newspaper and was quoted as saying his punishment was "nothing but retaliation on the part of prosecutors and because of liars they put on the stand." He testified in the disciplinary matter that he had been misquoted and what he referred to as retaliation was the prosecutor's proposal to seek a new indictment. As to Count II, board adopted panel's findings that respondent violated Gov.Bar R. IV(2) and DR 1-102(A)(4), 1-102(A)(5) and for the conduct that occurred on or after 2/1/2007, Prof.Cond.R. 8.4(d) and 8.4(h). In aggravation, respondent committed multiple

offenses, there was a pattern of misconduct, he acted with dishonest motive when he falsely told the judge he had destroyed the subpoenas, he acted with selfish motive in promoting himself as a fearless and aggressive criminal-defense advocate. BCGD Proc.Reg. 10(B)(1)(b), (c), (d). In mitigation, there was no prior discipline and he largely acknowledged and expressed remorse for his misconduct in Count I. BCGD Proc.Reg. 10(B)(2)(a). The court adopted the Board's findings of violations and the recommended sanction of a suspension for two years with the second year stayed on condition that he serve a 12 month probation including that he submit to the appointment of a monitor and comply. "Conduct that is degrading and disrespectful to judges and fellow attorneys is neither zealous advocacy nor a legitimate trial tactic. Lying to a tribunal and making false accusations against Judges and fellow attorneys can never be condoned. Attorneys must advocate within the rules of law and act with civility and professionalism."

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**Rules Violated:** Prof.Cond.R. 8.4(d), 8.4(h); DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 7-106(C)(6), 8-102(B)

<b>Aggravation:</b> (a)		<b>Mitigation:</b> (b), (c), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Two-year suspension, 12 months stayed		

**Vogtsberger, Disciplinary Counsel v.**

119 Ohio St.3d 458, 2008-Ohio-4571. Decided 9/17/2008.

Respondent deposited personal funds into his client trust account to shield the funds from creditors. This misconduct began after his divorce in 2004 which led to financial obligations he was unable to fulfill and judgments against him totaling \$60,000 to \$70,000. His business and personal bank accounts were garnished, so he closed them and deposited the funds into the trust account. In May 2006, he was suspended from the practice of law for failure to comply with continuing legal education requirements, 109 Ohio St.3d 1464, 2006-Ohio-2403. The misuse of the trust fund account began before the CLE suspension. Board adopted the master commissioner's findings of violations of DR 1-102(A)(6), 9-102(A), 9-102(B). Upon relator's motion for default, the matter was referred to a master commissioner. Board agreed with the master commissioner's finding that realtor failed to demonstrate by clear and convincing evidence violations of DR 1-102(A)(4), DR 1-102(A)(5) and Gov.Bar R. V(4)(G). Board recommended a two-year suspension with one year stayed upon conditions. The Supreme Court of Ohio agreed with the board's findings of violations of DR 1-102(A)(6), 9-102(A), and 9-102(B), but disagreed with the board's finding that realtor did not prove violations of DR 1-102(A)(4) and 1-102(A)(5). The court found violations of DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 9-102(A), and 9-102(B). The court stated: "Clearly, a lawyer may not use his trust account, which is a tool established for the benefit of the profession, as a 'safe haven' for his money to avoid his personal financial responsibilities." The court cited a previous case, *Mathewson* (2007) where a violation of DR 1-102(A)(4) and (5) was found when attorney deposited personal funds into a trust account to keep them from collection procedures by federal-tax and child support enforcement authorities. The court reiterated its previous holding from *Miles* (1996) that it is "of the utmost importance that attorneys maintain their personal and office accounts separate from their clients' accounts and that the violation of that rule warrants a substantial sanction whether or not the client has been harmed." The court, citing *Reid* (1999) noted that "[i]n disciplinary cases, the Supreme Court renders the final determination of the facts and conclusions of law; we are not bound by the board's findings or conclusions." The court adopted the recommended sanction and so ordered a suspension for two years as with one year stayed on condition that respondent 1) satisfy the conditions of the CLE suspension, (2) satisfactorily complete 12 hours of additional CLE in law-office management and accounting during the year of the stayed suspension, (3) complete one year of monitored probation, (4) pay costs of the proceeding. One justice concurred with the sanction but would not find violations of DR 1-102(A)(4) and 1-102(A)(5).

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**Rules Violated:** DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 9-102(A), 9-102(B); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Two-year suspension, 12 months stayed		

*Walker, Disciplinary Counsel v.*

119 Ohio St.3d 47, 2008-Ohio-3321. Decided 7/8/2008.

Respondent was previously suspended from the practice of law for one year for failing to promptly return a client's money, neglecting a legal matter, and engaging in conduct prejudicial to the administration of justice in *Akron Bar Assn. v. Walker* (1984), 15 Ohio St.3d 31. In this disciplinary matter, respondent forged signatures on a deed conveying property and was arrested for possession of cocaine after promising in a disciplinary proceeding before the panel to never have another drink or use marijuana or cocaine again. In Count I, respondent was a long-time acquaintance and lawyer for a client who had recently died. During the administration of the client's estate, the client's son objected to the presentation of a deed that fraudulently conveyed the son's property to his father. Respondent met with the son and the son's attorney and acknowledged he notarized the deed, but claimed the decedent had introduced him to a person who claimed to be the son. Respondent repeated this story to relator, but after relator retained a handwriting expert eventually explained that he had forged the son's and two witnesses' signatures on the deed. As to Count II, during the panel hearing for Count I, respondent promised to never use alcohol, marijuana, or cocaine again. He was arrested six days later for possession of cocaine. He pleaded guilty to the cocaine possession charge, a fifth degree felony, but was sentenced to treatment in lieu of conviction. The board adopted the panel's findings that as to Count I respondent violated DR 1-102(A)(3), (4), (5), and (6) and as to Count II, DR 1-102(A)(6). The aggravating factors include making a false statement during the disciplinary process when he denied forging the deed and a prior disciplinary conviction where respondent failed to promptly return a client's money, neglected an entrusted legal matter, and engaged in conduct prejudicial to the administration of justice that respondent was suspended from the practice of law. BCGD Proc.Reg. 10(B)(1)(a) and (f). The mitigating factors include respondent paying all monies owed to the client's son as to the forged deed, BCGD Proc.Reg. 10(B)(2)(c), the board finding the respondent did not act selfishly or with a profit motive, BCGD Proc.Reg. 10(B)(2)(b), and that respondent basically cooperated with the disciplinary process, apologized, and showed remorse for his actions. BCGD Proc.Reg. 10(B)(2)(d). Further, the board found that respondent's substance abuse and alcoholism contributed to his misconduct and that by his second hearing he was in compliance with his OLAP contract and the terms of his sentence of treatment in lieu of conviction. BCGD Proc.Reg. 10(B)(2)(g) and (f). The board adopted the panel's recommendation that respondent be suspended from the practice of law for two years with one year stayed on the conditions that respondent (1) comply with all terms and conditions of his OLAP contract, (2) upon his return to the practice of law, submit to the appointment of a substance-abuse monitor and a law-practice monitor, (3) commit no further violations during the stay period, and (4) pay all costs of the proceedings. The Supreme Court agreed with the board and so ordered the two year suspension with one year stayed on conditions. In dissent, one justice, noted that respondent "exhibits a troubling tendency toward recidivism" and appears not to have learned from his first disciplinary suspension, and that the conduct warranted a stricter sanction of indefinite suspension with reinstatement conditioned upon compliance with the conditions recommended by the board.

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**Rules Violated:** DR 1-102(A)(3), 1-102(A)(4), 1-102(A)(5), 1-102(A)(6)

<b>Aggravation:</b> (a), (f)		<b>Mitigation:</b> (b), (c), (d), (f), (g)	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> NO	<b>Sanction:</b> Two-year suspension, 12 months stayed		

*Watkins, Akron Bar Assn. v.*

120 Ohio St.3d 307, 2008-Ohio-6144. Decided 12/3/2008.

Respondent charged a clearly excessive fee and commingled funds while acting as the trustee of a single client's revocable living trust. Irene Radabaugh, a stroke victim, asked respondent to look after her financial affairs in June 2002. Respondent drafted and Radabaugh executed a power of attorney, making respondent attorney-in-fact over Radabaugh's finances, healthcare, and a revocable living trust, naming himself as trustee. Respondent had never served as a trustee before, but nevertheless agreed to oversee the trust assets of approximately \$198,000. Respondent charged Irene at least \$46,294.33 for his services over a 20 month period while Irene was in the care of a nursing home. In June 2004, Irene hired another attorney to assist in selling her home and other estate planning needs. This attorney was concerned about the fees respondent charged Irene, stemming from provisions in the living trust that allowed trustee compensation at an hourly rate of \$150, but only for "extraordinary" services. The second lawyer found that respondent had charge the "extraordinary" services fee for ordinary services. Most troubling of the examples were 137 entries, each for three quarters of an hour at a cost of \$112.50, resulting in charges of \$15,412.50 for simply picking up Radabaugh's mail. The second attorney inquired into the charges, and respondent sent a letter attempting to explain. This letter did not allay the second lawyer's concerns, who filed a grievance with relator in July 2006. Expert opinion established that respondent had overcharged his client by \$28,344.22, which respondent conceded the mistake and repaid. He explained that he did not realize the difference in the compensation rates. He said he tried to get others to do the tasks, but they left them up to him. Because Radabaugh had died in January 2006, the funds were used to reimburse Medicaid for her care. Respondent also received six payments totaling \$11,800 from the Radabaugh trust as advances toward his future fees. He did not deposit the unearned fees into his client trust account. Respondent stipulated and the board found, as had the panel, that he had violated DR 2-106(A) and DR 9-102(A). The Supreme Court agreed. In mitigation, respondent has no prior disciplinary record, did not act with a dishonest or selfish motive, participated openly and cooperatively with the disciplinary process, and as a former state representative and former city law director has shown a commitment to public service and a good reputation and character. He conceded his mistake which according to the panel and board resulted from inexperience and a desire to help a longtime family friend. Further, respondent made restitution within two weeks of receiving relator's notice of the amount owed and has shown remorse for his misconduct. BCGD Proc.Reg. 10(B)(2)(a), (b), (d) and (e). No aggravating factors were found. The board agreed with the panel's recommendation of a six month suspension, with all six months stayed on the condition that respondent commits no further misconduct during that period. The Supreme Court agreed and so ordered.

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**Rules Violated:** DR 2-106(A), DR 9-102(A)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (b), (d), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> YES	<b>Sanction:</b> Six-month suspension, stayed		

*Weisberg, Toledo Bar Assn. v.*

124 Ohio St.3d 274, 2010-Ohio-142. Decided 1/27/2010.

The Supreme Court of Ohio rejected the board's recommendation of a consent to discipline agreement as to violations of DR 1-102(A)(3) and 9-102(A) and a sanction of one year with credit for time served and returned the case to the board for further proceedings. See *Toledo Bar Assn. v. Weisberg*, 118 Ohio St.3d 1499, 2008-Ohio-3305. Respondent was convicted of federal income tax evasion and he also commingled personal and client funds in his IOLTA. Respondent received an interim felony suspension on March 26, 2007 in *In re Weisberg*, 113 Ohio St.3d. 1424, 2007-Ohio-1313 based upon his August 2006 guilty plea to federal income tax evasion for which he was sentenced to five months in prison, five months house arrest, and three years supervised post-release control; he served the entirety of his sentence. This conviction resulted from his failure to pay taxes and his concealment of funds. Respondent stipulated that sometime prior to 1996 he became delinquent in the payment of federal income taxes for several years. In 1996, he set up a payment plan with the IRS to pay delinquent taxes, but in 1998 he failed to pay a portion of the income taxes due in 1997. The IRS terminated the installment agreement, under the terms of the installment agreement, terminated the agreement, but did not inform respondent until the end of 1999. During 1998 and 1999 respondent made payments under the agreement. From 1997 through 2002, he attempted to conceal assets from the IRS by keeping some personal funds in his IOLTA, including substantial portions of earned legal fees. Respondent used his IOLTA for virtually all of his business and personal funds from 1997 through 2002. He drew checks from the account to pay numerous and substantial personal expenses. Respondent admitted that he violated DR 1-102(A)(3) and DR 9-102(A). The Board adopted the panel's findings of violations of DR 1-102(A)(3) and DR 9-102(A) and recommended sanction of a two-year suspension with credit for the March 26, 2007 interim suspension. In aggravation, respondent's illegal conduct, which he attributed to a "cash flow situation" produced mainly by gambling debts, was motivated by dishonesty and self-interest. BCGD Proc.Reg. 10(B)(1)(b). In mitigation were respondent's lack of prior disciplinary record, cooperation in the disciplinary process, agreement to continue treatment for his gambling addiction, presentation of strong evidence of his character and reputation, and that respondent had served the sentence for his crimes. BCGD Proc.Reg. 10(B)(2)(a), (d), (e), and (f). The court, citing *Roetzel* (1994), noted that attempts to willfully evade federal income taxes are deemed illegal conduct involving moral turpitude in violation of DR 1-102(A)(3). The court, citing *Vogtsberger* (2008) and *Miles* (1996) noted that a trust account may not be used by a lawyer as a safe haven for money to avoid personal financial responsibilities. The Supreme Court accepted the board's findings of violations of DR 1-102(A)(3) and 9-102(A), but ordered a two-year suspension with no credit for time served, with the suspension stayed on conditions of a two-year monitored probation, including that he enter an OLAP contract to obtain counseling and other appropriate therapy for his gambling.

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**Rules Violated:** DR 1-102(A)(3), 9-102(A)

<b>Aggravation:</b> (b)		<b>Mitigation:</b> (a), (d), (e), (f)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> NO	<b>Sanction:</b> Two-year suspension, stayed		

*Willard, Disciplinary Counsel v.*

123 Ohio St.3d 15, 2009-Ohio-3629. Decided 7/30/2009.

Respondent partnered with a nonlawyer organization to represent clients in foreclosure actions and he represented them with very little preparation or communication. In 2004, Foreclosure Alternatives contacted respondent to represent customers in foreclosure actions. Foreclosure Alternatives sends direct mail advertisements to defendants in pending foreclosure proceedings offering to intervene on their behalf and negotiate with the foreclosing lender. If a defendant responds, an employee of the company contacts them to schedule a meeting and sends a packet of information. In the packet is a mediation agreement, laying out the company's fees and instructions for the customer to deposit money in an account on a monthly basis to demonstrate to the lender the customer's ability to make payments. The packet includes a limited power of attorney providing authority to an unnamed attorney to take legal action on behalf of the defendant. None of the information discloses the fee that will be paid to the attorney out of the general fee paid to the company. Respondent agreed to a fixed fee of \$150 to provide limited representation of customers referred by the company. His representation was limited to filing responsive pleadings. The company retained authority to negotiate with lenders. Respondent participated in a minimum of 28 cases. Out of the 28 clients he discussed cases with only three or four of them. His usual protocol was that he would receive a copy of the foreclosure complaints and the limited power of attorney from Foreclosure Alternatives. He filed an answer or a motion to strike and sent a copy to the client with a letter stating "This is a response I filed on your behalf. I had a referral from Foreclosure Alternatives. If there are any other defenses you can think of, feel free to call me." Respondent was not informed of the progress of Foreclosure Alternatives negotiations with the lender. The next action respondent took was to notify the company when he received the lender's motion for summary judgment. If the client had no defense, respondent sent the client a letter stating "A motion for summary judgment was filed. I suggest that you consider a Chapter 13 bankruptcy or a bankruptcy." He not otherwise personally communicate with the client. The grievance arose from the foreclosure on David and Annette Chandler's home. After the Chandlers wrote a check to Foreclosure Alternative for \$450, half the total fee, the company notified them that the "attorney has filed plea [sic] and answered the complaint in your foreclosure case," The letter did not identify the attorney and no answer had been filed. It was another two months before the company referred the case to respondent and by that time, the court had already entered a default judgment and ordered the chandler's house be sold. Instead of contacting the clients, respondent told the company it was too late, but agreed to do "something" and accepted the fee. He filed a motion to strike and contacted the lender, but the lender informed him the sale would go forward as scheduled. The Chandlers learned of the sale through a newspaper notice two weeks prior to the sale date. They contacted Foreclosure Alternatives who told them everything was fine. Three days before the sale, Foreclosure Alternatives told them their situation was hopeless. The Chandlers were not notified that a motion to strike was filed and did not receive a copy of the motion. Chandlers learned respondent's name by examining court documents. They wrote respondent and requested their file be forwarded to another attorney who filed the grievance against respondent along with a civil suit against respondent and Foreclosure Alternatives. The board adopted the panel's findings and recommended sanction. The Board found a violation of DR 2-103(C) and the Supreme Court of Ohio agreed--the company solicited customers and referred business to respondent but did not qualify as authorized referral service and the Supreme Court of Ohio agreed. Board found a violation of DR 3-101(A) for aiding a nonlawyer in the unauthorized practice of law--the company performed all the negotiations with the creditors. Board found a violation of DR 3-102(A) and the court agreed--the Chandler's and other customers paid a set fee to the company to handle negotiations and provide advice and this work amount to practice of law, then the company transferred \$150 to respondent for each case he handled which is a sharing of legal fees with a nonlawyer. Board found a violation of DR 3-103(A) and the court agreed--respondent partnered with a company to provide legal services. The Board did not find clear and convincing evidence to support violations of both DR 6-101(A)(2) and 7-101(A)(1), but upon relator's objections, the court found these violations--the facts including his minimal contact with clients showed a lack of preparedness and failure to seek objectives such as by not contacting the

Chandlers to discover whether there was any means to aid them in avoiding pending foreclosure—respondent was involved in the cases only to the extent he filed responsive pleadings in court. In mitigation, there is no prior discipline, he cooperated, and submitted three letters as to his character and reputation. BCGD Proc.Reg. 10(B)(2)(a), (b), (d), and (e). In aggravation, there was vulnerability and harm to the clients which the Board found outweighed the mitigation. The court also found as aggravating factors that he committed multiple offenses in his representation of each client and he engaged in a pattern of misconduct in representing 28 referred clients over a two-and-a-half year period. BCGD Proc.Reg. 10(B)(1)(c), (d). The court compared the case to *Mullaney* (2008) involving three attorneys who entered agreement with Foreclosure Solutions, LLC, one received a public reprimand, a second attorney who was not admitted to practice in Ohio, received an injunction prohibiting him from appearing pro hac vice in the state for two years, and a third attorney was given a one-year suspension all stayed. But the court found respondent's conduct more egregious warranting a more severe sanction because respondent concluded it was too late to help the Chandlers, but took the case anyway, accepted the fee, and filed a boilerplate motion without communicating with the Chandlers. The court rejected the Board's recommended sanction of one year stayed upon conditions. The court ordered a suspension for one year with six months stayed on condition of no further misconduct. Two justices dissented in favor of a one year suspension stayed upon conditions.

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**Rules Violated:** DR 2-103(C), 3-101(A), 3-102(A), 3-103(A), 6-101(A)(2), 7-101(A)(1)

<b>Aggravation:</b> (c), (d)		<b>Mitigation:</b> (a), (b), (d), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> One-year suspension, 6 months stayed		

*Willette, Columbus Bar Assn. v.*

117 Ohio St.3d 433, 2008-Ohio-1198. Decided 3/20/2008.

Respondent entered a contract with Estate Planning Legal Services, P.C. (“EPLS”), a Michigan law firm to market and sell living trusts and other estate-planning services in Ohio. The contract provided that EPLS would be respondent’s sole and exclusive agent for marketing, sales, and preparing estate-planning packages. For any client referred by EPLS to respondent, respondent would pay EPLS the lesser of \$750 or 50% of the client’s fee as a marketing and document- preparation fee. EPLS prohibited respondent from offering financial advice to his clients as to funding of the trust. EPLS contacted prospective clients on respondent’s behalf by direct mail and telephone solicitation. EPLS touted the benefits of living trusts over probate. EPLS referred the consumers to respondent and a meeting would be arranged. In 2004, Janice Tolbert, an EPLS telemarketer contacted a couple (the Trotts). Later, respondent contacted the Trotts and identified himself as the attorney following up the phone call. He met with the Trotts and spoke favorably of living trusts and dangers and costs of probate. The Trotts agreed to have respondent prepare a standard living trust for \$1,500. He collected personal and financial information from them and without their knowledge or consent forwarded the information to EPLS. EPLS drafted the trust document and returned it to respondent. Respondent met with the Trotts to review and sign the document. He informed them they would need to meet another individual who would witness their signatures and explain the funding of the trust. That individual, Larry Spencer, an agent of EPLS contacted them. Spencer was compensated solely by commissions on any insurance policies or annuities that he was able to sell to trust clients. After talking with Spencer, the Trotts became suspicious and filed a grievance. Board adopted the panel’s findings, conclusions, and recommendations. Board found respondent violated DR 1-102(A)(4), 1-102(A)(6), 2-101(A), 2-101(F)(1), 2-103(B), 2-103(C), 3-102, 4-101, 5-101(A)(1), and 6-102. The Board did not find clear and convincing evidence of a violation of DR 2-106. In aggravation, there were multiple violations, refusal to acknowledge fully the wrongful nature of the conduct, concealing of material information from the Trotts, and an attempt to return only a portion of the Trotts’ fees in exchange for a full release. BCGD Proc.Reg. 10(B)(1)(b), (d), and (g). In mitigation, there was no prior discipline, there was cooperation and remorse for certain segments of the misconduct, and the eventual return of the entire fee, but the mitigating effect of the refund was reduced because it occurred later in the grievance process. BCGD Proc.Reg 10(B)(2)(a), (c), (d). Board recommended suspension for one year, with six months stayed. Respondent did not object to the Board’s findings of violations of DR 2-103(B), 2-103(C), 3-102, and 5-101(A)(1), but objected to the Board’s findings of violations of DR 1-102(A)(4), 1-102(6), 2-101(F)(1), 4-101, and 6-102. The Supreme Court of Ohio adopted all of the Board’s findings. Respondent violated DR 2-103(B) by paying EPLS a fee for referring clients; DR 2-103(C) by using EPLS to market his services; DR 3-102 by paying EPLS 50% of the fees received from each client referred to him by EPLS; DR 5-101(A)(1) by failing to inform the Trotts of his business relationship with EPLS, including that he was obligated to use EPLS agents for trust-funding advice; DR 102(A)(4) by his misrepresentation by omissions in failing to inform Trotts of pertinent information such as he had a contract with EPLS, that he was paying EPLS a portion of the fee he charged them; that he contract with EPLS required him to use EPLS for trust-funding advice and document preparation, and by failing to advice them they could transfer their own assets into the trust rather than relay on financial advice from EPLS; DR 2-101(A) by not attempting to supervise or review mailing by EPLS and continuing to use EPLS services even after he knew the marketing practices did not comply with the rules; DR 2-101(F)(1) by EPLS solicitation of legal business by telephone; DR 4-101 by sharing Trotts’ confidential information with EPLS without the clients’ knowledge or express consent; DR 6-102 by requesting a full release from the Trotts; DR 1-102(A)(6) by his inability to recognize the inherent conflict of interest between his business relationship with EPLS and his duty to the Trotts. The court adopted the Board’s recommended sanction and so ordered a one-year suspension with six months stayed. Citation to *Wheatley* (2005).

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**Rules Violated:** DR 1-102(A)(4), 1-102(A)(6), 2-101(A), 2-101(F)(1), 2-103(B), 2-103(C), 3-102, 4-101, 5-101(A)(1), 6-102

<b>Aggravation:</b> (b), (d), (g)		<b>Mitigation:</b> (a), (c), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <u>One-year suspension, 6 months stayed</u>		

*Williams, Disciplinary Counsel v.*

130 Ohio St.3d 341, 2011-Ohio-5163. Decided 10/13/2011.

Respondent was convicted of child rape. Respondent was currently under suspension for failing to meet the CLE requirements (2003) and for failing to register (2005). Although Respondent initially responded to relator's complaint, he did not respond to subsequent communication attempts. A master commissioner made findings of fact, conclusions of law, and a recommended sanction. In June 2008, respondent was indicted on three counts of child rape and one count of kidnapping with a sexual motivation. The end result was two convictions for rape and two concurrent life sentences. This conduct was found to have violated DR 1-102(A)(3) (illegal conduct involving moral turpitude) and 1-102(A)(6) (conduct that adversely reflects on lawyer's fitness to practice). The only mitigating factor present was the imposition of prior sanctions. BCGD Proc.Reg. 10(B)(2)(f). In aggravation, the board found a pattern of misconduct involving multiple offenses, refusal to acknowledge the wrongful nature of respondent's conduct, and harm to a vulnerable victim. BCGD Proc.Reg. 10(B)(1)(c), (d), (g), and (h). The Court also found a dishonest and selfish motive, and a failure to cooperate in the disciplinary process. BCGD Proc.Reg. 10(B)(1)(b) and (e). The relator, the master commissioner and the board all recommended disbarment. The Court noted that disbarment is appropriate for violations of DR 1-102 that result in a felony conviction, including reckless homicide, attempted murder, and murder. *See Zemba* (2002), *Rocker* (1999), *Riebel* (1990), *Steele* (1981). The Court held that "permanent disbarment is the only appropriate sanction for an attorney convicted of raping a child," and thus permanently disbarred the respondent.

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**Rules Violated:** DR 1-102(A)(3), 1-102(A)(6)

<b>Aggravation:</b> (b), (c), (d), (e), (g), (h)		<b>Mitigation:</b> (f)	
<b>Prior Discipline:</b> <a href="#">YES</a>	<b>Procedure/ Process Issues:</b> <a href="#">YES</a>	<b>Criminal Conduct:</b> <a href="#">YES</a>	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Disbarment</a>		

*Williams, Columbus Bar Assn. v.*

129 Ohio St.3d 603, 2011-Ohio-4381. Decided 9/7/2011.

Respondent neglected client matters, failed to provide competent representation and reasonably communicate with clients, and failed to withdraw from representation when his mental condition impaired his abilities and perform the obligations of appointed counsel. This case was originally offered as a consent-to-discipline case, which was rejected by the Court; it was twice remanded to the board to either correct an error or to consider a more severe sanction. The parties stipulated to the facts and misconduct. Respondent was appointed to appeal a man's rape conviction. Respondent did appear, but later failed to file an appellate brief, and the case was dismissed. Respondent admitted that he should have filed a brief, but that he suffered from depression and frequently used marijuana. In the second count, respondent was appointed to defend a defendant charged with aggravated robbery and aggravated murder. Respondent did not appear for trial, and testified that he just did not leave his office when it was time to go to trial. This conduct violated Prof.Cond.R. 1.1 (competent representation), 1.3 (reasonable diligence), 1.4(a)(1) (informed consent to client), 1.4(a)(2) (reasonable consultation with client), 1.4(a)(3) (keep client reasonably informed), 1.4(a)(4) (comply with reasonable requests for information), 1.16(a)(2) (requiring withdraw when lawyer's wellness impairs lawyer's ability), and 6.2 (failing to avoid appointment when not doing so would violate the Prof.Cond.R.). The Court agreed with the above findings. In aggravation, respondent committed multiple offenses and harmed vulnerable clients. BCGD Proc.Reg. 10(B)(1)(d), (h). In mitigation, respondent lacked a prior disciplinary record, lacked a dishonest or selfish motive, and cooperated with the disciplinary process. BCGD Proc.Reg. 10(B)(2)(a), (b), (d). Although the respondent testified at great length about his depression and use of marijuana, the board did not find it to be a mitigating factor. The parties originally stipulated to a two-year suspension, stayed on the condition of completion of his OLAP contract. The board recommended a two-year suspension, stayed with the conditions of 2 years of monitored probation, submit to random drug testing, and complete his OLAP contract. Citing *Gresley* (2010), the Court found that respondent's misconduct was not as egregious as *Gresley's*, and thus adopted the board's recommended sanction, with the added condition that respondent refrain from drug or alcohol use.

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**Rules Violated:** Prof.Cond.R. 1.1, 1.3, 1.4(a)(1), 1.4(a)(2), 1.4(a)(3), 1.4(a)(4), 1.16(a)(2), 6.2

<b>Aggravation:</b> (b), (h)		<b>Mitigation:</b> (a), (b), (d)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Two-year suspension, stayed		

*Williamson, Butler Cty. Bar Assn. v.*

117 Ohio St.3d 399, 2008-Ohio-1196. Decided 3/20/2008.

As to Count I, in May 2004 respondent agreed to represent a female client in a proceeding to terminate her marriage and agreed to help her through a domestic-violence action pending in municipal court. She paid him \$500 toward a \$1,000 fee. He began dating her shortly after she hired him. By the end of May 2004 the relationship became intimate, after the client paid the \$500 and respondent appeared at a preliminary hearing in the domestic violence case against her husband. By mid-June, the client and her two children moved in with him and resided there until October 2004 when the client and her husband reconciled. In a letter dated May 27, 2004, respondent claimed to be withdrawing as her lawyer. He began denying their attorney-client relationship in correspondence to the lawyer representing her husband, although he continued to assist her in secret. He directed the client not to refer to him in public as her lawyer and promised to have a colleague sign off on any required papers. The colleague later testified that respondent never consulted him about the client. Upon granting relator's motion for default, a master commissioner found violations of DR 1-102(A)(5), 2-110(B)(2) for engaging in an affair with a client and continuing to represent her, and a violation of DR 1-102(A)(4) by lying to conceal the relationship. As to Count II, master commissioner found respondent violated Gov.Bar R. V(4)(G) by not complying with two subpoenas to appear before relator. Master Commissioner recommended an indefinite suspension. Board adopted master commissioner's findings and recommended sanction. As to aggravating factors, respondent attempted to mislead relator by reporting during the investigation that the client was represented by independent counsel. BCGD Proc.Reg. 10(B)(1)(f). He changed the date of the letter purporting to terminate his professional relationship with the client so that it coincided with a date after his last appearance in court on her behalf. He was suspended since December 5, 2005 for failure to properly register. The court adopted the findings and recommended sanction and so ordered an indefinite suspension. Citations to *Sturgeon* (2006) and *Kodish* (2006) as to sexual misconduct cases. Citations to *Hofelich* (2007) and *James* (2006) as to failure to cooperate cases.

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**Rules Violated:** DR 1-102(A)(4), 1-102(A)(5), 2-110(B)(2); Gov.Bar R. [V\(4\)\(G\)](#)

<b>Aggravation:</b> (f)		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> <a href="#">Indefinite Suspension</a>		

*Wilson, Dayton Bar Assn. v.*

127 Ohio St.3d 10, 2010-Ohio-4937. Decided 10/14/2010.

Respondent issued a bad trust account check to a client, failed to act with reasonable diligence on two other client matters, and failed to cooperate in the disciplinary process. Relator's complaint was brought against Respondent, Y. Nicole Wilson, even though the attorney registration number used is listed as belonging to a "Y. Nicole Camp." The court found them to be the same person. Respondent failed to file an answer, so relator moved for default, and the case was referred to a master commissioner whose findings, conclusions, and recommendations the board adopted. Respondent's license was suspended on November 3, 2009 for failure to register for the 2009/2011 biennium. In Count 1, respondent informed relator she would return a retainer to a grievant dissatisfied with a bankruptcy representation. The bank returned the \$450 trust account check for insufficient funds. Respondent did not respond to relator's repeated requests for a meeting and failed to honor a request that she appear at a scheduled meeting before the grievance committee. Board found that this conduct violated Prof.Cond.R. 1.15(a), 1.15(d), 8.1(b) and Gov.Bar R. V(4)(G). The Board concluded the record did not support relator's allegation of a violation of Prof.Cond.R. 8.4(c). The court agreed. In Count 2, respondent agreed to represent a husband and wife in a custody matter. Respondent did not respond to relator's attempts to obtain information about this grievance. Based on factual findings, the board concluded that respondent's failure to respond to relator's attempts to inquire violated Prof.Cond.R. 8.1(b) and Gov.Bar R. V(4)(G). The board, citing *Sebree* (2004), did not find a violation of Prof.Cond.R. 1.1 and 1.3, because there was no sworn or certified evidence to support these alleged violations. The court agreed. In Count 3, the Board found violations of Prof.Cond.R. 1.1, 1.3, 8.1(b), and Gov.Bar R. V(4)(G). Respondent commenced a bankruptcy action for a husband and wife, but failed to stop an improper garnishment of the husband's paycheck. The clients sent documents to respondent at her request, but they were returned by the post office marked "undeliverable." The board found that relator's investigator tried to contact respondent two times. One attempt was returned as "not deliverable as addressed" and respondent did not respond to the second attempt. The court noted that while alleged in the complaint, the affidavits submitted do not mention the specific attempts by relator to communicate; therefore the court rejected these findings. But, because the record contained clear and convincing evidence that respondent has not responded to relator and has not filed an answer, the court found violations of Prof.Cond.R. 8.1(b) and Gov.Bar R. V(4)(G). The court also found the violations of Prof.Cond.R. 1.1 and 1.3. In mitigation, the board found that respondent lacked a prior disciplinary record. BCGD Proc.Reg. 10(B)(2)(a). In aggravation, the Board found that respondent engaged in multiple offenses, a pattern of misconduct, failed to cooperate, failed to make restitution, and failed to acknowledge the wrongful nature of her conduct. BCGD Proc.Reg. 10(B)(1)(c), (d), (e), (g), and (i). Relator recommended disbarment. The board recommended an indefinite suspension. Citations to *Torian* (2005) and *Verbiski* (1999). The court ordered respondent be indefinitely suspended from the practice of law, and that her reinstatement be conditioned on restitution of \$450 plus interest to the clients in Count 1.

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**Rules Violated:** Prof.Cond.R. 1.1, 1.3, 1.15(a), 1.15(d), 8.1(b); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> (c), (d), (e), (g), (i)		<b>Mitigation:</b> (a)	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Wineman, Disciplinary Counsel v.*

121 Ohio St.3d 614, 2009-Ohio-2005. Decided 5/6/2009.

Respondent attempted to represent clients in and out of the courtroom while intoxicated. As to Count I, when respondent arrived on August 3, 2006 at the courthouse where he was scheduled to appear for clients in two different proceedings, a sheriff's deputy suspected from his appearance and breath he was intoxicated. Opposing counsel in one of the same cases reached the same conclusion when trying to discuss the case. The lawyer reported his suspicions to the magistrate. The magistrate confirmed the lawyer's impressions with the deputy sheriff and reported respondent's condition to the common pleas court judge. The judge brought respondent into chambers and confronted him. The judge observed the signs of intoxication, including slurred speech and the odor of alcohol and forbade him to participate in the two hearings that day. Respondent agreed to pay the costs of continuances. Respondent acknowledged his intoxicated state, apologized, and conceded he needed help. Board adopted the panel's findings of violations of DR 1-102(A)(5) and DR 1-102(A)(6). As to Count II, Michael Sandifer hired respondent in April 2007 to defend him in a criminal charge in municipal court. When Sandifer met his at his office that month to discuss the case, Sandifer left abruptly because respondent was intoxicated. Also, on May 9, 2007, respondent appeared under the influence of alcohol at one of Sandifer's pretrial hearings. He entered the courtroom, walked by Sandifer without acknowledging his presence, and entered the judge's chambers. Both the judge and the assistant law director prosecuting the case detected the odor of alcohol. The judge warned him he would declare a mistrial and find respondent in contempt if he appeared intoxicated at trial. The day of the trial, during lunch break, Sandifer noticed respondent's eyes were bloodshot and his speech was slurred and that he smelled of alcohol. Sandifer requested that respondent ask certain questions of witnesses, but respondent was unresponsive and repeatedly asked Sandifer to remind him of the facts in the case. Sandifer feared respondent was under the influence of alcohol. Sandifer was found guilty by a jury. Sandifer discharged respondent in June 2007 and asked for a refund. Sandifer hired new counsel and the judge vacated the conviction, in part because of the possible intoxication of respondent. Sandifer was convicted of a lesser crime. After reviewing relator's draft complaint, respondent refunded Sandifer's \$750. Board adopted panel's findings of violations of Prof.Cond.Rules 1.1, 8.4(d), 8.4(h). There are no aggravating factors. In mitigation, there is no prior discipline; his conduct was not motivated by self-interest or dishonesty; he cooperated fully; and offered persuasive evidence of professional competence; good character, and reputation; and met the requirements for alcohol as a mitigating factor. BCGD Proc.Reg. 10(B)(2)(a), (b), (d), (e), (g)(i) through (iv). He originally entered an OLAP contract on June 9, 2007. He relapsed on July 4, 2007 but remained sober thereafter. Nevertheless, his OLAP contract was terminated in February 2008 for noncompliance because he did not enter an inpatient treatment facility. In May 2008, he signed another OLAP contract. Board adopted the panel's recommended sanction of suspension for 24 months with conditions that he comply with OLAP contract, including any inpatient or outpatient treatment program determined by OLAP, that he complete a two- year probation including quarterly reports to a monitoring attorney; and that he commit no other misconduct. The court accepted the findings of violations and the recommended sanction and so ordered. Citation to *Scurry* (2007).

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**Rules Violated:** Prof.Cond.Rules 1.1, 8.4(d), 8.4(h); DR 1-102(A)(5), 1-102(A)(6)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (b), (d), (e), (g)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Two-year suspension		

**Wittbrod, Akron Bar Assn. v.**

122 Ohio St.3d 394, 2009-Ohio-3549. Decided 7/28/2009.

Following the Supreme Court's rejection of the Board's recommendation of acceptance of a consent- to-discipline agreement imposing a one-year suspension stayed on conditions of mental health treatment, a panel of the board held a disciplinary hearing upon the court's order for "further proceedings, including consideration of a more severe sanction." See *Akron Bar Assn. v. Wittbrod*, 122 Ohio St.3d 394, 2009-Ohio-3549. As to the six count complaint, the hearing panel found misconduct as to Counts III and IV, but not as to the other four. As to Count III, respondent violated DR 1-104(A) and (B) by defending a client against an employee's workers' compensation claim and not advising the client he lacked malpractice insurance. As to Count IV, respondent violated DR 6-102 and Prof.Cond.R. 1.8(h)(2) by miscalculating and missing a filing deadline for appealing the Industrial Commission's decision to allow the employee's claim for disability compensation against the employer whom respondent represented. In November 2006, the client sued respondent for malpractice. In November 2007, respondent settled for approximately \$11,000 but has since defaulted on installment payments due. At some point during settlement negotiations, either before or after February 1, 2007, respondent proposed as a term of settlement the dismissal of the grievance. Both the panel and the board observed that DR 6-102 did not specifically prohibit a lawyer from negotiating with a client for a dismissal of a grievance through negotiation with an unrepresented client. The rule focused on prohibiting a lawyer's negotiations with a client to limit malpractice liability. Now, Prof.Cond.R. 1.8(h)(2)(i) through (iii) sets forth necessary safeguards as to negotiating with a client to limit malpractice liability. But, in *Akron Bar Assn. v. Markovich*, 117 Ohio St.3d 313, 2008-Ohio-862, the court accepted a stipulation to a violation of DR 6-102 (the former counterpart to Prof.Cond.R. 1.8(h)(2) based on a lawyer's attempt to obtain dismissal of a pending grievance through negotiations with an unrepresented client. The court noted that "[a]pparently the stipulation resulted not only because the client was unrepresented but because the disciplinary investigation in process might have led to a malpractice claim." In footnote 2, the court cited *Cleveland Bar Assn. v. Kates* (1997), 78 Ohio St.3d 69 in which the court "observed that '[d]isciplinary proceedings are not actions for malpractice,' however, and suggested that a lawyer's attempt to derail a disciplinary investigation through negotiations to dismiss a grievance was more aptly charged as a violation of DR 1-102(A)(2) (prohibiting a lawyer from circumventing a Disciplinary Rule through the actions of another)." In mitigation, there is no history of disciplinary violations, no evidence of dishonesty or selfish motive or multiple offenses. The \$200 filing fee for the appeal was returned to the client. Any harm to the client has been rectified by the malpractice settlement agreement. Respondent has given up practicing law. Shortly before the hearing, respondent's attorney and others essentially staged an intervention at respondent's home office to review his remaining active client files. Respondent displayed significant emotions at the hearing. He described symptoms of depression and anxiety, including treatment dating back to 2002 by his family physician who prescribed anti-anxiety medications. The day before the hearing he signed an OLAP contract relating to mental health issues and he was directed to see a psychiatrist and a new psychologist. He presented no medical evidence regarding his mental health. He does not relate his mistake as to missing the appeal deadline to his mental health. He stated he developed a fear of clients, a distrust over the past two years, that his emotional symptoms started to build, especially after (the underlying client dispute.), and that the malpractice action was a tipping point in causing an exacerbation of his mental health symptoms and causing him to shut down and withdraw. After an initial delay in responding to relator's letters, he has cooperated. The panel and board concluded that normally the violations would justify only a public reprimand, not an actual suspension, but because of his unresolved mental health issues to protect the public and to give respondent the opportunity to address the issues through OLAP and appropriate medical providers, the Board recommends a suspension for six months with the suspension stayed on condition that he comply with the OLAP contract, including any recommendations for medical treatments made by OLAP and that he attend one or more CLE courses on law-office management that his practice be monitored for one year by an attorney appointed by relator. The Supreme Court of Ohio agreed and so ordered a six-month suspension stayed on the stated conditions.

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**Rules Violated:** Prof.Cond.R. 1.8(h)(2); DR 1-104(A), 1-104(B), 6-102

<b>Aggravation:</b> NONE		<b>Mitigation:</b> (a), (b)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Six-month suspension, stayed		

*Wittbrod, Akron Bar Assn. v.*

130 Ohio St.3d 72, 2011-Ohio-4706. Decided 9/21/2011.

Respondent neglected a legal matter entrusted to him, failed to notify his clients that he lacked professional liability insurance, failed to provide competent representation, and failed to cooperate in the disciplinary investigation. Respondent was previously suspended for six-months, stayed, and received an attorney registration suspension in 2009. Respondent did not answer the complaint, so a master commissioner made findings of fact, conclusions of law and recommended a six-month suspension to be served concurrently with the previous suspension. In Count One, respondent kept money from a settlement to pay the client's medical bills, but did not pay them. Respondent closed his office without leaving a forwarding address and did not advise his client that he lacked professional liability insurance. This conduct violated DR 1-104(A) and (B)/ Prof.Cond.R. 1.4(c) (lack of liability insurance), DR 6-101(A)(3)/ Prof.Cond.R. 1.3 (neglect of a legal matter), Prof.Cond.R. 8.1(b) and Gov.Bar R. V(4)(G) (failure to cooperate in a disciplinary investigation). The board dismissed charges of DR 9-102(A) and (B) and Prof.Cond.R. 1.15. In Count Two, respondent represented a couple in a bankruptcy proceeding. When the couple's mortgage company refunded \$5000 in payments the clients had made to respondent, respondent did not return that money. He ceased communication and as a result, the couple had to sell their home at a loss to avoid foreclosure. Respondent did not advise his clients that he lacked liability insurance. This conduct violated DR 1-104(A) and (B)/ Prof.Cond.R. 1.4(c), DR 6-101(A)(1) (failure to provide competent representation), 6-101(A)(3)/ Prof.Cond.R. 1.3, Prof.Cond.R. 8.1(b) and Gov.Bar R. V(4)(G). The board dismissed charges of DR 9-102(A) and (B) and Prof.Cond.R. 1.15. In Count Three, respondent failed to reaffirm a bankruptcy client's debt on an auto lease, despite the client's wishes, and thus ruined her cosigner's credit and force the car to be repossessed. He did not advise the client that he lacked liability insurance. This conduct violated Prof.Cond.R. 1.1 (competent representation), 1.3, 1.4(c), 8.1(b), and Gov.Bar R. V(4)(G). The Court agreed with the above findings. In aggravation, respondent had a prior disciplinary record, had a stayed suspension revoked, engaged in a pattern of misconduct involving multiple offenses, failed to cooperate in the disciplinary process, failed to make restitution and harmed vulnerable clients. BCGD Proc.Reg. 10(B)(1)(a), (c), (d), (e), (h), (i). There were no factors in mitigation. Relator sought and the board recommended an indefinite suspension, citing respondent's previous discipline and his apparent indifference towards it. Citing *Hoff* (2010), *Davis* (2009), and *Mathewson* (2007), the Court adopted the board's recommended sanction.

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**Rules Violated:** Prof.Cond.R. 1.3, 1.4(c), 8.1(b); DR 1-104(A), 1-104(B), 6-101(A)(1), 6-101(A)(3); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> (a), (c), (d), (e), (h), (i)		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Wolanin, Disciplinary Counsel v.*

121 Ohio St.3d 390, 2009-Ohio-1393. Decided 4/1/2009.

Respondent misappropriated client funds and failed to respond appropriately in the disciplinary proceeding. Respondent participated intermittently in prehearing proceedings but did not appear at the disciplinary hearing. Board adopted the panel's findings and conclusions, but did not adopt the panel's recommendation of a permanent disbarment. As to Count I, respondent was retained to represent a client (Dechert) in a personal-injury lawsuit. Respondent filed the suit. Respondent received a settlement \$1,649.62 check made payable to him and Dechert in January 2006. The settlement agreement provided for Dechert to receive \$1649.62 and for payment of medical bills. Respondent either cashed the check or deposited it into an unknown bank account. From March through May 2006, the client tried unsuccessfully to contact respondent. In May, the client filed a grievance and respondent finally mailed Dechert a check for \$1,649.62 on June 19, 2006. The bank records show that the funds were not on deposit until the day the check was written. Board found violations of DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 9-102(B)(1), 9-102(B)(3), and 9-102(B)(4). As to Count II, from September 2006 through January 2007, relator sent respondent numerous requests for documentation regarding his use of his trust account. Board found that respondent violated DR 1-102(A)(5) and (A)(6) and Gov.Bar R. V(4)(G) for failing to provide any documentation that he held Dechert's funds in compliance with the disciplinary rules. As to Count III, in May 2003, respondent accepted on a contingent-fee basis a personal injury case of William and Betty Clark (Clarks). Respondent received a settlement check in October 2005, deposited it into his trust account, and later in October paid himself the \$2,400 contingent fee. He forwarded \$2,000 to the Clarks, promising to pay the rest of their share by the end of the year after the expert-witness fee was determined. For the rest of 2005, respondent failed to pay the Clarks in full or provide an accounting. Bank records show he did not maintain the funds in his trust account. Respondent deposited \$1,700 into his trust account on November 20, 2006 bringing the balance to \$1,708.04 and the next day mailed a \$1,700 check to the Clarks. Board found violations of DR 1-102(A)(4), 1-102(A)(6), 9-102(B)(3) and 9-102(B)(4). In mitigation, there is no prior discipline. BCGD Proc.Reg. 10(B)(2)(a). No mitigating effect was attributed to respondent suffering from depression, adjustment disorder, and alcohol abuse, because the requirement of BCGD Proc.Reg 10(B)(2)(g)(iii) was not satisfied. In aggravation, respondent had dishonest and selfish motives and engaged in a pattern of misconduct. BCGD Proc.Reg. 10(B)(1)(b) and (c). Respondent's case is similar to *Maybaum* (2006) in which an indefinite suspension was ordered. Respondent, without apology, has declined to fully participate in the disciplinary process. He notified the panel, three days before the hearing that he had booked a flight to Poland on the day of the hearing. The hearing was rescheduled for his convenience, but less than two days before the hearing he notified relator he would not attend "[i]n light of the stipulations submitted." The court noted that respondent showed little mitigation and a dismissive attitude toward the process and the court saw no reason to depart from the standard sanction for such serious violations. The court agreed with the Board's findings and recommended sanction and so ordered an indefinite suspension.

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**Rules Violated:** DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 9-102(B)(1), 9-102(B)(3), 9-102(B)(4); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> (b), (c)		<b>Mitigation:</b> (a)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

*Yeager, Disciplinary Counsel v.*

123 Ohio St.3d 156, 2009-Ohio-4761. Decided 9/17/2009.

Respondent misrepresented events three times in a juvenile court proceeding and abruptly quit the client's case during one of the hearings. Respondent was admitted in 1989 and registered inactive on September 1, 2005. The board served the complaint upon the Clerk of the Supreme Court of Ohio, after certified mail service went unclaimed at her registration address in New York, New York. Upon relator's motion for default, the matter was heard by a master commissioner whose findings and recommendation the board adopted. Respondent represented the father of a minor child in a custody, visitation, and support proceeding filed by the child's mother to modify certain court orders. On December 20, 2001, respondent moved to continue a scheduled January 7, 2002 proceeding, citing scheduling conflicts. She advised the court she had been "previously scheduled" to appear on January 7 in municipal court and in common pleas court, domestic relations division. The record shows that there were three court appearances (two in domestic and one in municipal, but that these court appearances were scheduled after September 18, 2001, the day the juvenile court scheduled the January 7, hearing. Two of the three appearances were scheduled in early December 2001, less than three weeks before respondent filed her motion for continuance of the January 7, 2002 hearing. Respondent misled the court to delay a ruling adverse to the client. Her motion to continue was never received by opposing party and was not received by the court until the hearing date. The court denied the motion and the January 7 hearing proceeded as scheduled and resulted in a new child-support order entered against respondent's client. As to the second misrepresentation, respondent filed objections to a magistrate's decision on child support issues and raised among other arguments that she had not received notice of the decision denying the continuance and although she had not propounded formal or informal discovery requests, she submitted an affidavit stating she requested discovery from the mother but did not receive a response. Numerous motions were filed and answered. The magistrate tried to hold a hearing on motions for sanctions against respondent and for attorney fees. There was a lengthy exchange between the magistrate and counsel involving accusations of failure to comply with rules of court. Respondent interrupted opposing counsel as he began his opening statement and asked the court to continue this to give defendant time to find local counsel because she cannot handle the case and cannot deal with it because it is a travesty. She abruptly left the courtroom after saying she had a severe headache, felt very ill, and begging the court to continue the case. The hearing continued without her. The juvenile court records show that she never filed a notice of withdrawal. On August 29, 2005, she replied to a notice of a hearing that had taken place on August 26 by saying she had withdrawn on March 4, 2004. The August 26 hearing was held on the mother's motion for sanctions against respondent. The hearing resulted in a September 2005 court order of \$11,888.50 in sanctions and calling respondent's conduct "spurious," "demean[ing], and "below standards of practice of an attorney licensed to practice law in this Court." As to the third misrepresentation, in late December 2005, respondent moved for leave to plead instanter and to vacate the judgment granting sanctions. In the motion, she made a statement contrary to the representation made in her August 29, 2005 notice, by stating that she had no notice of the proceeding that resulted in the order of sanction. The juvenile court overruled the motion and ordered her to pay \$7,937.50 more in attorney fees. The appellate court dismissed her appeal for failure to prosecute. Board found violations of DR 1-102(A)(4), 1-102(A)(5), 2-110(A)(2), 7-101(A)(3) and 7-102(A)(5). In aggravation, there was a pattern and multiple offenses, no acknowledgment of the wrongful nature of her misconduct, no attempt to make restitution by satisfying the attorney fees levied against her. BCGD Proc.Reg. 10(B)(1)(c), (d), (g), and (i). In mitigation she had practice for years without prior discipline. BCGD Proc.Reg. 10(B)(1). The court adopted the board's findings of violations and the recommended sanction of an indefinite suspension and so ordered.

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**Rules Violated:** DR 1-102(A)(4), 1-102(A)(5), 2-110(A)(2), 7-101(A)(3), 7-102(A)(5)

<b>Aggravation:</b> (c), (d), (g), (i)		<b>Mitigation:</b> (a)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

**Zaccagnini, Disciplinary Counsel v.**

130 Ohio St.3d 77, 2011-Ohio-4703. Decided 9/21/2011.

Respondent was convicted of conspiracy to unlawfully obtain contracts to appraise real estate. Respondent failed to file an answer; the master commissioner prepared findings of facts, conclusions of law, and recommended sanction. Respondent received an interim felony suspension in May 2010 after he pleaded guilty to a felony count of conspiracy for unlawfully obtaining contracts to appraise real estate, in violation of 18 U.S.C. 1951. He was sentenced to 60 months in prison and ordered to pay \$3,215,845 in restitution. This conduct violated DR 1-102(A)(3) (illegal conduct involving moral turpitude), 1-102(A)(4) and Prof.Cond.R. 8.4(c) (conduct involving dishonest, fraud, deceit or misrepresentation), 1-102(A)(5) and 8.4(d) (conduct prejudicial to the administration of justice), and 1-102(A)(6) and 8.4(h) (conduct that adversely reflects on the lawyer's fitness to practice law). Under *Freeman* (2008), although both the disciplinary rules and the rules of professional conduct were charged, respondent's activities were a single continuing ethical violation. The Court adopted the findings of fact and conclusions of law. In mitigation, respondent had no prior disciplinary record and received a criminal sanction for his conduct. BCGD Proc.Reg. 10(B)(2)(a) and (f). In aggravation, the respondent acted with a dishonest and selfish motive, and his pattern of criminal misconduct and corruption resulted in great harm to the citizens of Cuyahoga County and the county government. BCGD Proc.Reg. 10(B)(1)(b), (c), and (h). Relator, the master commissioner, and the board all recommended permanent disbarment. Relying on *Ritson* (2010), the Court adopted the recommended sanction and ordered respondent be permanently disbarred.

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**Rules Violated:** Prof.Cond.R. 8.4(c), 8.4(d), 8.4(h); DR 1-102(A)(3), 1- 102(A)(4), 1-102(A)(5), 1-102(A)(6)

<b>Aggravation:</b> (b), (c), (h)		<b>Mitigation:</b> (a), (f)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> NO	<b>Sanction:</b> Disbarment		

**Zaffiro, Cleveland Metro. Bar Assn. v.**  
127 Ohio St.3d 5, 2010-Ohio-4830. Decided 10/7/2010.

Respondent failed to inform a client that he lacked malpractice insurance, failed to cooperate in the disciplinary investigation, and made a false statement during the disciplinary investigation. The charges filed by relator arose from his representation of a client in a small-claims court case that led to a default judgment against this client; his failure to inform the client that he did not carry malpractice insurance, and his conduct during the disciplinary investigation. The parties entered into a consent-to-discipline agreement, but the panel rejected the agreement, expressing concern that while respondent claimed to personally satisfy the default judgment pending against his client, he did so using funds from his client trust account. The panel vacated the scheduled hearing to allow relator time to investigate this matter and instructed relator to either file a second amended complaint or seek a new hearing date. Relator did not amend the complaint. The parties submitted stipulated findings of fact and conclusions of law in which relator dismissed Count 1 of its amended complaint and respondent admitted the remaining charges. The parties agreed that a stayed six-month suspension was appropriate. The parties moved to waive the hearing. The panel reviewed the stipulations of fact and misconduct, as well as the stipulated exhibits. The panel agreed to the dismissal of Count 1, but also unanimously dismissed Counts 2 and 3 for lack of support by clear and convincing evidence of a violation of Prof.Cond.R. 1.3 or 1.4(A)(3). The panel accepted the stipulations that respondent failed to produce his professional- liability insurance policy upon relator's request during the investigation, violating Prof.Cond.R. 8.1(b) and Gov.Bar R. V(4)(G); agreed to provide information on the policy to relator when no policy existed, violating Prof.Cond.R. 8.1(a); and did not inform his clients that he lacked professional liability insurance, violating DR 1-104(A). The board adopted these findings. The court agreed. In mitigation, there was a lack of a prior disciplinary record, lack of a dishonest or selfish motive, timely effort to make restitution by satisfying the default judgment and refunding the retainer, a cooperative attitude toward the disciplinary process once counsel was obtained, and good character and reputation. BCGD Proc.Reg. 10(B)(2)(a), (b), (c), (d), and (e). In aggravation, respondent falsely led relator to believe he carried malpractice insurance. BCGD Proc.Reg. 10(B)(1)(f). The panel recommended a public reprimand rather than accepting the parties agreement six-month, stayed suspension which relied on misconduct in the dismissed counts. The board adopted the panel's recommended sanction. The court agreed and so ordered a public reprimand.

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**Rules Violated:** Prof.Cond.R. 8.1(a), 8.1(b); DR 1-104(A); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> (f)		<b>Mitigation:</b> (a), (b), (c), (d), (e)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Public Reprimand		

*Zapor, Disciplinary Counsel. v.*  
127 Ohio St.3d 372, 2010-Ohio-5769. Decided 12/2/2010.

Respondent, while serving as a court-appointed guardian, misappropriated funds from a ward's account. In December 2009, he was convicted of theft, a fifth-degree felony for which he was ordered to serve one year community control, pay a fine, and provide complete restitution. In March 2010, he received an interim felony suspension from the practice of law. Respondent was appointed in 2007 as guardian for a ward. The ward's only assets were her OPERS pension, Social Security benefits, and a house. For a year and a half, respondent made unauthorized withdrawals to pay his personal expenses. The withdrawals totaled over \$20,000 and resulted in several overdrafts. In two accountings to the court, he falsely represented he collected and deposited the Social Security checks and had not made withdrawal in excess of the monthly withdrawal amount authorized by the court for the ward's care. Board adopted the panel's findings of violations of Prof.Cond.R. 1.3, 3.3(a)(1), 8.4(b), 8.4(c), 8.4(d), and 8.4(h) and recommended sanction of an indefinite suspension. In mitigation, the Board found as the parties stipulated that respondent lacked a prior disciplinary record, made restitution, had a cooperative attitude, and had other penalties imposed upon him. BCGD Proc.Reg. 10(B)(2)(a), (c), (d), and (f). In aggravation, although not stipulated to, the board found that respondent: acted with a dishonest or selfish motive, pattern of misconduct, and multiple offenses. BCGD Proc.Reg. 10(B)(1)(b), (c), and (d). Although respondent testified in deposition about his problems with alcohol and gambling, the board did not find that it rose to the level of mitigation pursuant to BCGD Proc.Reg. 10(B)(2)(g). Respondent declined to attend a formal hearing and present such evidence, even though it was suggested to him by the panel chair, and respondent admitted he was not in compliance with his OLAP contract. The board, citing *Hunter* (2005), noted that the presumptive sanction for this type of behavior is disbarment. Citing *Thomas* (2010), it was noted that mitigating circumstances can support an indefinite suspension. The court noted that according to the Board, respondent seemed genuinely contrite and confessed that the funds were misappropriated because of financial difficulties. According to his testimony, he has taken steps to resolve his substance-abuse and gambling problems, which he claims played some role in his choice, and he with the assistance of his family has made all the restitution in the criminal case. The Court adopted the board's recommended sanction of an indefinite suspension, without credit for time served under the interim felony suspension, but added that before petitioning for reinstatement, respondent must comply with conditions: extend his current OLAP contract an additional 2 years from the current expiration date; abide by obligations of the OLAP contract; continue his treatment and provide proof of treatment, and refrain from any disciplinary violations.

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**Rules Violated:** Prof.Cond.R. 1.3, 3.3(a)(1), 8.4(b), 8.4(c), 8.4(d), 8.4(h)

<b>Aggravation:</b> (b), (c), (d)		<b>Mitigation:</b> (a), (c), (d), (f)	
<b>Prior Discipline:</b> NO	<b>Procedure/ Process Issues:</b> YES	<b>Criminal Conduct:</b> YES	
<b>Public Official:</b> NO	<b>Sanction:</b> Indefinite Suspension		

**Zigan, Disciplinary Counsel v.**

118 Ohio St.3d 180, 2008-Ohio-1976. Decided 5/1/2008.

Respondent was admitted to the practice of law in 1999, but from December 2, 2005 to February 13, 2006, respondent was suspended from the practice of law for failure to comply with attorney registration requirements. As to Count I, in July 2005, respondent accepted \$750 from a client for attorney fees and filing fees for an uncontested divorce. Respondent failed to file any pleadings and did not return the fee. The law firm that employed respondent had no record of the client paying any attorney fees. The client filed his own petition for dissolution. Board found violations of DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 6-101(A)(3), 7-101(A)(2), 9-102(A), and 9-102(B)(4). As to Count II, respondent accepted a \$1,000 retainer from a client for representation in an eviction matter. Respondent gave the client a receipt, but not from the firm's official receipt book. The firm had no record the retainer was paid. The file contained a contingent-fee agreement which the client denied ever signing. Respondent promised in a deposition with relator to supply the police with a handwriting sample for comparison on the contingent fee agreement, but failed to do so. Expert analysis substantiated that the signature was forged. The law firm instructed respondent not to represent the client because of a conflict of interest with the law firm, but respondent filed an answer and counterclaim on the client's behalf and then did not appear at a pretrial conference. The court contacted the firm which informed the court the respondent had been fired and instructed not to take the case because of conflict. Board found violations of DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 9-102(A), and Gov.Bar R. V(4)(G). As to Count III, he was paid a retainer of \$1,500 in February 2005 to represent a client in a breach of contract matter. He gave the client and unofficial receipt. The firm had no record of a retainer. The file contained a contingent fee agreement that the client denied signing. His employment was terminated on 9/11/2005 when a lawyer in the firm confronted him about the \$1,500. He admitted he kept the money for his own use. He failed to provide a handwriting sample. Board found violations of DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 9-102(A), and Gov.Bar R. V(4)(G). As to Count IV, in August 2005, he accepted a computer and equipment as payment on an account for the representation of a client. The firm refused to accept these items as payment and ordered respondent to return the items, but respondent kept the equipment valued at \$3500 for himself. On April 3, 2006, after his termination, he accepted an additional \$2,500 for legal fees. He indicated to relator that the work, except for one half hour, was performed while at the firm. He did not return to the firm any portion of the fees. Board found violations of DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), and Gov.Bar R.V(4)(G). As to Count V, in April 2005, he failed to deposit in an IOLTA the funds from settling a client's personal injury claim. The file did not indicate the case had been settled. Respondent cashed the settlement check and paid the client a portion but failed to pay any of funds to the law firm and failed to fill out any settlement statements for the file. The firm learned of it when the client complained that the medical bills had not been paid. Board found violations of DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), and 9-102(A). As to Count VI, respondent between January 13, 2005 and August 31, 2005 failed to turn over to the firm five checks totaling \$5,0000 for attorney fees. He stipulated that he deposited the checks into his personal account and converted the funds to his own use, except for one check for \$750 which he admitted at the hearing he endorsed. As to Count VII, in September 2005, after no longer employed by the law firm, he accepted \$630 from a woman to represent her son in bringing a civil lawsuit. He admitted to the woman in November that he had not performed work on the matter and told her in February 2006 that he would return the money, but he failed to do so. Board found violations of DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 6-101(A)(3), 7-101(A)(1), 7-101(A)(2) and 9-102(B)(4). He testified that he deposited fees earned on behalf of the firm with the firm, that he did not forge fee contracts, and that the lack of record of his fees in the firm's files could be explained by the actions of another employee who was eventually fired. The board did not find respondent's testimony credible and neither did the court. The court adopted the board's findings of misconduct. He converted funds from his employer for his personal use, repeatedly failed to perform work for clients, and failed to cooperate by failing to provide a handwriting sample for analysis by a handwriting examiner. He deceived clients and abandoned their cases. His license was previously suspended. The court agreed with the board's recommended sanction of a permanent disbarment and so ordered.

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**Rules Violated:** DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 6-101(A)(3), 7-101(A)(1), 7-101(A)(2), 9-102(B)(4); Gov.Bar R. V(4)(G)

<b>Aggravation:</b> NONE		<b>Mitigation:</b> NONE	
<b>Prior Discipline:</b> YES	<b>Procedure/ Process Issues:</b> NO	<b>Criminal Conduct:</b> NO	
<b>Public Official:</b> NO	<b>Sanction:</b> Disbarment		

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- Ritson (10/29/2010) (conspiracy to commit mail fraud and wire fraud)
- Sabroff (8/27/2009) (theft)
- Saunders (11/30/2010)
- Schram (4/30/2009) (felony for willful failure to collect or pay over tax; felony for failing to file tax return; and misdemeanor for failing to report gross income)
- Smith (3/9/2011) (conspiracy to defraud IRS; making false tax returns; corruptly endeavoring to obstruct and impede an IRS investigation)
- Theisler (4/8/2010) (aggravated trafficking in drugs, illegal possession of drug documents, engaging in a pattern of corrupt activity, and practicing medicine or surgery without a certificate)
- Weisberg (1/27/2010) (federal income tax evasion)
- Williams (10/13/2011) (two counts of child rape)
- Zaccagnini (9/21/2011) (unlawfully obtaining real estate contracts)
- Zapor (12/2/2010) (theft)

#### **Misdemeanor Conduct**

- Andrews (3/17/2010) (attempted tampering with evidence in violation of R.C. 2921.12, a felony of the fourth degree, and attempted importuning in violation of R.C. 2923.02, a misdemeanor of the first degree)
- Bowling (10/21/2010) (did not plead to and was not convicted of any crime, but was charged with possession of marijuana which was resolved by

forfeiture of a \$168 bond and was charged with possession of drug paraphernalia which was dismissed)

Burkholder (2/26/2009) (assault and battery; threatening to commit crimes; violating abuse-prevention order)

Chambers (4/29/2010) (no contest plea to aggravated disorderly conduct arising from a dispute with neighbor)

Grigsby (3/31/2011) (misuse of credit card)

Heiland (1/17/2008) (defrauding creditors)

Kiesling (4/12/2010) (unlawful accounting practices in violation of R.C. 4701.14 (G), a first degree misdemeanor)

Large (5/6/2009) (willingly failing to file personal income tax returns)

LoDico (5/29/2008) (aggravated

menacing)

McFaul (12/13/2008) (drug possession)

Russo (2/25/2010) (disorderly conduct-intoxicated; disorderly conduct-persistent)

#### **Treatment in Lieu of Conviction**

Larkin (2/23/2011) (indicted for cocaine and heroin possession and entered a diversion program but did not comply; judge returned case to active docket)

Peskin (4/29/2010) (crack cocaine and resisting arrest)

Rathburn (9/28/2010) (deception to obtain a dangerous drug; illegal processing of drug documents; both fourth-degree felonies)

Walker (7/8/2008) (possession of cocaine)

### **Disciplinary Procedure/ Process Issues**

Allerding (10/29/2009) (court dismissed a count in which board found violations of DR 1-102(A)(6) and Prof.Cond. R.8.4(h) because the neither the board's finding or relator's complaint specified in the count an act or omission)

Blair (2/24/2011) (court cited Freeman (2008) in footnote 1 and noted that when both former and current rules are cited for the same act the allegation constitutes a single ethical violation; the court quoted Thompson (1982) that mishandling clients' funds is of gravest concern to the court in disciplinary matters)

Brenner (7/29/2009) (court rejected respondent's argument that DR 1-102(A)(5) requires that misconduct take place in an administrative or judicial proceeding)

Boggs (6/7/2011) (Court will defer to the panel's determinations of credibility when those determinations are supported by evidence)

Bunstine (10/13/2009) (court dismissed the cause, noting that court was not bound by panel or board and that relator did not meet burden of proving violation by clear and convincing evidence)

Campbell (7/15/2010) (court said a judge who obtains information regarding illegal conduct may relay to law enforcement officials who may at their discretion, elect to investigate,

respondent's conduct went beyond that and became a participant in the investigation; court found aggravating factors that the parties had not stipulated to and the board had not made a finding)

Cantanzarite (8/14/2008) (clear and convincing standard; deference to panel determinations of credibility; purpose of discipline to protect)

Chambers (4/29/2010) (court found that respondent's conduct in attempting to have a grievant dismiss the grievance violated Prof.Cond. R. 8.4(d) and (h) even though the grievant and respondent never had an attorney client relationship; relator noted it had authority to investigate even if grievant desired dismissal of grievant; court had previously remanded case to board and placed respondent on monitored probation during the remand)

Character (6/23/2011) (Court noted that the evidentiary requirements of Sebree (2004) only apply in default cases; an attorney is held to the ethical rules even for actions that do not pertain to practicing law; Court overruled respondent's due process objections-that her case was prejudiced by her criminal prosecution and conviction, her incarceration and inability to attend the hearings, and the use of a two-member panel)

- Clovis (5/5/2010) (as required by Gov.Bar R. V(6)(F)(1)(b) in a default proceeding, the record did not support finding of one of the charged violations)
- Crosby (12/29/2009) (court noted and cited prior case law that mishandling of client funds is of gravest concern to the court in reviewing claimed attorney misconduct; and that maintaining personal and office accounts separate from client accounts is of utmost importance)
- Davis (2/12/2009) (court noted it typically imposed a suspension of at least two year for lawyers who engaged in a sustained course of conduct to conceal from their clients a failure to competently pursue claims on their behalf)
- Davis (11/29/2011) (court ordered respondent's indefinite suspension to run consecutively with her current term suspension from which she had not yet been reinstated)
- Dawson (11/19/2009) (board noted registration suspension and CLE monetary sanction as aggravating factors, but the court noted that Gov.Bar R. X(5)(C) prohibits consideration of CLE sanctions in disciplinary proceedings; when attorney entered into a settlement agreement with a client the attorney did not have intent to avoid the obligation in bankruptcy although he later filed for bankruptcy, but the board found his failure to satisfy the judgment owed to the client violates DR 1-102(A)(6))
- Dearfield (10/19/2011) (court found no dishonest or selfish motive when respondent had a good faith belief that he could keep a client's filing fee to offset owed legal fees)
- Dismuke (3/31/2011) (court ordered term suspension, but to be reinstated must prove mentally fit to return to practice of law; respondent testified he had underlying mental-health issued but did not meet BCGD Proc.Reg. 10(B)(2)(g)(i-iv) mitigating requirements; eventual cooperation with disciplinary process]
- Doellman (12/15/2010) (discussion of distinction between dismissals and recommendations to dismiss; notice procedures of Gov.Bar R. V(6)(K) as to dismissals; discussion of independent violations versus a pattern of misconduct; court precedent in not finding violations of DR 1-102(A)(5) for commingling; actual suspension for course of conduct that violates DR 1-102(A)(4))
- Emerson (6/25/2009) (indefinite suspension is appropriate sanction for repeated neglect and failure to cooperate)
- Farrell (9/16/2008) (depressive order did not contribute to cause duplicity; not mitigating factor)
- Forbes (6/11/2009) (disciplinary proceeding is not forum to collaterally attack a criminal conviction; fundamental tenet of professional responsibility is personal and professional integrity; lawyer should refrain from illegal conduct)
- Freeman (8/13/2008) (when respondent's conduct occurred both prior to and after the adoption of the Rules and respondent is charged under the applicable rule of both the Code of Professional Conduct and the Rules of Professional Conduct it constitutes only one rule violation)
- Freeman (8/24/2010) (testimony as to depression and OLAP involvement not mitigating factor because no independent evidence of involvement with OLAP)
- Freeman (3/31/2011) (respondent not bound by stipulation when stipulated facts and evidence at hearing demonstrate conduct did not constitute a rule violation)
- Frost (6/24/2009) (lawyer's statement about judges; objective standard used in disciplinary cases rather than subjective standard applicable in defamation cases; petition for reinstatement must include proof of mental fitness)
- Gaul (10/17/2010) (admission of expert testimony as to Code of Judicial Conduct; interpretation of conduct prejudicial to the administration for purposes of Prof.Cond. R. 8.4(d) when disciplining judge; discussion of meaning of performing judicial duties without bias or prejudice for purposes of Jud.Cond. R. 3(B)(5))
- Gibson (2/16/2011) (exception to actual suspension when dishonesty violating Prof.Cond. R. 8.4(c))
- Gittinger (8/6/2010) (reinstatement to practice law after an indefinite suspension was conditioned on not applying for reinstatement until after

- satisfaction of a five-year supervised release period; court addressed that the sanction of indefinite suspension avoids inconsistency in the court's disciplinary sanction and the federal court's criminal sanction and allows for resolution of the criminal case prior to reinstatement to the practice of law)
- Glaser (12/4/2009) (court noted in a footnote that the complaint alleged a violation of DR 9-102(B)(4), but the master commissioner and board parenthetically misquoted the substance of that rule, quoting instead the substance of DR 9-102(B)(3))
- Goldblatt (5/29/2008) (respondent's objection at oral argument that he should receive credit for time served under interim suspension was not properly before the court because not raised in written objections)
- Godles (12/27/2010) (mere fact that malpractice suit is pending is not a mitigating factor; notice of restitution in settling malpractice without admission of malpractice is not mitigating factor because with no admission of misconduct respondent is not technically being penalized for it)
- Gresley (12/22/2010) (neglect and failure to cooperate generally warrant indefinite suspension, but court departed from this sanction based upon cases and respondent's eventual cooperation)
- Grigsby (3/31/2011) (purpose of disciplinary process to protect public; self reported misconduct)
- Grote (10/7/2010) (taking fees without performing services is tantamount to theft)
- Hackett (6/30/2011) (client's right to choose their attorney is absolute; requirement that respondent receive 95% of the fee regardless of what he actually did showed a dishonest/ selfish motive)
- Hale (12/4/2008) (bankruptcy, lawyers not responsible for restitution discharged in bankruptcy; cited Gay (2002), Gerren (2006))
- Heiland (1/17/2008) (Fifth amendment right against self-incrimination; disciplinary proceedings not civil or criminal; due process in disciplinary proceeding not equal to those in criminal proceeding; amended complaints less than 30 days prior to hearing when good cause shown; rule does not require that respondent have 20 days to respond to amended complaint before hearing; Gov Bar R. V and regulations are to be construed liberally)
- Henry (12/22/2010) (presumptive sanction for taking retainer and failing to carry out employment is disbarment; no mitigating effect chemical dependency when no evidence to meet BCGD Proc.Reg. 10(B)(2)(g) requirements)
- Hildebrand (12/1/2010) (presumptive sanction for taking retainer and failing to carry out employment is disbarment; in footnote 1 the court observed that Gov.Bar R. V(8) prohibits consideration of CLE suspension in imposition of disciplinary sanction the court noted that respondent's previous suspension was mentioned by board)
- Hoff (1/26/2010) (court did not accept master commissioner's and board's finding of a violation of Rule 1.4(a)(3) because it was not charged in the complaint)
- Holda (4/7/2010) (relator dismissed a charge of a violation of Prof.Cond. R. 1.16(d), but panel and board were able to make a finding of the violation because it was originally charged in the complaint)
- Hoskins (7/3/2008) (acquittal of criminal charges does not preclude court from finding conduct unethical; clear and convincing evidence; judges held to higher standards than attorneys or other persons)
- Jackson (11/30/2010) (discusses cases in which there was initial failure to cooperate then later cooperation; initial false statements then truthful)
- Johnson (7/23/2009) (readmission after one-year suspension with six months stayed conditioned upon evaluation and report showing mental fitness)
- Johnson (10/7/2010) (general stress is not mitigating factor when objective standard of Proc.Reg. 10(B)(2)(g) not met; deference to panel's credibility determinations; voluntary decision to not practice law not mitigating when departure exacerbated harm to client)
- Johnston (4/2/2009) (trust account overdraft triggered bank to report to relator)
- Jones (10/1/2009) (attorney with inactive status was disciplined but the suspension, stay, and probation will take effect upon respondent's return to active practice in Ohio)
- Jones (12/16/2010) (attorney with inactive status discipline for a second time while

- on inactive status and while under the 2009 discipline)
- Kafantaris (4/1/2009) (presumptive sanction for misappropriation is permanent disbarment; respondent filed with the court a false affidavit of compliance with 2003 suspension order; testimony by mostly family members of respondent as a good family man was not given mitigating effect)
- Kaplan (1/28/2010) (no link between medical conditions of significant traumatic head injury, chronic obstructive pulmonary disease, diabetes, anxiety and misconduct; failure to cooperate and neglect warrant indefinite suspension)
- Kellogg (7/20/2010) (court imposed indefinite suspension with reinstatement conditioned upon completion of supervised release imposed by federal court in underlying criminal case; court addressed presumptive sanctions, noting that disbarment is not presumptive sanction for money laundering, and that even presumptive sanctions are rebuttable; conduct involved moral turpitude)
- Kellogg-Martin (2/4/2010) (court dismissed the cause; court declined to construe DR 7-103(B) as requiring a greater scope of disclosure than Brady or Crim R. 16 require; court held that DR 7-103(B) imposes no requirement to disclose information that the prosecutor is not required to disclose by applicable law such as Brady or Crim. Rule 16)
- Kelly (2/4/2009) (deference to panel on credibility not applicable when facts not in dispute and no witness's testimony challenged as unreliable; court need not defer to panel's or board's conclusions and is free to exercise independent judgment as to evidentiary weight and applicable law)
- Kiesling (4/12/2010) (purpose of discipline is to protect the public; presumptive sanction for repeated misconduct and failure to cooperate is permanent disbarment)
- Kizer (9/17/2009) (term suspension with reinstatement subject to petition for reinstatement requirements; mitigating mental disability under BCGD Proc. Reg. 10(B)(2)(g)(i)-(iv) not met)
- Kraemer (7/21/2010) (mentions factors relevant to determination as to whether to give credit for time served under felony interim suspension; dishonesty results in actual suspension)
- Lapine (12/21/2010) (SEC did not issue a disciplinary order within the meaning of Gov.Bar R. V(11)(F), and thus it is not a jurisdiction warranting reciprocal discipline)
- Larkin (2/23/2011) (substance abuse did not qualify as mitigating factor under BCGD Proc. Reg. 10(B)(2)(g)(i)-(iv); court discussed duty to protect public but also not to deprive public of attorneys who through rehabilitation may practice ethically and competently)
- Leneghan (2/14/2008) (court defers to panel's assessment of credibility)
- Lentes (12/11/2008) (introduction of evidence in brief or at oral argument before court permitted only in exceptional circumstance; no exceptional circumstances present; court did not accept respondent's offer of resignation)
- Mamich (3/25/2010) (court agreed with board that there were no violations of 1.2(a), 1.4(a)(1), 1.4(a)(3) because these charges require the formation of an attorney client relationship)
- Marosan (8/7/2008) (primary purpose of disciplinary sanction is to protect public not punish the offender)
- McAuliffe (3/19/2009) (proper way to raise issue of law in disciplinary proceeding is to the panel, then board, then court; mitigating factors have little relevance when judge engages in illegal conduct involving moral turpitude; respondent's collateral attack on conviction is not an appeal from a conviction which requires stay of disciplinary case pursuant to Gov.Bar R. V(5)(C))
- McCord (4/7/2009) (subjective intent not relevant to consideration of whether respondent performed deceptive acts in violation of DR 1-102(A)(4), 2-102(B), 2-102(C), 7.5(a), 7.5(d), 8.4(b), 8.4(c), 8.4(d), 8.4(h))
- McNerney (5/28/2009) (no mitigating effect of alcoholism and claimed depression due to lack of medical evidence of diagnosis of mental disability and causal connection between mental disability and alcoholism and the conduct; term suspension ordered, but reinstatement subject to stringent standards in Gov.Bar R. V(10)(C)through(G) for petition for reinstatement from indefinite

- suspension)
- McShane (2/25/2009) (master commissioner granted default motion and board report was filed with court, but respondent offered compelling evidence of mental disability to the court to explain his failure to answer, thus court remanded the case to board for further proceedings as to appropriate sanction)
- Meade (12/22/2010) (neglect coupled with failure to cooperate warrants indefinite suspension; no mitigating effect to claims of mental disability when there is not medical evidence as BCGD Proc.Reg. 10(B)(2)(g) requires)
- Minamyer (7/28/2011) (respondent's extensive mental health problems led court to lower sanction recommended by board; Justice Lundberg Stratton's 11-page concurrence admonished the examining psychiatrist's evaluation)
- Mishler (4/10/2008) (discussion of engaging an unaffiliated "per diem" attorney)
- Mishler (12/14/2010) (after disciplinary hearing, respondent filed a motion attempting to change testimony and to add or amend exhibits; much of his testimony and the motion that followed were contradictory)
- Mitchell (1/26/2010) (court noted in a footnote that board noted respondent's prior CLE suspension, but that CLE suspension is not to be considered in imposition of a disciplinary sanction)
- Muntean (12/20/2010) (self-report)
- Nance (11/19/2009) (respondent raised health problems and mental disability but not establish as mitigating factor under BCGD 10(B)(2)(g)(i) and (ii); court addressed proper sanction when lawyer's financial distress is a major factor in lawyer's failure to pay funds under a court order)
- Newman (3/17/2009) (remanded because conditions of Gov.Bar R. V(6)(F)(1) not met because neither sworn or certified evidence; defined "certified copy")
- Nicks (2/25/2010) (meaning of "competent representation" under Rule 1.1; no violation found)
- Noel (6/17/2010) (evidence to support default motion neither sworn nor certified therefore court relied only on deposition testimony and exhibits attached thereto; court found a violation of Prof.Cond. R. 1.15(d) as charged but noted in footnote 1 that 1.16(d) is more fitting charge for the conduct charged-failing to return the file)
- O'Brien (12/4/2008) (refusal to admit wrong doing offset by fact that respondent sought legal advice as to assertion of the attorney-client privilege; in footnote 1 the court noted that in certain instances DR 7-102(B)(1) contravenes client confidentiality but DR 7-102(B)(1) was not charged and misconduct not charged cannot be adjudicated in a disciplinary proceeding)
- Ohlin (8/24/2010) (respondent claimed alcohol dependence and a mental disability but no evidence provided and therefore not a mitigating factor; court dismissed some of the alleged violations for which the record did not contain sworn or certified evidence as required by Gov.Bar R. V(6)(F)(1)(b) in a motion for default.)
- Peskin (4/29/2010) (did not establish cocaine as mitigating factor under BCGD 10(B)(2)(g)(i)-(iv))
- Pfundstein (12/21/2010) (purpose of disciplinary sanction; deference to panel's credibility determinations unless record weighs heavily against; actual suspension for dishonesty unless significant mitigating factors justify lesser sanction; court agreed with board's dismissal of stipulated Prof.Cond.R 8.4(d) violation)
- Pheils (6/23/2011) (prohibition against loaning client money is absolute; arranging with a close relative to loan money is tantamount to the attorney providing the loan; loan necessary to advance litigation is tied to the litigation)
- Plough (7/21/2010) (respondent was charged with a violation of Prof.Cond.R. 8.4(d), but the court made a finding of a violation of DR 1-102(A)(5) because the record showed the conduct occurred prior to February 1, 2007)
- Poole (12/4/2008) (court rejected board using findings of violations of DR 1-102(A)(4) (dishonesty) and 9-102(A)(commingling) as aggravating factors because the charges were dismissed by stipulation of the parties; the court distinguished between violations of DR 9-102(A)(4) commingling and DR 9-102(B)(4) violations)
- Portman (4/16/2009) (respondent moved court to supplement record; court granted motion, ordered interim

- suspension, and remanded to board to consider proffered mitigation evidence)
- Potter (6/10/2010) (Prof. Cond. R. 8.4(c) results in actual suspension unless significant mitigating factors warrant departure; self report of misconduct to relator)
- Powers (9/25/2008) (court did not give deference to panel's assessment of credibility; guilty plea in criminal case cannot be rationalized in a subsequent disciplinary proceeding)
- Pullins (12/23/2010) (respondent revealing in affidavit of disqualification that grievance filed against judge; objective standard used to determine whether lawyer's statement about judge was made with knowledge or reckless disregard of falsity; trial court ruling as to respondent's conduct does not prevent supreme court from considering whether the conduct violated ethics rules; supreme court has original jurisdiction in disciplinary matters; deference to panel's credibility determinations; lawyer's statements made in role as guardian ad litem; privacy of proceeding sworn or affirmed by members and employees of board, certified grievance committees, disciplinary counsel)
- Randall (6/12/2008) (court is not bound by the board's findings of fact or conclusions of law)
- Raso (6/22/2011) (mitigating effects of restitution were tempered when the restitution occurred after the disciplinary process began)
- Resnick (12/21/2010) (conflicting evidence regarding drug abuse or mental health issues, but record establishes the need to ensure problems are treated before resuming practice of law; primary purpose of disciplinary sanctions is not to punish the offender but to protect the public)
- Ricketts (12/23/2010) (significant mitigating factors warrant departure from actual suspension for dishonesty, deceit, fraud, or misrepresentation; rejected respondent's arguments that actual suspension warranted only if dishonesty, deceit, fraud, or misrepresentation to client or court; rejected respondent's argument that good-faith exception to DR 7-102(A)(2) and Prof. Cond. R. 3.1 was a defense to other rule violations)
- Riek (4/12/2010) (court noted in a footnote that panel found violations of all the rules stipulated but then cited only three of the four rules; court found this an inadvertent omission and concluded that the panel and board found all of the four stipulated violations and that clear and convincing evidence supports this conclusion)
- Ritson (10/29/2010) (effect of prior discipline; clear and convincing evidence; panel report should include transcript; nonprejudicial irregularity when transcript filed three days after board considered panel's report)
- Robinson (1/29/2009) (default motions requirement of sworn or certified documentary prima facie evidence applies to violations Gov. Bar R. V(4)(G) and Rule 8.1)
- Robinson (8/25/2010) (Prof. Cond. R. 8.4-willful violations Gov. Bar R. IV(1); deference to credibility determinations by panel; Prof. Cond. R. 3.4(a) prohibition on obstruction of access to evidence applies to lawyer in personal or professional capacity)
- Rohrer (11/17/2009) (court disagreed with board's findings of no aggravating factors; discussion of pro bono as a positive factor but not immunizing attorney from discipline; lying to court warrants actual suspension-citations to past case law; in a footnote the court noted as did one panel member that respondent has a duty to self-report)
- Rozanc (8/27/2009) (mitigating mental disability under BCGD Proc. Reg. 10(B)(2)(g)(i)-(iv) not found)
- Sabroff (8/27/2009) (citation of cases in which presumptive sanction is permanent disbarment; respondent's failure to cooperate prevented determination of whether his health issues and chemical dependency were mitigating under BCGD Proc. Reg. 10(B)(2)(g)(i)-(iv))
- Sanz (2/24/2011) (presumptive sanction for misappropriation is disbarment; court did not adopt board's finding of a violation of Gov. Bar. R. V(4)(G) because not charged by relator; CLE sanction not considered when imposing disciplinary sanction]
- Sargeant (5/20/2008) (case of first impression involving docket control by judge; court took judicial notice of statistics regarding judge's case case-

- status reports filed pursuant to the Rules of Superintendence)
- Saunders (11/30/2010) (affidavit by grievant's attorney who did not have personal knowledge of the facts does not meet the requirement of prima facie evidence required by Gov.Bar R. V(6)(F) in a default proceeding)
- Schiller (9/23/2009) (accepting retainers and failing to do work is tantamount to theft)
- Schramski (3/2/2010) (panel found Rule violations but not DR violations because panel viewed it as a continuing violation, but court found both Rule and DR violations)
- Scott (8/25/2011) (court noted that while violations seemed in line with the recommended sanction, facts of the case "depict misconduct of a very serious nature" )
- Shaw (9/23/2010) (court rejected respondent's request to supplement the record)
- Shea (1/30/2008) (violation of DR 1-102(A)(4) but actual suspension not warranted)
- Simmons (12/13/2008) (actual suspension for DR 1-102(A)(4) violation)
- Smith (11/19/2009) (court discussed responsibilities of new attorney and stated that their ethical obligations are not diminished by instructions from supervising attorneys; application of Prof.Cond.R. 5.2 discussed even though misconduct occurred prior to its adoption)
- Smith (3/9/2011) (court conditioned reinstatement upon completion of federal supervised release and entering into a final agreement with the federal government for payment of restitution)
- Squire (11/3/2011) (client's knowledge about the use of attorneys from other firms has no bearing on Rule 1.5(e); court reserved judgment on whether a lawyer may use his accounts receivable in a security agreement)
- Stafford (4/5/2011) (court deferred to the board's assessment of the truth and weight of the evidence, noting the thoroughness of the 22-day hearing; opinion written by Justice Lanzinger, not per curiam)
- Stoll (12/14/2010) (respondent's testimony as to depression and anxiety not found to be mitigating factors)
- Stubbs (2/15/2011) (no mitigating factors, although past participation in OLAP, she no longer participates and presented no evidence of mental disability)
- Taylor (12/4/2008) (purpose of disciplinary system; did not impose actual suspension for DR 1-102(A)(4) violation)
- Theisler (4/8/2010) (court ordered respondent to complete his term of probation stemming from his felony conviction prior to applying for readmission from his indefinite suspension from the practice of law)
- Troy (2/12/2009) (respondent appeared for disposition of relator's motion for default and entered stipulations but did not oppose relator's motion for default and master commissioner granted motion for default and made findings)
- Van Sickle (2/24/2011) (neglect and failure to cooperate warrant indefinite suspension; indefinite suspensions are imposed on attorneys who suffer from mental illness or substance abuse but fail to provide sufficient evidence to qualify as mitigation; panel dismissed several stipulated violations not charged in the complaint)
- Veneziano (12/30/2008) (purpose of disciplinary process; court is final arbiter and not bound by stipulations; claim of complete ignorance does not have same mitigating effect of a causally related mental disability or chemical dependence)
- Vogel (2/14/2008) (first disciplinary case finding violations of Code of Professional Responsibility and Rules of Professional Conduct)
- Vogtsberger (9/17/2008) (court found two violations not found by board; court not bound by board's findings or conclusions; court renders final determination of facts and conclusions of law)
- Weisberg (1/27/2010) (attempts to willfully evade federal income taxes are deemed illegal conduct involving moral turpitude in violation of DR 1-102(A)(3))
- Williams (10/13/2011) (court held the disbarment was the only appropriate sanction for an attorney convicted of child rape)
- Wilson (10/14/2010) (in default proceeding some allegations not supported by sworn or certified evidence)
- Wittbrod (7/28/2009) (discussion of rule

violations for attempt to dismiss a grievance as term of settlement of malpractice claim; cooperated after initial delay in responding to relator's letters)  
 Wolanin (4/1/2009) (no mitigating effect to depression, adjustment disorder, and alcohol abuse because BCGD Proc.Reg.

10(B)(2)(g)(iii) not met)  
 Zapor (12/2/2010) (respondent's deposition testimony of alcohol and gambling not a mitigating factor when respondent did not appear at hearing and did not meet the requirements of Proc.Reg.  
 10(B)(2)(g))

## Disciplinary Rule Violations

### **DR 1-102(A)(3) (engaging in illegal conduct involving moral turpitude)**

Andrews (3/17/2010)  
 Baker (5/28/2009)  
 Burkholder (2/26/2009)  
 Butler (1/27/2011)  
 Character (6/23/2011)  
 Farrell (9/16/2008)  
 Gittinger (8/6/2010)  
 Goldblatt (5/29/2008)  
 Heiland (1/17/2008)  
 Howard (8/25/2009)  
 Kellogg (7/20/2010)  
 Kiesling (4/12/2010)  
 Lawson (7/9/2008)  
 Lawson (9/20/2011)  
 LoDico (5/29/2008)  
 Mason (6/12/2008)  
 McAuliffe (3/19/2009)  
 Parrish (5/5/2009)  
 Powers (9/25/2008)  
 Resnick (12/21/2010)  
 Ridenbaugh (8/20/2009)  
 Smith (3/9/2011)  
 Walker (7/8/2008)  
 Weisberg (1/27/2010)  
 Williams (10/13/2011)  
 Zaccagnini (9/21/2011)

### **DR 1-102(A)(4) (conduct involving dishonesty, fraud, deceit, or misrepresentation)**

Baker (5/28/2009)  
 Bennett (2/4/2010)  
 Blair (2/24/2011)  
 Brenner (7/29/2009)  
 Broschak (5/14/2008)  
 Brown (12/15/2009)  
 Cantrell (5/20/2010)  
 Character (6/23/2011)  
 Chasser (3/18/2010)

Davis (2/12/2009)  
 Ellison (4/23/2008)  
 Ellis (10/16/2008)  
 Farrell (9/16/2008)  
 Frost (6/24/2009)  
 Gittinger (8/6/2010)  
 Glaeser (12/4/2008)  
 Gueli (9/25/2008)  
 Hayes (5/29/2008)  
 Heiland (1/17/2008)  
 Hickman (8/6/2008)  
 Higgins (4/3/2008)  
 Hoff (1/26/2010)  
 Horton (2/24/2010)  
 Hoskins (7/3/2008)  
 Jackson (11/30/2010)  
 Johnson (7/23/2009)  
 Kafantaris (4/1/2009)  
 Karris (9/1/2011)  
 Kealy (4/12/2010)  
 Kellogg (7/20/2010)  
 Kellogg-Martin (2/4/2010) (cause dismissed)  
 Kelly (2/4/2009)  
 Kimmins (9/24/2009)  
 Large (5/6/2009)  
 Lawson (7/9/2008)  
 Lawson (9/20/2011)  
 Lentes (12/11/2008)  
 Maher (2/5/2009)  
 Manning (7/8/2008)  
 Markovich (3/6/2008)  
 Mason (6/12/2008)  
 McAuliffe (3/19/2009)  
 McCord (4/7/2009)  
 Medley (1/27/2011)  
 Miller (7/20/2010)  
 Minamyer (7/28/2011)  
 Mishler (4/10/2008)  
 Mishler (12/14/2010)  
 Mitchell (4/23/2008)

Niermeyer (8/5/2008)  
 Parrish (5/5/2009)  
 Portman (4/16/2009)  
 Powers (9/25/2008)  
 Pullins (12/23/2010)  
 Raso (6/22/2011)  
 Resnick (12/21/2010)  
 Ricketts (12/23/2010)  
 Ritson (10/29/2010)  
 Roberts (2/14/2008)  
 Robinson (1/29/2009)  
 Sabroff (8/27/2009)  
 Schram (4/30/2009)  
 Schiller (9/23/2009)  
 Shea (1/30/2008)  
 Simmons (12/13/2008)  
 Smith (3/9/2011)  
 Smithern (3/3/2010)  
 Stahlbush (8/24/2010)  
 Taylor (12/4/2008)  
 Theisler (4/8/2010)  
 Thomas (2/25/2010)  
 Tomlan (4/3/2008)  
 Trivers (10/13/2009)  
 Vogel (2/14/2008)  
 Vogtsberger (9/17/2008)  
 Walker (7/8/2008)  
 Willette (3/20/2008)  
 Williamson (3/20/2008)  
 Wolanin (4/1/2009)  
 Yeager (9/17/2009)  
 Zaccagnini (9/21/2011)  
 Zigan (5/1/2008)

**DR 1-102(A)(5) (conduct prejudicial to  
 the administration of justice)**

Andrews (3/17/2010)  
 Brenner (7/29/2009)  
 Broschak (5/14/2008)  
 Brown (12/15/2009)  
 Bunstine (10/13/2009) (cause dismissed)  
 Campbell (7/15/2010)  
 Cantrell (5/20/2010)  
 Chambers (4/29/2010)  
 Character (6/23/2011)  
 Crosby (12/29/2009)  
 Dice (12/30/2008)  
 Doellman (12/15/2010)  
 Ellis (10/16/2008)  
 Finan (4/23/2008)  
 Freeman (8/13/2008)

Frost (6/24/2009)  
 Glaeser (12/4/2008)  
 Gueli (9/25/2008)  
 Hayes (5/29/2008)  
 Heiland (1/17/2008)  
 Horton (2/24/2010)  
 Hoskins (7/3/2008)  
 Ita (4/3/2008)  
 Johnson (7/23/2009)  
 Johnson (8/26/2009)  
 Kafantaris (4/1/2009)  
 Kealy (4/12/2010)  
 Kellogg (7/20/2010)  
 Kellogg-Martin (2/4/2010) (cause  
 dismissed)  
 Lawson (7/9/2008)  
 Lawson (9/20/2011)  
 Lentes (12/11/2008)  
 Maley (8/13/2008)  
 Markovich (3/6/2008)  
 McAuliffe (3/19/2009)  
 McShane (2/25/2009)  
 Mishler (4/10/2008)  
 Mishler (12/14/2010)  
 Mitchell (4/23/2008)  
 McCord (4/7/2009)  
 McNamee (8/7/2008)  
 Nittskoff (11/10/2011)  
 O'Brien (12/4/2008)  
 Plough (7/21/2010)  
 Pullins (12/23/2010)  
 Randall (6/12/2008)  
 Robinson (1/29/2009)  
 Ryan (8/27/2009)  
 Sabol (4/9/2008)  
 Sabroff (8/27/2009)  
 Schiller (9/23/2009)  
 Shaw (9/23/2010)  
 Simmons (12/13/2008)  
 Smith (12/3/2008)  
 Smith (3/9/2011)  
 Stafford (4/5/2011)  
 Stahlbush (8/24/2010)  
 Stuard, Becker, Bailey (1/29/2009)  
 (Becker)  
 Tomlan (4/3/2008)  
 Van Sickle (2/24/2011)  
 Vogel (2/14/2008)  
 Vogtsberger (9/17/2008)  
 Walker (7/8/2008)  
 Williamson (3/20/2008)

Wineman (5/6/2009)  
 Wolanin (4/1/2009)  
 Yeager (9/17/2009)  
 Zaccagnini (9/21/2011)  
 Zigan (5/1/2008)

**DR 1-102(A)(6) (conduct adversely  
 reflecting on fitness to practice law)**

Baker (5/28/2009)  
 Bennett (2/4/2010)  
 Blair (2/24/2011)  
 Brenner (7/29/2009)  
 Broschak (5/14/2008)  
 Brown (12/15/2009)  
 Burkholder (2/26/2009)  
 Butler (1/27/2011)  
 Cantrell (5/20/2010)  
 Catanzarite (8/14/2008)  
 Chambers (4/29/2010)  
 Character (6/23/2011)  
 Chasser (3/18/2010)  
 Crosby (12/29/2009)  
 Davis (2/12/2009)  
 Davis (3/18/2009)  
 Dawson (11/19/2009)  
 DiAlbert (10/14/2008)  
 Dice (12/30/2008)  
 Doellman (12/15/2010)  
 Gittinger (8/6/2010)  
 Ellis (10/16/2008)  
 Ellison (4/23/2008)  
 Finan (4/23/2008)  
 Forbes (6/11/2009)  
 Freeman (8/13/2008)  
 Frost (6/24/2009)  
 Glaeser (12/4/2008)  
 Goldblatt (5/29/2008)  
 Gueli (9/25/2008)  
 Hales (12/4/2008)  
 Hayes (5/29/2008)  
 Heiland (1/17/2008)  
 Heisler (10/14/2008)  
 Higgins (4/3/2008)  
 Hoff (1/26/2010)  
 Horton (2/24/2010)  
 Hoskins (7/3/2008)  
 Howard (8/25/2009)  
 Jackson (11/30/2010)  
 Jarabek (2/25/2009)  
 Johnson (3/3/2009)

Johnson (7/23/2009)  
 Johnston (4/2/2009)  
 Kafantaris (4/1/2009)  
 Karris (9/1/2011)  
 Kelly (2/4/2009)  
 Kimmins (9/24/2009)  
 Kiesling (4/12/2010)  
 Laatsch (8/17/2009)  
 Large (5/6/2009)  
 LaRue (7/29/2009)  
 Lawson (7/9/2008)  
 Lawson (9/20/2011)  
 Lentes (12/11/2008)  
 Lockshin (5/25/2010)  
 LoDico (5/29/2008)  
 Maher (2/5/2009)  
 Maley (8/13/2008)  
 Manning (7/8/2008)  
 Markovich (3/6/2008)  
 Mason (6/12/2008)  
 McAuliffe (3/19/2009)  
 McCord (4/7/2009)  
 McFaul (12/3/2008)  
 McNerney (5/28/2009)  
 McShane (2/25/2009)  
 Medley (1/27/2011)  
 Miller (7/20/2010)  
 Mishler (4/10/2008)  
 Mishler (12/14/2010)  
 Mitchell (4/23/2008)  
 Nance (7/9/2008)  
 Nance (11/19/2009)  
 Newcomer (9/11/2008)  
 Nittskoff (11/10/2011)  
 O'Brien (12/4/2008)  
 O'Malley (8/24/2010)  
 Parrish (5/5/2009)  
 Peden (5/15/2008)  
 Portman (4/16/2009)  
 Powers (9/25/2008)  
 Pullins (12/23/2010)  
 Randall (6/12/2008)  
 Resnick (12/21/2010)  
 Ridenbaugh (8/20/2009)  
 Ritson (10/29/2010)  
 Roberts (2/14/2008)  
 Ryan (8/27/2009)  
 Sabroff (8/27/2009)  
 Schram (4/30/2009)  
 Schiller (9/23/2009)  
 Shaw (9/23/2010)

Shea (1/30/2008)  
 Simon (2/16/2011)  
 Slavin (5/6/2009)  
 Smith (12/3/2008)  
 Smith (3/9/2011)  
 Smithern (3/3/2010)  
 Stafford (4/5/2011)  
 Stahlbush (8/24/2010)  
 Stridsberg (8/26/2009)  
 Theisler (4/8/2010)  
 Thomas (2/25/2010)  
 Tomlan (4/3/2008)  
 Trivers (10/13/2009)  
 Van Sickle (2/24/2011)  
 Veneziano (12/30/2008)  
 Vogel (2/14/2008)  
 Vogtsberger (9/17/2008)  
 Walker (7/8/2008)  
 Willette (3/20/2008)  
 Williams (10/13/2011)  
 Wineman (5/6/2009)  
 Wolanin (4/1/2009)  
 Zaccagnini (9/21/2011)  
 Zigan (5/1/2008)

**DR 1-104 (informing client of lack of professional malpractice insurance)**

Matejkovic (3/3/2009)  
 Minamyer (7/28/2011)  
 Nittskoff (11/10/2011)  
 Portman (4/16/2009)  
 Schramski (3/2/2010)

**DR 1-104(A) (informing client of lack of professional malpractice insurance)**

Baker (5/28/2009)  
 Character (6/23/2011)  
 Dawson (11/19/2009)  
 DiAlbert (10/14/2008)  
 Drain (12/3/2008)  
 Ellis (10/16/2008)  
 Evans (8/25/2009)  
 Godles (12/27/2010)  
 Horan (8/27/2009)  
 Jackson (10/23/2008)  
 Johnson (8/26/2009)  
 Maher (2/5/2009)  
 McNerney (5/28/2009)  
 Miller (7/20/2010)  
 Ohlin (8/24/2010)  
 Palombaro (3/24/2009)

Parrish (5/5/2009)  
 Ryan (8/27/2009)  
 Saylor (4/29/2010)  
 Shea (1/30/2008)  
 Trainor (6/7/2011)  
 Wittbrod (7/28/2009)  
 Zaffiro (10/7/2010)

**DR 1-104(B) (maintaining copy of notice)**

Baker (5/28/2009)  
 Character (6/23/2011)  
 Evans (8/25/2009)  
 Jackson (10/23/2008)  
 Johnson (8/26/2009)  
 Maher (2/5/2009)  
 McNerney (5/28/2009)  
 Ohlin (8/24/2010)  
 Wittbrod (7/28/2009)

**DR 1-104(C) (notice required unless applicable exception)**

DiAlbert (10/14/2008)  
 Character (6/23/2011)

**DR 2-101(A)(1) (false, fraudulent, misleading, deceptive, self-laudatory, or unfair statements)**

Willette (3/20/2008)

**DR 2-101(F)(1) (soliciting legal business in person or by telephone)**

Willette (3/20/2008)

**DR 2-102(B) (practice under a trade name; misleading name)**

Character (6/23/2011)  
 McCord (4/7/2009)

**DR 2-102(C) (improper representation of the existence of partnership)**

Character (6/23/2011)  
 McCord (4/7/2009)

**DR 2-103(A) (recommending employment of self, partner, or associate to non-lawyer without solicitation)**

McNamee (8/7/2008)

**DR 2-103(B) (compensating a person to recommend employment)**

Chasser (3/18/2010)

Willette (3/20/2008)

**DR 2-103(C) (requesting a person to promote the use of lawyer's services)**

Jackel (5/1/2008)  
Mullaney, Brooking, Moeves  
(9/16/2008)  
Patterson (12/2/2009)  
Willard (7/30/2009)  
Willette (3/20/2008)

**DR 2-106(A) (charging or collecting a clearly excessive or illegal fee)**

Cantanzarite (8/14/2008)  
Character (6/23/2011)  
Cook (1/29/2009)  
Gueli (9/25/2008)  
Hickman (8/6/2008)  
Hoskins (7/3/2008)  
Johnson (3/3/2009)  
Lawson (7/9/2008)  
Miller (7/20/2010)  
Mishler (4/10/2008)  
Mishler (12/14/2010)  
McCord (4/7/2009)  
Parrish (5/5/2009)  
Sawers (3/3/2009)  
Smith (11/19/2009)  
Stahlbush (8/24/2010)  
Stridsberg (8/26/2009)  
Watkins (12/3/2008)

**DR 2-106(B) (fee in excess of reasonable fee)**

Character (6/23/2011)  
Lawson (7/9/2008)

**DR 2-107(A) (fee division by lawyers not in the same firm)**

Johnson (3/3/2009)  
McCord (4/7/2009)  
Mishler (4/10/2008) (no violation)

**DR 2-107(A)(1) (fee division in proportion to services performed)**

Chasser (3/18/2010)  
Mason (6/12/2008)

**DR 2-107(A)(2) (terms of fee division and identities of lawyers not disclosed in writing)**

Jackson (11/30/2010)  
Mason (6/12/2008)

**DR 2-107(A)(3) (total fee is unreasonable)**  
Mason (6/12/2008)

**DR 2-110(A)(2) (withdrawal without steps to avoid foreseeable prejudice to client; failing to return papers)**

Andrews (3/17/2010)  
Kiesling (4/12/2010)  
Lawson (7/9/2008)  
Maher (2/5/2009)  
Schiller (9/23/2009)  
Van Sickle (2/24/2011)  
Yeager (9/17/2009)

**DR 2-110(A)(3) (failing after withdrawal to promptly refund any unearned fees)**

Schiller (9/23/2009)

**DR 2-110(B)(2) (representing client when continued employment will result rule violation)**

Williamson (3/20/2008)

**DR 3-101(A) (aiding a non-lawyer in the unauthorized practice of law)**

Jackel (5/1/2008)  
Maley (8/13/2008)  
Mullaney, Brooking, Moeves  
(9/16/2008)  
Palombaro (3/24/2009)  
Patterson (12/2/2009)  
Willard (7/30/2009)

**DR 3-101(B) (practice of law violating professional regulations)**

Hickman (8/6/2008)  
Higgins (4/3/2008)  
Jackel (5/1/2008)  
Sayler (4/29/2010)  
Simmons (12/13/2008)

**DR 3-102 (sharing fees with a non-lawyer)**

Jackel (5/1/2008)  
Maley (8/13/2008)  
Mullaney, Brooking, Moeves  
(9/16/2008)  
Patterson (12/2/2009)

Willard (7/30/2009)  
Willette (3/20/2008)

**DR 3-103(A) (forming a partnership with a non-lawyer to practice law)**

Mullaney, Brooking, Moeves  
(9/16/2008) (no violation by Mullaney)  
Willard (7/30/2009)

**DR 4-101 (failing to preserve the confidences of a client)**

Willette (3/20/2008)

**DR 4-101(B)(1) (knowingly revealing the secrets or confidences of a client)**

Jackel (5/1/2008)

**DR 4-101(B)(2) (failure to preserve client confidences and secrets)**

Kimmins (9/24/2009)

**DR 5-101(A)(1) (employment when attorney's judgment might be influenced by personal interests)**

Dettinger (4/2/2009)  
Gueli (9/25/2008)  
Lawson (9/20/2011)  
McNamee (8/7/2008)  
Shaw (9/23/2010)  
Tomlan (4/3/2008)  
Willette (3/20/2008)

**DR 5-101(A)(2) (preparing a will/trust in which the lawyer is named a beneficiary)**

Shaw (9/23/2010)

**DR 5-103(B) (providing financial assistance to client)**

Fletcher (7/22/2009)  
Kimmins (9/24/2009)  
Laatsch (8/27/2009)  
Podor (2/5/2009)

**DR 5-104(A) (entering into a business transaction with client when interests differ)**

Character (6/23/2011)  
Dettinger (4/2/2009)  
Kealy (4/12/2010)  
Markovich (3/6/2008)  
Marosan (8/7/2008)

McNamee (8/7/2008)  
Shaw (9/23/2010)

**DR 5-105(A) (declining employment if judgment is or is likely to be adversely affected)**

Character (6/23/2011)  
Taylor (12/4/2008)

**DR 5-105(B) (continuing employment when judgment is likely to be adversely affected by representation of another client)**

Gueli (9/25/2008)  
McNamee (8/7/2008)  
Taylor (12/4/2008)

**DR 5-105(C) (representing multiple clients without full disclosure)**

Mangan (10/13/2009)

**DR 6-101(A) (failing to act competently)**

Sayler (4/29/2010)

**DR 6-101(A)(1) (handling a legal matter not competent to handle)**

DiAlbert (10/14/2008)  
Gueli (9/25/2008)  
Hales (12/4/2008)  
Hayes (5/29/2008)  
Lawson (7/9/2008)  
Maher (2/5/2009)  
Nittskoff (11/10/2011)  
Sawers (3/3/2009)  
Smith (11/19/2009)

**DR 6-101(A)(2) (handling a legal matter without adequate preparation)**

Character (6/23/2011)  
DiAlbert (10/14/2008)  
Dice (12/30/2008)  
Drain (12/3/2008)  
Gueli (9/25/2008)  
Hales (12/4/2008)  
Hayes (5/29/2008)  
Ita (4/3/2008)  
Johnson (8/26/2009)  
Lawson (7/9/2008)  
Mangan (10/13/2009)  
Mullaney, Brooking, Moeves  
(9/16/2008)

Patterson (12/2/2009)  
 Ryan (8/27/2009)  
 Willard (7/30/2009)

**DR 6-101(A)(3) (neglecting an entrusted legal matter)**

Allerding (10/29/2009)  
 Andrews (3/17/2010)  
 Baker (5/28/2009)  
 Broschak (5/14/2008)  
 Brown (12/15/2009)  
 Brown (2/24/2010)  
 Chambers (4/29/2010)  
 Character (6/23/2011)  
 Church (1/17/2008)  
 Dawson (11/19/2009)  
 Davis (3/18/2009)  
 DiAlbert (10/14/2008)  
 Dice (12/30/2008)  
 Drain (12/3/2008)  
 Dundon (8/30/2011)  
 Ellis (10/16/2008)  
 Ellison (4/23/2008)  
 Emerson (6/25/2009)  
 Evans (8/25/2009)  
 Farah (5/20/2010)  
 Freeman (4/5/2011)  
 Glaeser (12/4/2008)  
 Gueli (9/25/2008)  
 Hales (12/4/2008)  
 Hayes (5/29/2008)  
 Hickman (8/6/2008)  
 Higgins (4/3/2008)  
 Hoff (1/26/2010)  
 Horton (2/24/2010)  
 Hoskins (7/3/2008)  
 Jarabek (2/25/2009)  
 Johnson (7/23/2009)  
 Johnson (8/26/2009)  
 Johnson (10/7/2010)  
 Jones (10/1/2009)  
 Kealy (4/12/2010)  
 Kiesling (4/12/2010)  
 Leneghan (2/14/2008)  
 Lawson (7/9/2008)  
 Lentes (12/11/2008)  
 Lowden (3/20/2008)  
 Maher (2/5/2009)  
 Maley (8/13/2008)  
 Markovich (3/6/2008)  
 Marshall (2/12/2009)

Mason (6/12/2008)  
 McShane (2/25/2009)  
 Minamyer (7/28/2011)  
 Mishler (12/14/2010)  
 Noel (6/17/2010)  
 Nittskoff (11/10/2011)  
 Ohlin (8/24/2010)  
 Parrish (5/5/2009)  
 Patterson (12/2/2009)  
 Poole (12/4/2008)  
 Portman (4/16/2009)  
 Ramos (7/3/2008)  
 Randall (6/12/2008)  
 Ranke (10/21/2010)  
 Raso (6/22/2011)  
 Robinson (1/29/2009)  
 Ryan (8/27/2009)  
 Sabol (4/9/2008)  
 Schiller (9/23/2009)  
 Slavin (5/6/2009)  
 Smith (12/3/2008)  
 Stoll (12/14/2010)  
 Troy (2/12/2009)  
 Van Sickle (2/24/2011)  
 Zigan (5/1/2008)

**DR 6-102 (attempt to exonerate self from or limit liability to client for malpractice)**

Markovich (3/6/2008)  
 Willette (3/20/2008)  
 Wittbrod (7/28/2009)

**DR 7-101(A)(1) (failing to seek lawful objectives through reasonable means)**

Andrews (3/17/2010)  
 Broschak (5/14/2008)  
 Cantrell (5/20/2010)  
 Chambers (4/29/2010)  
 Character (6/23/2011)  
 Church (1/17/2008)  
 Davis (2/12/2009)  
 Davis (3/18/2009)  
 DiAlbert (10/14/2008)  
 Dice (12/30/2008)  
 Ellis (10/16/2008)  
 Emerson (6/25/2009)  
 Glaeser (12/4/2008)  
 Hayes (5/29/2008)  
 Higgins (4/3/2008)  
 Hoff (1/26/2010)  
 Johnson (8/26/2009)

Kiesling (4/12/2010)  
 Larson (12/30/2009)  
 McShane (2/25/2009)  
 Mishler (4/10/2008)  
 Mishler (12/14/2010)  
 Ohlin (8/24/2010)  
 Patterson (12/2/2009)  
 Poole (12/4/2008)  
 Ryan (8/27/2009)  
 Van Sickle (2/24/2011)  
 Willard (7/30/2009)

**DR 7-101(A)(2) (failure to carry out a contract of employment)**

Andrews (3/17/2010)  
 Broschak (5/14/2008)  
 Chambers (4/29/2010)  
 Character (6/23/2011)  
 Chasser (3/18/2010)  
 Church (1/17/2008)  
 Davis (2/12/2009)  
 Davis (3/18/2009)  
 DiAlbert (10/14/2008)  
 Dice (12/30/2008)  
 Emerson (6/25/2009)  
 Glaeser (12/4/2008)  
 Higgins (4/3/2008)  
 Hoff (1/26/2010)  
 Horton (2/24/2010)  
 Johnson (8/26/2009)  
 Jones (10/1/2009)  
 Kealy (4/12/2010)  
 Larson (12/30/2009)  
 Lawson (7/9/2008)  
 Marshall (2/12/2009)  
 Mason (6/12/2008)  
 McShane (2/25/2009)  
 Poole (12/4/2008)  
 Ryan (8/27/2009)  
 Schiller (9/23/2009)  
 Smith (12/3/2008)  
 Van Sickle (2/24/2011)

**DR 7-101(A)(3) (causing prejudice or damage to client)**

Broschak (5/14/2008)  
 Character (6/23/2011)  
 Chasser (3/18/2010)  
 Church (1/17/2008)  
 Davis (2/12/2009)  
 Drain (12/3/2008)

Emerson (6/25/2009)  
 Glaeser (12/4/2008)  
 Gueli (9/25/2008)  
 Hales (12/4/2008)  
 Hayes (5/29/2008)  
 Jackson (11/30/2010)  
 Kealy (4/12/2010)  
 Kiesling (4/12/2010)  
 Larson (12/30/2009)  
 Lawson (7/9/2008)  
 Maley (8/13/2008)  
 Mason (6/12/2008)  
 McShane (2/25/2009)  
 Mishler (4/10/2008)  
 Mishler (12/14/2010)  
 Parrish (5/5/2009)  
 Robinson (1/29/2009)  
 Ryan (8/27/2009)  
 Sabroff (8/27/2009)  
 Schiller (9/23/2009)  
 Thomas (2/25/2010)  
 Yeager (9/17/2009)

**DR 7-102(A)(1) (taking legal action merely to harass or injure another)**

Cantanzarite (8/14/2008)  
 Frost (6/24/2009)  
 Mitchell (4/23/2008)

**DR 7-102(A)(2) (advancing claim or defense unwarranted under existing law)**

Frost (6/24/2009)  
 Mitchell (4/23/2008)  
 Ricketts (12/23/2010) (not alleged as a violation but used to argue good faith defense to other rule violations)

**DR 7-102(A)(3) (concealing or knowingly failing to disclose what the law requires to be revealed)**

Gueli (9/25/2008)  
 Kafantaris (4/1/2009)  
 Kellogg-Martin (2/4/2010) (cause dismissed)  
 Mishler (12/14/2010)

**DR 7-102(A)(4) (knowingly using perjured testimony or false evidence)**

Mitchell (4/23/2008)  
 Pullins (12/23/2010)

**DR 7-102(A)(5) (knowingly making false statements of law or fact)**

Cantrell (5/20/2010)  
 Chasser (3/18/2010)  
 Mishler (12/14/2010)  
 Mitchell (4/23/2008)  
 Pullins (12/23/2010)  
 Robinson (1/29/2009)  
 Taylor (12/4/2008)  
 Yeager (9/17/2009)

**DR 7-102(A)(6) (knowingly participating in the creation or presentation of false evidence)**

Mitchell (4/23/2008)  
 Niermeyer (8/5/2008)  
 Pullins (12/23/2010)

**DR 7-102(A)(7) (counseling or assisting a client in illegal or fraudulent conduct)**

Kellogg (7/20/2010)  
 Lawson (9/20/2011)  
 O'Brien (12/4/2008)

**DR 7-102(A)(8) (conduct contrary to a disciplinary rule)**

Kellogg (7/20/2010)  
 Lawson (9/20/2011)

**DR 7-103(B) (failing to timely disclose evidence in a criminal trial)**

Kellogg-Martin (2/4/2010) (cause dismissed)

**DR 7-105(A) (threatening criminal prosecution to obtain an advantage in a civil matter)**

Ellison (4/23/2008)

**DR 7-106(A) (disregarding ruling of a tribunal)**

Emerson (6/25/2009)  
 Pullins (12/23/2010)

**DR 7-106(B)(7) (intentionally or habitually violating any established rule of procedure)**

Randall (6/12/2008)

**DR 7-106(C)(1) (making statements unsupported by evidence)**

Frost (6/24/2009)

**DR 7-106(C)(2) (questions with no reasonable basis to believe are relevant and are intended to degrade a someone)**

Markovich (3/6/2008)

**DR 7-106(C)(4) (asserting personal opinion)**

Markovich (3/6/2008)

**DR 7-106(C)(6) (undignified or discourteous conduct before a tribunal)**

Pullins (12/23/2010)  
 Vogel (2/14/2008)

**DR 7-109(A) (suppressing evidence that attorney or client has a legal obligation to produce)**

Kellogg (7/20/2010)  
 Tomlan (4/3/2008)

**DR 7-110(B) (communicating as to the merits of a cause with a presiding judge or official on a pending matter)**

Stuard, Becker, Bailey (1/29/2009)  
 (Becker)  
 Tomlan (4/3/2008)

**DR 8-102(B) (making false accusations against a judge or other adjudicatory officers)**

Frost (6/24/2009)  
 Pullins (12/23/2010)  
 Vogel (2/14/2008)

**DR 9-102 (failing to preserve the identity of a client's funds and property)**

Matejkovic (3/32009)  
 Schramski (3/2/2010)

**DR 9-102(A) (commingling funds)**

Character (6/23/2011)  
 Chasser (3/18/2010)  
 Cook (1/29/2009)  
 Crosby (12/29/2009)  
 Doellman (12/15/2010)  
 Fletcher (7/22/2009)

Freeman (8/13/2008)  
 Hickman (8/6/2008)  
 Horton (2/24/2010)  
 Johnson (3/3/2009)  
 Johnston (4/2/2009)  
 LaRue (7/29/2009)  
 Lawson (7/9/2008)  
 Maher (2/5/2009)  
 Maley (8/13/2008)  
 Manning (7/8/2008)  
 Markovich (3/6/2008)  
 McNerney (5/28/2009)  
 Miller (7/20/2010)  
 Mishler (12/14/2010)  
 Nance (7/9/2008)  
 Newcomer (9/11/2008)  
 Palombaro (3/24/2009)  
 Peden (5/15/2008)  
 Ramos (7/3/2008)  
 Sabroff (8/27/2009)  
 Sawers (3/3/2009)  
 Simon (2/16/2011)  
 Smithern (3/3/2010)  
 Troy (2/12/2009)  
 Vogtsberger (9/17/2008)  
 Watkins (12/3/2008)  
 Weisberg (1/27/2010)  
 Zigan (5/1/2008)

**DR 9-102(A)(2) (failure to maintain a trust account; failure to preserve funds and property)**

Character (6/23/2011)  
 Kafantaris (4/1/2009)  
 Kizer (9/17/2009)  
 Matejkovic (3/32009)

**DR 9-102(B) (failure to identify or keep record of funds)**

Peden (5/15/2008)  
 Vogtsberger (9/17/2008)

**DR 9-102(B)(1) (failure to promptly notify a client of the receipt of client's funds)**

Brown (2/24/2010)  
 Doellman (12/15/2010)  
 Lawson (7/9/2008)  
 Mishler (4/10/2008)  
 Mishler (12/14/2010)

Wolanin (4/1/2009)

**DR 9-102(B)(3) (failure to maintain complete records of all client's property)**

Baker (5/28/2009)  
 Blair (2/24/2011)  
 Broschak (5/14/2008) (fees in criminal case)  
 Chasser (3/18/2010) (settlement funds)  
 Cook (1/29/2009) (foreclosure representation)  
 Crosby (12/29/2009)  
 Doellman (12/15/2010)  
 Emerson (6/25/2009)  
 Fletcher (7/22/2009)  
 Freeman (8/13/2008)  
 Gueli (9/25/2008)  
 Heiland (1/17/2008) (used trust to launder money from elderly couple's retirement funds)  
 Horan (8/27/2009) (guardian ad litem of minor's funds-did not give funds to minor when minor turned 18)  
 Hoskins (7/3/2008) (estate)  
 Jackson (10/23/2008) (fees and expenses in divorce case)  
 Johnston (4/2/2009) (did not misappropriate, but commingled)  
 Kafantaris (4/1/2009) (settlement funds; life insurance payment)  
 Kimmins (9/24/2009) (items removed from client's property)  
 Laatsch (8/27/2009)  
 LaRue (7/29/2009)  
 Lawson (7/9/2008)(settlement and fees)  
 Maley (8/13/2008) (bankruptcy practice)  
 Manning (7/8/2008) (settlement funds)  
 Mason (6/12/2008) (settlement funds)  
 McNerney (5/28/2009)  
 Mishler (4/10/2008)  
 Mishler (12/14/2010)  
 Palombaro (3/24/2009)  
 Ramos (7/3/2008)  
 Sabroff (8/27/2009)  
 Schiller (9/23/2009) (bankruptcy practice)  
 Smithern (3/3/2010)  
 Thomas (2/25/2010)  
 Troy (2/12/2009) (unearned fees)  
 Wolanin (4/1/2009)

**DR 9-102(B)(4) (failure to promptly pay or deliver client funds, securities or other property)**

Allerding (10/29/2009)  
 Andrews (3/17/2010)  
 Chambers (4/29/2010)  
 Chasser (3/18/2010)  
 Church (1/17/2008)  
 Davis (3/18/2009)  
 Doellman (12/15/2010)  
 Dundon (8/30/2011)  
 Ellis (10/16/2008)  
 Emerson (6/25/2009)  
 Freedman (10/14/2008)  
 Glaeser (12/4/2008)  
 Gueli (9/25/2008)  
 Hayes (5/29/2008)  
 Hickman (8/6/2008)  
 Horan (8/27/2009)  
 Horton (2/24/2010)  
 Jackson (11/30/2010)  
 Kafantaris (4/1/2009)  
 Kiesling (4/12/2010)  
 Larson (12/30/2009)  
 Lawson (7/9/2008)

Lowden (3/20/2008)  
 Maher (2/5/2009)  
 Manning (7/8/2008)  
 Mason (6/12/2008)  
 McShane (2/25/2009)  
 Miller (7/20/2010)  
 Mishler (4/10/2008)  
 Mishler (12/14/2010)  
 Ohlin (8/24/2010)  
 Palombaro (3/24/2009)  
 Parrish (5/5/2009)  
 Poole (12/4/2008)  
 Portman (4/16/2009)  
 Sabroff (8/27/2009)  
 Schiller (9/23/2009)  
 Smith (12/3/2008)  
 Van Sickle (2/24/2011)  
 Wolanin (4/1/2009)  
 Zigan (5/1/2008)

**DR 9-102(E)(1) (failure to maintain clients' funds in trust account)**

Blair (2/24/2011)  
 Character (6/23/2011)  
 Lawson (7/9/2008)

**Discipline Imposed/ Dismissals****Cause Remanded**

Newman (3/17/2009)

**Dismissal by Supreme Court on Merits**

Stuard, Becker, Bailey (1/29/2009)  
 (Bailey)  
 Bunstine (10/13/2009)  
 Kellogg-Martin (2/4/2010)  
 Lapine (12/21/2010)  
 Rust (1/28/2010)

**Indefinite Suspension**

Andrews (3/17/2010)  
 Baker (5/28/2009)  
 Bandman (5/20/2010)  
 Bennett (2/4/2010)  
 Boggs (6/7/2011)  
 Broschak (5/14/2008)  
 Brown (3/25/2009)  
 Brown (12/15/2009)  
 Brown (10/13/2011)  
 Burkholder (2/26/2009)  
 Butler (1/27/2011)  
 Cantrell (5/20/2010)  
 Cantrell (9/14/2011)

Chasser (3/18/2010)  
 Church (1/17/2008)  
 Clovis (5/5/2010)  
 Davis (3/18/2009)  
 Davis (11/29/2011)  
 Emerson (6/25/2009)  
 Evans (8/25/2009)  
 Freeman (8/24/2010)  
 Frost (6/24/2009)  
 Gittinger (8/6/2010)  
 Goldblatt (5/29/2008)  
 Grote (10/7/2010)  
 Heiland (1/17/2008)  
 Higgins (4/3/2008)  
 Hoff (1/26/2010)  
 Hunter (11/15/2011)  
 Kaplan (1/28/2010)  
 Kellogg (7/20/2010)  
 Kelly (2/4/2009)  
 Larkin (2/23/2011)  
 Lawson (7/9/2008)  
 Maher (2/5/2009)  
 McCord (4/7/2009)  
 Meade (12/22/2010)  
 Medley (1/27/2011)

Miller (7/20/2010)  
 Mitchell (1/26/2010)  
 Muntean (12/20/2010)  
 Newman (10/21/2010)  
 Nittskoff (11/10/2011)  
 Ohlin (8/24/2010)  
 Portman (4/16/2009)  
 Ranke (9/22/2011)  
 Resnick (12/21/2010)  
 Ridenbaugh (8/20/2009)  
 Robinson (1/29/2009)  
 Pullins (12/23/2010)  
 Saunders (11/30/2010)  
 Saylor (4/29/2010)  
 Schiller (9/23/2009)  
 Siehl (11/18/2009)  
 Smith (12/3/2008)  
 Smith (3/9/2011)  
 Smithern (3/3/2010)  
 Spector (3/18/2009)  
 Squire (11/3/2011)  
 Stubbs (2/15/2011)  
 Theisler (4/8/2010)  
 Thomas (2/25/2010)  
 Tomlan (4/3/2008)  
 Troy (9/29/2011)  
 Van Sickle (2/24/2011)  
 Williamson (3/20/2008)  
 Wilson (10/14/2010)  
 Wittbrod (9/21/2011)  
 Wolanin (4/1/2009)  
 Yeager (9/17/2009)  
 Zapor (12/2/2010)

#### **Permanent Disbarment**

Bursey (12/2/2009)  
 Character (6/23/2011)  
 Farrell (6/21/2011)  
 Freeman (4/5/2011)  
 Gueli (9/25/2008)  
 Henry (12/22/2010)  
 Horan (8/17/2009)  
 Hickman (8/6/2008)  
 Hildebrand (12/1/2010)  
 Hoskins (7/3/2008)  
 Kafantaris (4/1/2009)  
 Kiesling (4/12/2010)  
 Lawson (9/20/2011)  
 Lentes (12/11/2008)  
 Longino (4/6/2011)  
 Marosan (8/7/2008)  
 Marshall (2/12/2009)  
 Mason (6/12/2008)  
 McAuliffe (3/19/2009)  
 Mishler (12/14/2010)  
 Parrish (5/5/2009)  
 Powers (9/25/2008)  
 Ritson (10/29/2010)

Sabroff (8/27/2009)  
 Sanz (2/24/2011)  
 Schram (4/30/2009)  
 Williams (10/13/2011)  
 Zaccagnini (9/21/2011)  
 Zigan (5/1/2008)

#### **Public Reprimand**

Bartels (3/25/2010)  
 Bowling (10/21/2010)  
 Bucciere (3/19/2009)  
 Cunningham (5/1/2008)  
 Detweiler (10/21/2010)  
 Dundon (8/30/2011)  
 Finan (4/23/2008)  
 Freedman (4/27/2011)  
 Godles (12/27/2010)  
 Goldie (9/18/2008)  
 Hackett (6/30/2011)  
 Helbling (3/8/2010)  
 Ita (4/3/2008)  
 Jackson (10/23/2008)  
 Johnson (8/26/2009)  
 Kubyn (3/19/2009)  
 Leneghan (2/14/2008)  
 Mangan (10/13/2009)  
 Mason (4/7/2010)  
 Matejkovic (3/3/2009)  
 Mullaney, Brooking, Moeves  
 (9/16/2008) (Mullaney)  
 Ranke (10/21/2010)  
 Sargeant (5/20/2008)  
 Sawers (3/3/2009)  
 Schmalz (8/25/2009)  
 Shaver (4/1/2009)  
 Shea (1/30/2007)  
 Smith (11/19/2009)  
 Stuard, Becker, Bailey (1/29/2009)  
 (Stuard, Becker)  
 Thompson(6/30/2011)  
 Zaffiro (10/7/2010)

#### **Term Suspension**

Archer (7/5/2011)  
 Allerdig (10/29/2009)  
 Blair (2/24/2011)  
 Brenner (7/29/2009)  
 Brown (2/24/2010)  
 Brueggeman (12/21/2010)  
 Cameron (10/12/2011)  
 Campbell (7/15/2010)  
 Cantanzarite (8/14/2008)  
 Chambers (4/29/2010)  
 Cook (1/29/2009)  
 Corrigan (9/22/2011)  
 Crosby (12/29/2009)  
 Davis (2/12/2009)  
 Dawson (11/19/2009)

Dearfield (10/19/2011)  
DeLoach (8/31/2011)  
Dettinger (4/2/2009)  
DiAlbert (10/14/2008)  
DiCato (11/17/2011)  
Dice (12/30/2008)  
DiMartino (2/3/2010)  
Dismuke (3/31/2011)  
Doellman (12/15/2010)  
Drain (12/3/2008)  
Ellis (10/16/2008)  
Ellison (4/23/2008)  
Farah (5/20/2010)  
Farrell (9/16/2008)  
Fink (12/14/2011)  
Fletcher (7/22/2009)  
Folwell (7/6/2011)  
Forbes (6/11/2009)  
Freedman (10/14/2008)  
Freeman (8/13/2008)  
Freeman (3/31/2011)  
Gaul (10/7/2010)  
Gerchak (10/5/2011)  
Gibson (2/16/2011)  
Glaeser (12/4/2008)  
Gresley (12/22/2010)  
Grigsby (3/31/2011)  
Gottelher (3/17/2010)  
Hales (12/4/2008)  
Hallquist (4/20/2011)  
Hanni (12/2/2010)  
Harwood (4/7/2010)  
Hauck (7/7/2011)  
Hayes (5/29/2008)  
Heisler (10/14/2008)  
Holda (4/7/2010)  
Hoppel (6/8/2011)  
Horton (2/24/2010)  
Howard (8/25/2009)  
Hunt (12/21/2010)  
Jackel (5/1/2008)  
Jackson (11/30/2010)  
Jaffe (2/25/2009)  
Jarabek (2/25/2009)  
Johnson (3/3/2009)  
Johnson (7/23/2009)  
Johnson (10/7/2010)  
Johnston (4/2/2009)  
Jones (10/1/2009)  
Jones (12/16/2010)  
Karris (9/1/2011)  
Kealy (4/12/2010)  
Kimmins (9/24/2009)  
Kizer (9/17/2009)  
Kraemer (7/21/2010)  
Laatsch (8/27/2009)  
Landis (3/17/2010)  
Lape (11/10/2011)  
Large (5/6/2009)  
LaRue (7/29/2009)  
Larson (12/30/2009)  
Lewis (4/21/2009)  
Lockshin (5/25/2010)  
Lowden (3/20/2008)  
Maley (8/13/2008)  
Mamich (3/25/2010)  
Manning (7/8/2008)  
Markovich (3/6/2008)  
Martin (12/15/2011)  
McFaul (12/3/2008)  
McNamee (8/7/2008)  
McNerney (5/28/2009)  
McShane (2/25/2009)  
Miller (9/7/2011)  
Minamy (7/28/2011)  
Mishler (4/10/2008)  
Mitchell (4/23/2008)  
Mullaney, Brooking, Moeves  
(9/16/2008) (Brooking)  
Murraine (11/17/2011)  
Nance (7/9/2008)  
Nance (11/19/2009)  
Nicks (2/25/2010)  
Niermeyer (8/5/2008)  
Newcomer (9/11/2008)  
Niles (6/10/2010)  
Noel (6/17/2010)  
O'Brien (12/4/2008)  
O'Malley (8/24/2010)  
Palombaro (3/24/2009)  
Peden (5/15/2008)  
Peskin (4/29/2010)  
Pfundstein (12/21/2010)  
Pheils (6/23/2011)  
Plough (7/21/2010)  
Podor (2/5/2009)  
Poole (12/4/2008)  
Potter (6/10/2010)  
Ramos (7/3/2008)  
Randall (6/12/2008)  
Raso (6/22/2011)  
Rathburn (9/28/2010)  
Ricketts (12/23/2010)  
Ridenbaugh (8/20/2009)  
Riek (4/12/2010)  
Roberts (2/14/2008)  
Robinson (8/25/2010)  
Rohrer (11/17/2009)  
Rozanc (8/27/2009)  
Russo (2/25/2010)  
Ryan (8/27/2009)  
Sabol (4/9/2008)  
Sakmar (12/1/2010)  
Schramski (3/2/2010)  
Scott (8/25/2011)  
Shaw (9/23/2010)

Sherman (6/9/2010)  
 Shuler (8/30/2011)  
 Siewert (11/23/2011)  
 Simon (2/16/2011)  
 Slavin (5/6/2009)  
 Simmons (12/13/2008)  
 Smith (12/3/2008)  
 Stafford (4/5/2011)  
 Stahlbush (8/24/2010)  
 Stridsberg (8/26/2009)  
 Stoll (12/14/2010)  
 Taylor (12/4/2008)  
 Thomas (3/24/2010)  
 Trainor (6/7/2011)  
 Trivers (10/13/2009)

Troxell (7/6/2011)  
 Troy (2/12/2009)  
 Walker (7/8/2008)  
 Watkins (12/3/2008)  
 Weisberg (1/27/2010)  
 Willard (7/30/2009)  
 Willette (3/20/2008)  
 Williams (9/7/2011)  
 Wineman (5/6/2009)  
 Wittbrod (7/28/2009)  
 Veneziano (12/30/2008)  
 Vivyan (3/3/2010)  
 Vogel (2/14/2008)  
 Vogtsberger (9/17/2008)

### Gov. Bar Rule V(4)(G) & V(10) Violations

#### **Gov. Bar R. V(4)(G) (failure to cooperate with disciplinary investigation)**

Allerding (10/29/2009)  
 Baker (5/28/2009)  
 Brown (3/25/2009)  
 Bursey (12/2/2009)  
 Cantanzarite (8/14/2008)  
 Chambers (4/29/2010)  
 Character (6/23/2011)  
 Chasser (3/18/2010)  
 Church (1/17/2008)  
 Clovis (5/5/2010)  
 Davis (2/12/2009)  
 Davis (3/18/2009)  
 Davis (11/29/2011)  
 Dice (12/30/2008)  
 Dismuke (3/31/2011)  
 Ellis (10/16/2008)  
 Emerson (6/25/2009)  
 Fink (12/14/2011)  
 Freeman (8/13/2008)  
 Freeman (4/5/2011)  
 Gottehrer (3/17/2010)  
 Gresley (12/22/2010)  
 Gueli (9/25/2008)  
 Heiland (1/17/2008)  
 Henry (12/22/2010)  
 Higgins (4/3/2008)  
 Hildebrand (12/1/2010)  
 Hoff (1/26/2010)  
 Horan (8/27/2009)  
 Hunt (12/21/2010)  
 Jackson (11/30/2010)  
 Jaffe (2/26/2009)  
 Jones (12/16/2010) (only violation)  
 Kaplan (1/28/2010)  
 Kealy (4/12/2010)  
 Kiesling (4/12/2010)  
 Lape (11/10/2011)  
 Larson (12/30/2009)

Lawson (7/9/2008)  
 Lentes (12/11/2008)  
 Maher (2/5/2009)  
 Marosan (8/7/2008)  
 Martin (12/15/2011)  
 Mason (6/12/2008)  
 McShane (2/25/2009)  
 Meade (12/22/2010)  
 Miller (7/20/2010)  
 Noel (6/17/2010)  
 Ohlin (8/24/2010)  
 Poole (12/4/2008)  
 Portman (4/16/2009)  
 Randall (6/12/2008)  
 Ranke (9/22/2011)  
 Sabroff (8/27/2009)  
 Sakmar (12/1/2010)  
 Sanz (2/24/2011) (not charged by relator; court did not adopt finding of violation)  
 Sayler (4/29/2010)  
 Simon (2/16/2011)  
 Smith (12/3/2008)  
 Spector (3/18/2009)  
 Stubbs (2/15/2011)  
 Troxell (7/6/2011)  
 Troy (9/29/2011)  
 Williamson (3/20/2008)  
 Wilson (10/14/2010)  
 Wittbrod (9/21/2011)  
 Wolanin (4/1/2009)  
 Zaffiro (10/7/2010)  
 Zigan (5/1/2008)

#### **Gov. Bar R. V(10) (reinstatement)**

Dismuke (3/31/2011) (term suspension, but to be reinstated must prove mentally fit to return to practice of law)  
 Kizer (9/17/2009) (term suspension, but reinstatement subject to petition for reinstatement requirements)

McNerney (5/28/2009)(term suspension,  
but reinstatement subject to petition for

reinstatement requirements)

### **Prior Disciplinary Record**

#### **Attorney Registration**

Brown (10/13/2011)  
Burkholder (2/26/2009)  
Clovis (5/5/2010)  
Davis (3/18/2009)  
Dismuke (3/31/2011)  
Freedman (10/14/2008)  
Hildebrand (12/1/2010) (x 2)  
Hoppel (6/8/2011)  
Landis (3/17/2010)  
Larkin (2/23/2011)  
Mason (6/12/2008)  
Mishler (12/14/2010)  
Mitchell (1/26/2010)  
Nance (7/9/2008)  
Nicks (2/25/2010)  
Ohlin (8/24/2010)  
Randall (6/12/2008)  
Ryan (8/27/2009) (x 2)  
Saunders (11/30/2010)  
Smith (12/3/2008)  
Spector (3/18/2009)  
Stubbs (2/15/2011) (x 2)  
Troy (9/29/2011)  
Van Sickle (2/24/2011) (x 2)  
Williams (10/13/2011)  
Wilson (10/14/2010)  
Zigan (5/1/2008)

#### **Board Discipline**

Archer (7/5/2011)  
Boggs (6/7/2011)  
Burkholder (2/26/2009)  
Character (6/23/2011)  
Church (1/17/2008)  
Cook (1/29/2009)  
Davis (11/29/2011)  
DiAlbert (10/14/2008)  
DiMartino (x 2)  
Ellison (4/23/2008)  
Farrell (6/21/2011)  
Freedman (10/14/2008)  
Freeman (8/24/2010)  
Freeman (3/31/2011)  
Goldie (9/18/2008)

Grote (10/7/2010) (x 2)  
Heisler (10/14/2008)  
Hickman (8/6/2008) (x 2)  
Holda (4/7/2010)  
Johnson (10/7/2010)  
Jones (12/16/2010)  
Kafantaris (4/1/2009)  
Lawson (9/20/2011)  
LoDico (5/29/2008)  
Lowden (3/20/2008)  
Maher (2/5/2009)  
Manning (7/8/2008)  
Marosan (8/7/2008) (x 2)  
Marshall (2/12/2009) (x 2)  
McCord (4/7/2009)  
Medley (1/27/2011) (x 2)  
Mishler (12/14/2010)  
Nance (11/19/2009)  
Patterson (12/2/2009)  
Podor (2/5/2009)  
Ryan (8/27/2009)  
Ranke (9/22/2011)  
Ritson (10/29/2010)  
Sabol (4/9/2008)  
Sayler (4/29/2010)  
Schram (4/30/2009)  
Siewert (11/23/2011)  
Stafford (4/5/2011)  
Stubbs (2/15/2011)  
Trainor (6/7/2011)  
Troy (9/29/2011)  
Walker (7/8/2008)  
Wittbrod (9/21/2011)

#### **Child Support**

Broschak (5/14/2008)  
Burkholder (2/26/2009)  
Heisler (10/14/2008)  
Lowden (3/20/2008) (x 2)  
McCord (4/7/2009)

#### **Other**

Emerson (6/25/2009) (reciprocal  
discipline x 3)  
Heisler (10/14/2008) (contempt)

### **Public Employee/ Judicial Discipline**

#### **Judges/ Former Judges/ Magistrates**

Bowling (10/21/2010) (did not plead to  
and was not convicted of any crime,  
but was charged with possession of

marijuana which was resolved by  
forfeiture of a \$168 bond and was  
charged with possession of drug  
paraphernalia which was dismissed)

Campbell (7/15/2010) failing to uphold integrity and impartiality of the judiciary; failing to respect and comply with the law and promote public confidence; failure to be faithful to law and maintain professional competence; failure to be patient, dignified and courteous)

Gaul (10/17/2010) (failing to respect and comply with the law and promote public confidence; performing duties with bias and prejudice; making public comments that might reasonably be expected to affect outcome or impair fairness)

Goldie (9/18/2008) (knowing disregard of constitutional and statutory rights)

Hoskins (7/3/2008) (attempt to conceal conflict of interest, mishandling estate; public comments on pending case, favoritism in sentencing)

Kelly (2/4/2009) (misappropriation of county humane society's money while serving as treasurer; practice of law for the human society while full-time magistrate)

McAuliffe (3/19/2009) (criminal convictions)

Medley (1/27/2011) (respondent, while suspended as a judge without pay, cashed state payroll warrants for gross wages and made false claims for reissuance of four expired payroll warrants; failed to respond to the court's initial inquiries into his receipt of the payroll warrants)

Pfundstein (12/21/2010) (part-time municipal court magistrate engaged in misconduct in the representation of a client in private practice)

Plough (7/21/2010) (failing to uphold the integrity and independence of the judiciary; failing to dispose of judicial matters promptly, efficiently and fairly; failing to diligently discharge administrative

responsibilities without bias; engaging in ex parte communication; engaging in conduct prejudicial to the administration of justice; failing to be patient, dignified, and courteous; engaging in conduct prejudicial to the administration of justice)

Russo (2/25/2010) (two misdemeanor convictions, one for disorderly conduct-intoxicated and one for disorderly conduct-persistent)

Sargeant (5/20/2008) (unnecessary and unjustified delay in deciding cases)

Stuard, Becker, Bailey (1/29/2009) (Stuard) (ex parte communication with prosecutors who drafted judge's sentencing opinion from judge's notes)

### **Public Officials/ Former Public Officials**

Bunstine (10/13/2009) (assistant prosecutor; cause dismissed)

Kellogg-Martin (2/4/2010) (assistant prosecutor; cause dismissed)

Forbes (6/11/2009) (BWC Oversight Commission; city council member and president)

McShane (2/25/2009) (former public employee-worked in office of Ohio Attorney General)

O'Malley (8/24/2010) (elected county recorder)

Saunders (11/30/2010) (assistant prosecutor municipal court; misconduct occurred in private practice)

Shaver (4/1/2009) (mayor of city)

Stuard, Becker, Bailey (1/29/2009) (Stuard-judge; Becker-assistant prosecutor; cause dismissed as to Bailey-assistant prosecutor)

Watkins 12/3/2008 (former state representative and former law director)

## **Rules of Professional Conduct Violations**

### **Rule 1.0(g) (terminology: knowingly, known, or knows)**

Lawson (7/9/2008)

### **Rule 1.0(i) (terminology: reasonable or reasonably)**

Lawson (7/9/2008)

### **Rule 1.1 (providing competent**

### **representation)**

Allerding (10/29/2009)

Boggs (6/7/2011)

Brown (12/15/2009)

Brown (2/24/2010)

Brown (10/13/2011)

Folwell (7/6/2011)

Grote (10/7/2010)

Harwood (4/7/2010)

Hoppel (6/8/2011)  
 Hunter (11/15/2011)  
 Kizer (9/17/2009)  
 Larson (12/30/2009)  
 Lawson (7/9/2008)  
 Lentes (12/11/2008)  
 Mishler (12/14/2010)  
 Nittskoff (11/10/2011)  
 Ohlin (8/24/2010)  
 Troxell (7/6/2011)  
 Troy (9/29/2011)  
 Williams (9/7/2011)  
 Wilson (10/14/2010)  
 Wineman (5/6/2009)

**Rule 1.2(a) (abiding by client's decisions concerning representation; consulting with clients as to means by which they are to be pursued)**

Brown (10/13/2011)  
 Hoff (1/26/2010)  
 Patterson (12/2/2009)  
 Ranke (9/22/2011)  
 Sherman (6/9/2010)

**Rule 1.3 (acting with reasonable diligence and promptness)**

Allerding (10/29/2009)  
 Boggs (6/7/2011)  
 Brown (3/25/2009)  
 Brown (12/15/2009)  
 Brown (2/24/2010)  
 Brown (10/13/2011)  
 Brueggeman (12/21/2010)  
 Bursey (12/2/2009)  
 Cantrell (5/20/2010)  
 Character (6/23/2011)  
 Clovis (5/5/2010)  
 Davis (11/29/2011)  
 Dismuke (3/31/2011)  
 Dundon (8/30/2011)  
 Folwell (7/6/2011)  
 Freeman (3/31/2011)  
 Freeman (4/5/2011)  
 Gibson (2/16/2011)  
 Gottehrer (3/17/2010)  
 Gresley (12/22/2010)  
 Grote (10/7/2010)  
 Hanni (12/2/2010)  
 Harwood (4/7/2010)  
 Henry (12/22/2010)  
 Hildebrand (12/1/2010)  
 Hoff (1/26/2010)  
 Holda (4/7/2010)  
 Hoppel (6/8/2011)  
 Horan (8/27/2009)  
 Hunt (12/21/2010)  
 Hunter (11/15/2011)

Johnson (10/7/2010)  
 Kaplan (1/28/2010)  
 Kizer (9/17/2009)  
 Lape (11/10/2011)  
 Larson (12/30/2009)  
 Lawson (7/9/2008)  
 Lentes (12/11/2008)  
 Lockshin (5/25/2010)  
 Maher (2/5/2009)  
 Meade (12/22/2010)  
 Minamyer (7/28/2011)  
 Mishler (12/14/2010)  
 Nicks (2/25/2010)  
 Nittskoff (11/10/2011)  
 Noel (6/17/2010)  
 Ohlin (8/24/2010)  
 Pfundstein (12/21/2010)  
 Ranke (9/22/2011)  
 Raso (6/22/2011)  
 Rozanc (8/27/2009)  
 Sakmar (12/1/2010)  
 Saunders (11/30/2010)  
 Schiller (9/23/2009)  
 Sherman (6/9/2010)  
 Shuler (8/30/2011)  
 Siehl (11/18/2009)  
 Smith (12/3/2008)  
 Spector (3/18/2009)  
 Stoll (12/14/2010)  
 Thomas (3/24/2010)  
 Troxell (7/6/2011)  
 Troy (9/29/2011)  
 Van Sickle (2/24/2011)  
 Williams (9/7/2011)  
 Wilson (10/14/2010)  
 Wittbrod (9/21/2011)  
 Zapor (12/2/2010)

**Rule 1.4 (communication)**

Dismuke (3/31/2011)  
 Hunt (12/21/2010)  
 Hunter (11/15/2011)  
 Larson (12/30/2009)  
 Scott (8/25/2011)  
 Troxell (7/6/2011)  
 Troy (9/29/2011)

**Rule 1.4(a)**

Patterson (12/2/2009)

**Rule 1.4(a)(1) (promptly informing the client of any circumstance with respect to which the client's informed consent is required)**

Brown (3/25/2009)  
 Freeman (4/5/2011)  
 Godles (12/27/2010)  
 Hoppel (6/8/2011)

Thomas (3/24/2010)

Williams (9/7/2011)

**Rule 1.4(a)(2) (reasonably consulting with client about means to accomplish objectives)**

Brueggeman (12/21/2010)

Dundon (8/30/2011)

Freeman (3/31/2011)

Freeman (4/5/2011)

Godles (12/27/2010)

Grote (10/7/2010)

Hoppel (6/8/2011)

Kiesling (4/12/2010)

Nittskoff (11/10/2011)

Saunders (11/30/2010)

Shuler (8/30/2011)

Williams (9/7/2011)

**Rule 1.4(a)(3) (keeping client reasonably informed about status of matter)**

Boggs (6/7/2011)

Brown (10/13/2011)

Brueggeman (12/21/2010)

Bursey (12/2/2009)

Dundon (8/30/2011)

Freeman (3/31/2011)

Freeman (4/5/2011)

Godles (12/27/2010)

Gottelher (3/17/2010)

Gresley (12/22/2010)

Grote (10/7/2010)

Henry (12/22/2010)

Hildebrand (12/1/2010)

Hoppel (6/8/2011)

Horan (8/27/2009)

Kaplan (1/28/2010)

Kizer (9/17/2009)

Larson (12/30/2009)

Minamy (7/28/2011)

Mishler (12/14/2010)

Nittskoff (11/10/2011)

Pfundstein (12/21/2010)

Ranke (9/22/2011)

Raso (6/22/2011)

Rozanc (8/27/2009)

Saunders (11/30/2010)

Sayler (4/29/2010)

Sherman (6/9/2010)

Shuler (8/30/2011)

Siehl (11/18/2009)

Smith (12/3/2008)

Thomas (3/24/2010)

Van Sickle (2/24/2011)

Williams (9/7/2011)

**Rule 1.4(a)(4) (complying as soon as practicable with client's reasonable**

**requests for information)**

Brown (3/25/2009)

Brown (10/13/2011)

Brueggeman (12/21/2010)

Davis (3/18/2009)

Dundon (8/30/2011)

Godles (12/27/2010)

Gresley (12/22/2010)

Grote (10/7/2010)

Freeman (3/31/2011)

Freeman (4/5/2011)

Hildebrand (12/1/2010)

Horan (8/27/2009)

Kaplan (1/28/2010)

Kiesling (4/12/2010)

Miller (7/20/2010)

Minamy (7/28/2011)

Nittskoff (11/10/2011)

Pfundstein (12/21/2010)

Rozanc (8/27/2009)

Saunders (11/30/2010)

Sayler (4/29/2010)

Shuler (8/30/2011)

Siehl (11/18/2009)

Smith (12/3/2008)

Williams (9/7/2011)

**Rule 1.4(a)(5) (consulting with client about limitations when client expects unlawful assistance )**

Godles (12/27/2010)

**Rule 1.4(b) (explaining matters for clients to make informed decisions regarding representation)**

Nittskoff (11/10/2011)

Patterson (12/2/2009)

**Rule 1.4(c) (informing clients if professional-liability insurance is terminated)**

Boggs (6/7/2011)

Character (6/23/2011)

Godles (12/27/2010)

Grote (10/7/2010)

Harwood (4/7/2010)

Hauck (7/7/2011)

McNerney (5/28/2009)

Miller (7/20/2010)

Minamy (7/28/2011)

Ohlin (8/24/2010)

Schiller (9/23/2009)

Schramski (3/2/2010)

Sherman (6/9/2010)

Shuler (8/30/2011)

Trainor (6/7/2011)

Wittbrod (9/21/2011)

**Rule 1.5(a) (charging or collecting an illegal or clearly excessive fee)**

Boggs (6/7/2011)  
 Bursey (12/2/2009)  
 Cantrell (5/20/2010)  
 Character (6/23/2011)  
 Clovis (5/5/2010)  
 Gottehrer (3/17/2010)  
 Hackett (6/30/2011)  
 Henry (12/22/2010)  
 Hildebrand (12/1/2010)  
 Hoppel (6/8/2011)  
 Jackson (11/30/2010)  
 Miller (7/20/2010)  
 Mishler (12/14/2010)  
 Schiller (9/23/2009)  
 Spector (3/18/2009)

**Rule 1.5(b) (communicating to the client the nature and scope of representation and the basis or rate of the fee and expenses)**

Mishler (12/14/2010)  
 Squire (11/3/2011)

**Rule 1.5(c) (contingent fee agreement)**

Mishler (12/14/2010)

**Rule 1.5(c)(2) (preparing closing statement in contingent fee matter)**

Bursey (12/2/2009)

**Rule 1.5(d)(3) (“Earned upon Receipt” or “non-refundable” fee)**

Dearfield (10/19/2011)  
 Freedman (4/27/2011)

**Rule 1.5(e) (fee division with lawyers not in the same firm)**

McCord (4/7/2009)

**Rule 1.6(a) (revealing information relating to the representation of a client)**

Shaver (4/1/2009)

**Rule 1.7 (conflict of interest- current clients)**

Longino (4/6/2011)

**Rule 1.7(a)(2) (conflict of interest arising from lawyer’s responsibilities to another client, a former client, a third person, or lawyer’s own personal interests)**

Bandman (5/20/2010)  
 Detweiler (10/21/2010)  
 Mamich (3/25/2010)  
 Pheils (6/23/2011)  
 Schmalz (8/25/2009)

Siewert (11/23/2011)

**Rule 1.7(b) (accepting/ continuing representation if conflict of interest created, unless conditions met)**

Kiesling (4/12/2010)  
 Pheils (6/23/2011)

**Rule 1.8(a) (entering a business transaction with a client)**

Kiesling (4/12/2010)  
 Squire (11/3/2011)

**Rule 1.8(a)(1) (transaction and terms fair and reasonable and fully disclosed to client in writing)**

Gibson (2/16/2011)

**Rule 1.8(a)(2) (advising client in writing of the desirability of seeking and giving reasonable opportunity to seek independent legal counsel)**

Gibson (2/16/2011)

**Rule 1.8(a)(3) (informed consent to the essential terms of a transaction with lawyer)**

Gibson (2/16/2011)

**Rule 1.8(e) (providing financial assistance to a client during representation)**

Pheils (6/23/2011)  
 Ranke (9/22/2011)

**Rule 1.8(h)(1) (making agreement prospectively to limit liability for malpractice or requiring arbitration of a claim)**

Mishler (12/14/2010)

**Rule 1.8(h)(2) (settling a potential claim for professional liability without advising client in writing to seek counsel or obtaining client’s informed consent)**

Baker (5/28/2009)  
 Mishler (12/14/2010)  
 Wittbrod (7/28/2009)

**Rule 1.8(j) (soliciting or engaging in sexual activity with a client when no previous consensual sexual relationship existed)**

Bartels (3/25/2010)  
 Detweiler (10/21/2010)  
 Schmalz (8/25/2009)  
 Siewert (11/23/2011)

**Rule 1.9(c)(2) (revealing information**

**relating to the representation of a former client)**

Shaver (4/1/2009)

**Rule 1.15**

Allerding (10/29/2009)

Baker (5/28/2009)

Brown (2/24/2010)

Crosby (12/29/2009)

Dismuke (3/31/2011)

Gresley (12/22/2010)

Hildebrand (12/1/2010)

Lape (11/10/2011)

Schramski (3/2/2010)

Slavin (5/6/2009)

**Rule 1.15(a) (holding property of clients or third persons separate from lawyer's own property; safekeeping funds in separate interest bearing trust account)**

Allerding (10/29/2009)

Baker (5/28/2009)

Blair (2/24/2011)

Boggs (6/7/2011)

Brown (3/25/2009)

Brown (10/13/2011)

Bursey (12/2/2009)

Cantrell (5/20/2010)

Crosby (12/29/2009)

Fletcher (7/22/2009)

Freeman (8/13/2008)

Hauck (7/7/2011)

Horan (8/27/2009)

Hunter (11/15/2011)

Johnston (4/2/2009)

Kaplan (1/28/2010)

Kiesling (4/12/2010)

LaRue (7/29/2009)

Lawson (7/9/2008)

Maher (2/5/2009)

Miller (7/20/2010)

Murraine (11/17/2011)

Palombaro (3/24/2009)

Riek (4/12/2010)

Schiller (9/23/2009)

Scott (8/25/2011)

Simon (2/16/2011)

Squire (11/3/2011)

Thomas (2/25/2010)

Vivyan (3/3/2010)

Wilson (10/14/2010)

**Rule 1.15(a)(2) (maintaining a record for each client)**

Blair (2/24/2011)

Bursey (12/2/2009)

Crosby (12/29/2009)

Fletcher (7/22/2009)

Folwell (7/6/2011)

Helbling (3/8/2010)

Freeman (8/13/2008)

Kiesling (4/12/2010)

LaRue (7/29/2009)

Ranke (9/22/2011)

Stubbs (2/15/2011)

**Rule 1.15(a)(3) (maintaining a record for each bank account)**

Bursey (12/2/2009)

Crosby (12/29/2009)

Freeman (8/13/2008)

Helbling (3/8/2010)

Stubbs (2/15/2011)

**Rule 1.15(a)(4) (maintaining bank statements, deposit slips, and cancelled checks)**

Bursey (12/2/2009)

**Rule 1.15(a)(5) (performing and maintaining a monthly reconciliation)**

Bursey (12/2/2009)

Folwell (7/6/2011)

Ranke (9/22/2011)

**Rule 1.15(b) (depositing own funds in client trust account for bank service charges)**

Hauck (7/7/2011)

Murraine (11/17/2011)

Palombaro (3/24/2009)

Vivyan (3/3/2010)

**Rule 1.15(c) (depositing unearned/advanced fees into a trust account)**

Boggs (6/7/2011)

Brown (3/25/2009)

Dearfield (10/19/2011)

Grote (10/7/2010)

Helbling (3/8/2010)

Kizer (9/17/2009)

Maher (2/5/2009)

Mishler (12/14/2010)

Palombaro (3/24/2009)

Riek (4/12/2010)

Scott (8/25/2011)

Squire (11/3/2011)

Vivyan (3/3/2010)

**Rule 1.15(d) (promptly delivering funds or property to client or third party)**

Brown (10/13/2011)

Brueggeman (12/21/2010)

Bursey (12/2/2009)

Davis (3/18/2009)

Freeman (4/5/2011)

Gottelher (3/17/2010)  
 Gresley (12/22/2010)  
 Jackson (11/30/2010)  
 Kiesling (4/12/2010)  
 Kizer (9/17/2009)  
 Larson (12/30/2009)  
 Lawson (7/9/2008)  
 Miller (7/20/2010)  
 Mishler (12/14/2010)  
 Noel (6/17/2010)  
 Ohlin (8/24/2010)  
 Sanz (2/24/2011)  
 Schiller (9/23/2009)  
 Shuler (8/30/2011)  
 Spector (3/18/2009)  
 Stubbs (2/15/2011)  
 Thomas (2/25/2010)  
 Trainor (6/7/2011)  
 Troxell (7/6/2011)  
 Van Sickle (2/24/2011)  
 Wilson (10/14/2010)

**Rule 1.16(a)(1) (accepting, or failing to withdraw from, representation that will violate the Rules or other law)**

Mamich (3/25/2010)  
 Rust (1/28/2010) (cause dismissed; no violation of Rule 1.16(a)(a); Rule 3.1 mentioned as support that no misconduct)

**Rule 1.16(a)(2) (requiring withdraw when lawyer's wellness impairs lawyer's ability)**

Williams (9/7/2011)

**Rule 1.16(c) (withdrawing from representation in a proceeding without leave of court if required)**

Gibson (2/16/2011)  
 Johnson (10/7/2010)

**Rule 1.16(d) (taking steps to protect a client's interest as part of termination of representation)**

Bursey (12/2/2009)  
 Davis (11/29/2011)  
 Gibson (2/16/2011)  
 Gresley (12/22/2010)  
 Henry (12/22/2010)  
 Holda (4/7/2010)  
 Johnson (10/7/2010)  
 Kubyn (3/19/2009)  
 Lape (11/10/2011)  
 Lawson (7/9/2008)  
 Maher (2/5/2009)  
 Meade (12/22/2010)  
 Schiller (9/23/2009)

**Rule 1.16(e) (promptly refunding fee paid in advance that is not earned)**

Davis (11/29/2011)  
 Gresley (12/22/2010)  
 Henry (12/22/2010)  
 Jackson (11/30/2010)  
 Kubyn (3/19/2009)  
 Lawson (7/9/2008)  
 Schiller (9/23/2009)  
 Squire (11/3/2011)

**Rule 3.1 (not bringing or defending a proceeding, or asserting or controverting an issue in a proceeding, unless there is a basis in law and fact for doing so that is not frivolous)**

Pullins (12/23/2010)  
 Ricketts (12/23/2010) (not alleged as a violation but used by respondent to argue good faith defense to other rule violations)  
 Rust (1/28/2010) (cause dismissed; no violation of Rule 1.16(a)(a); Rule 3.1 mentioned as support that no misconduct)

**Rule 3.3(a)(1) (knowingly make or fail to correct a false statement of fact to a tribunal)**

Cameron (10/12/2011)  
 Mitchell (1/26/2010)  
 Hoppel (6/8/2011)  
 Rohrer (11/17/2009)  
 Thomas (3/24/2010)  
 Zapor (12/2/2010)

**Rule 3.4(a) (destroying or concealing a document with evidentiary value)**

Robinson (8/25/2010)  
 Stafford (4/5/2011)

**Rule 3.4(c) (knowingly disobey the rules of a tribunal)**

Baker (5/28/2009)  
 Johnson (10/7/2010)  
 Nicks (2/25/2010)  
 Rohrer (11/17/2009)  
 Shaw (9/23/2010)  
 Stafford (4/5/2011)

**Rule 3.5(a)(6) (undignified or discourteous conduct that is degrading to a tribunal)**

DiCato (11/17/2011)  
 Pullins (12/23/2010)  
 Sakmar (12/1/2010)

**Rule 4.1(a) (making false statement to third person during representation)**

Bursey (12/2/2009)

Gibson (2/16/2011)

**Rule 4.2 (prohibiting communication with a represented party)**

Cameron (10/12/2011)

**Rule 5.3(a) (managing must have measures in effect to assure non-lawyer's conduct is compatible with professional obligations)**

Blair (2/24/2011)

Lawson (7/9/2008)

**Rule 5.3(b) (supervisory lawyer must make reasonable efforts to ensure conduct is compatible with professional obligations)**

Crosby (12/29/2009)

Lawson (7/9/2008)

**Rule 5.4(a) (prohibiting lawyer from sharing legal fees with a nonlawyer)**

Folwell (7/6/2011)

Harwood (4/7/2010)

Patterson (12/2/2009)

**Rule 5.4(c) (prohibiting a lawyer from permitting a person pays the lawyer to direct or regulate the lawyers' professional judgment)**

Mamich (3/25/2010)

Patterson (12/2/2009)

**Rule 5.5(a) (prohibiting a lawyer from practicing law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so)**

Bucciare (3/19/2009)

Cantrell (5/20/2010)

Freeman (8/24/2010)

Harwood (4/7/2010)

Jarabek (2/25/2009)

Sabroff (8/27/2009)

**Rule 5.5(b)(2) (prohibiting a lawyer who is not admitted to practice in this jurisdiction from holding himself out as admitted to practice)**

Mitchell (1/26/2010)

**Rule 5.6 (creating an agreement that restricts a lawyer's right to practice upon termination or as part of a settlement)**

Hackett (6/30/2011)

**Rule 6.2 (failing to avoid appointment when not doing so would violate the Prof.Cond.R.).**

Williams (9/7/2011)

**Rule 7.2(b) (giving anything of value to a person for recommendation of the lawyer's services)**

Mason (4/7/2010)

**Rule 7.3(c)(3) ("ADVERTISING MATERIAL" OR "ADVERTISEMENT ONLY")**

Freeman (3/31/2011) (no violation)

**Rule 7.5(a) (practicing under a trade name or a misleading name)**

Character (6/23/2011)

McCord (4/7/2009)

**Rule 7.5 (d) (stating or implying practice in partnership or other organization)**

Character (6/23/2011)

McCord (4/7/2009)

**Rule 8.1(a) (knowingly making a false statement of material fact in connection with a disciplinary matter)**

Cantrell (5/20/2010)

Jackson (11/30/2010)

Kealy (4/12/2010)

Scott (8/25/2011)

Shuler (8/30/2011)

Zaffiro (10/7/2010)

**Rule 8.1(b) (failing to disclose fact or failing to respond to demand for information from a disciplinary authority)**

Allerding (10/29/2009)

Baker (5/28/2009)

Brueggeman (12/21/2010)

Bursey (12/2/2009)

Clovis (5/5/2010)

Corrigan (9/22/2011)

Davis (2/12/2009)

Davis (3/18/2009)

Davis (11/29/2011)

Farah (5/20/2010)

Freeman (4/5/2011)

Gottreher (3/17/2010)

Gresley (12/22/2010)

Henry (12/22/2010)

Hildebrand (12/1/2010)

Kiesling (4/12/2010)

Lape (11/10/2011)

Marosan (8/7/2008)

Marshall (2/12/2009)  
 Martin (12/15/2011)  
 Newman (10/21/2010)  
 Nittskoff (11/10/2011)  
 Noel (6/17/2010)  
 Ranke (9/22/2011)  
 Saunders (11/30/2010)  
 Saylor (4/29/2010)  
 Siehl (11/18/2009)  
 Simon (2/16/2011)  
 Spector (3/18/2009)  
 Troxell (7/6/2011)  
 Van Sickle (2/24/2011)  
 Wilson (10/14/2010)  
 Wittbrod (9/21/2011)  
 Zaffiro (10/7/2010)

**Rule 8.2**

Pullins (12/23/2010)

**Rule 8.2(a) (false or reckless statements concerning the integrity of a judicial officer)**

Pullins (12/23/2010)

**Rule 8.3(a) (requiring an attorney to report to disciplinary authority violations of the Rules)**

Newman (10/21/2010)

**Rule 8.4(a) (violating, attempting to violate, knowingly assisting or inducing another to violate the Rules)**

Gibson (2/16/2011)  
 Mishler (12/14/2010)  
 Pheils (6/23/2011)

**Rule 8.4(b) (committing illegal act that reflects adversely on honesty or trustworthiness)**

Bursey (12/2/2009)  
 Cantrell (5/20/2010)  
 Cantrell (9/14/2011)  
 Grigsby (3/31/2011)  
 Evans (8/25/2009)  
 Farrell (6/21/2011)  
 Horan (8/27/2009)  
 Hunter (11/15/2011)  
 Kiesling (4/12/2010)  
 Kraemer (7/21/2010)  
 Larkin (2/23/2011)  
 Lewis (4/21/2009)  
 McCord (4/7/2009)  
 Muntean (12/20/2010)  
 Newman (10/21/2010)  
 Niles (6/10/2010)  
 Ridenbaugh (8/20/2009)  
 Sabroff (8/27/2009)

Troxell (7/6/2011)  
 Zapor (12/2/2010)

**Rule 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation)**

Archer (7/5/2011)  
 Baker (5/28/2009)  
 Bandman (5/20/2010)  
 Blair (2/24/2011)  
 Brown (3/25/2009)  
 Brown (10/13/2011)  
 Cantrell (5/20/2010)  
 Character (6/23/2011)  
 DeLoach (8/31/2011)  
 DiMartino (2/3/2010)  
 Evans (8/25/2009)  
 Farrell (6/21/2011)  
 Folwell (7/6/2011)  
 Freeman (8/24/2010)  
 Freeman (4/5/2011)  
 Gerchak (10/5/2011)  
 Gibson (2/16/2011)  
 Grigsby (3/31/2011)  
 Hauck (7/7/2011)  
 Hoff (1/26/2010)  
 Hoppel (6/8/2011)  
 Horan (8/27/2009)  
 Hunter (11/15/2011)  
 Kiesling (4/12/2010)  
 Kraemer (7/21/2010)  
 Larson (12/30/2009)  
 Lentes (12/11/2008)  
 Lewis (4/21/2009)  
 McCord (4/7/2009)  
 Miller (7/20/2010)  
 Mishler (12/14/2010)  
 Muntean (12/20/2010)  
 Nicks (2/25/2010)  
 Niles (6/10/2010)  
 Medley (1/27/2011)  
 Minamyer (7/28/2011)  
 Mitchell (1/26/2010)  
 Pfundstein (12/21/2010)  
 Potter (6/10/2010)  
 Pullins (12/23/2010)  
 Raso (6/22/2011)  
 Rathburn (9/28/2010)  
 Riek (4/12/2010)  
 Ricketts (12/23/2010)  
 Rohrer (11/17/2009)  
 Robinson (8/25/2010)  
 Sabroff (8/27/2009)  
 Sanz (2/24/2011)  
 Schiller (9/23/2009)  
 Slavin (5/6/2009)  
 Spector (3/18/2009)  
 Squire (11/3/2011)  
 Stubbs (2/15/2011)

Thomas (2/25/2010)  
 Thompson (6/30/2011)  
 Troy (9/29/2011)  
 Zaccagnini (9/21/2011)  
 Zapor (12/2/2010)

**Rule 8.4(d) (conduct prejudicial to the administration of justice)**

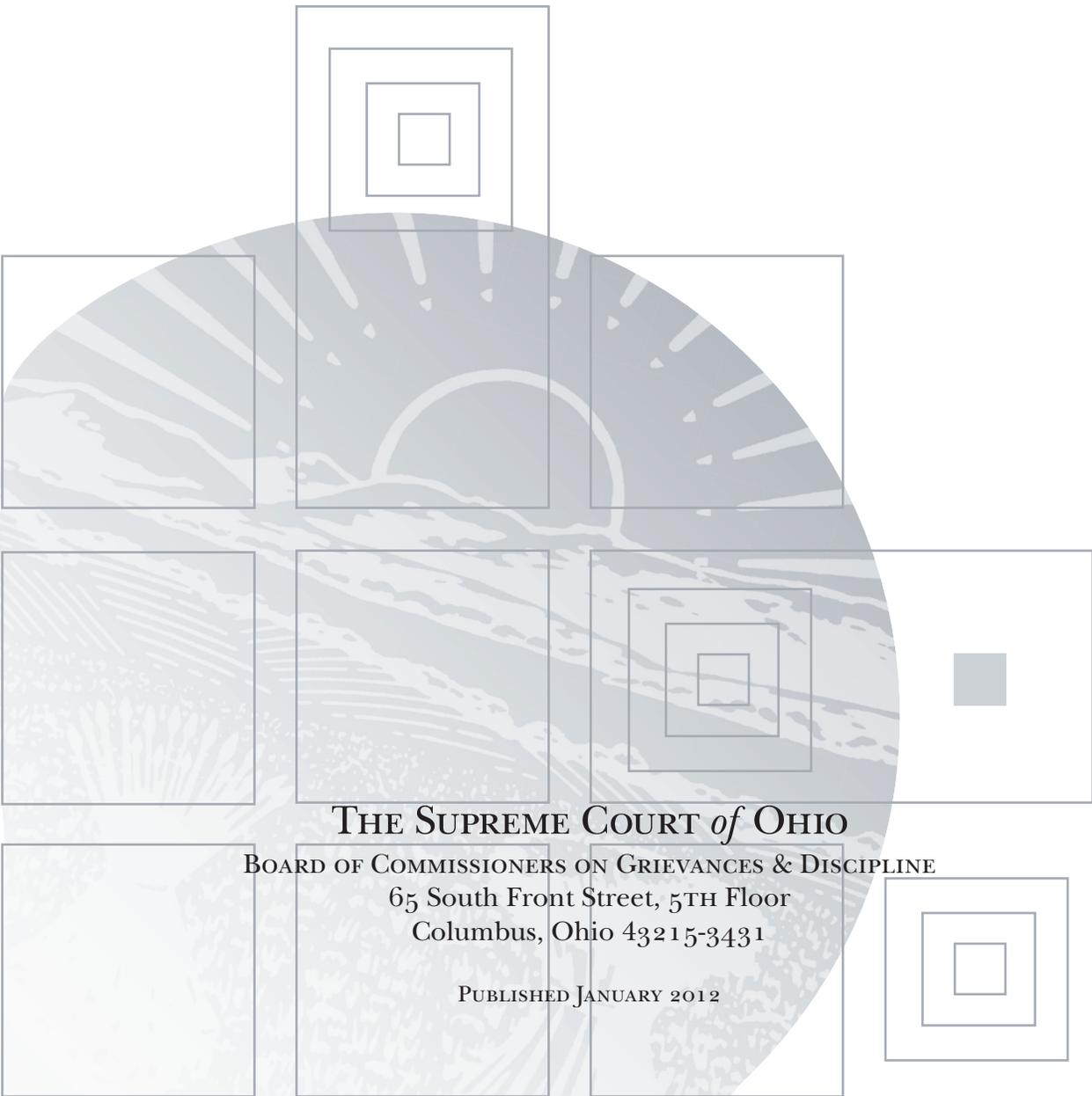
Baker (5/28/2009)  
 Bandman (5/20/2010)  
 Blair (2/24/2011)  
 Brown (12/15/2009)  
 Burkholder (2/26/2009)  
 Cantrell (5/20/2010)  
 Chambers (4/29/2010)  
 Crosby (12/29/2009)  
 Davis (2/12/2009)  
 Davis (11/29/2011)  
 Dearfield (10/19/2011)  
 Farrell (6/21/2011)  
 Fink (12/14/2011)  
 Freeman (8/13/2008)  
 Freeman (8/24/2010)  
 Freeman (4/5/2011)  
 Gaul (10/7/2010)  
 Gerchak (10/5/2011)  
 Gresley (12/22/2010)  
 Grigsby (3/31/2011)  
 Hanni (12/2/2010)  
 Henry (12/22/2010)  
 Hoppel (6/8/2011)  
 Jarabek (2/25/2009)  
 Kraemer (7/21/2010)  
 Lentes (12/11/2008)  
 Lewis (4/21/2009)  
 Lockshin (5/25/2010)  
 Maher (2/5/2009)  
 Mamich (3/25/2010)  
 McCord (4/7/2009)  
 Meade (12/22/2010)  
 Mishler (12/14/2010)  
 Mitchell (1/26/2010)  
 Nicks (2/25/2010)  
 Niles (6/10/2010)  
 Nittskoff (11/10/2011)  
 Noel (6/17/2010)  
 Peskin (4/29/10)  
 Plough (7/21/2010)  
 Pullins (12/23/2010)  
 Ranke (9/22/2011)  
 Robinson (8/25/2010)  
 Rohrer (11/17/2009)  
 Sabroff (8/27/2009)  
 Sakmar (12/1/2010)  
 Schiller (9/23/2009)  
 Shaw (9/23/2010)  
 Siehl (11/18/2009)  
 Siewert (11/23/2011)

Simon (2/16/2011)  
 Smith (12/3/2008)  
 Stafford (4/5/2011)  
 Stubbs (2/15/2011)  
 Vogel (2/14/2008)  
 Wineman (5/6/2009)  
 Zaccagnini (9/21/2011)  
 Zapor (12/2/2010)

**Rule 8.4(h) (conduct adversely reflecting on lawyer's fitness to practice)**

Allerding (10/29/2009)  
 Archer (7/5/2011)  
 Baker (5/28/2009)  
 Bandman (5/20/2010)  
 Blair (2/24/2011)  
 Boggs (6/7/2011)  
 Brown (12/15/2009)  
 Brueggeman (12/21/2010)  
 Burkholder (2/26/2009)  
 Bursey (12/2/2009)  
 Cantrell (5/20/2010)  
 Cantrell (9/14/2011)  
 Chambers (4/29/2010)  
 Character (6/23/2011)  
 Clovis (5/5/2010)  
 Crosby (12/29/2009)  
 Davis (3/18/2009)  
 Davis (11/29/2011)  
 Detweiler (10/21/2010)  
 DiCato (11/17/2011)  
 Farrell (6/21/2011)  
 Folwell (7/6/2011)  
 Freeman (8/13/2008)  
 Freeman (8/24/2010)  
 Gibson (2/16/2011)  
 Gresley (12/22/2010)  
 Heisler (10/14/2008)  
 Henry (12/22/2010)  
 Hoff (1/26/2010)  
 Hoppel (6/8/2011)  
 Horan (8/27/2009)  
 Hunter (11/15/2011)  
 Jackson (11/30/2010)  
 Jarabek (2/25/2009)  
 Johnston (4/2/2009)  
 Kealy (4/12/2010)  
 Kiesling (4/12/2010)  
 Kizer (9/17/2009)  
 Kraemer (7/21/2010)  
 Landis (3/17/2010)  
 Larkin (2/23/2011)  
 LaRue (7/29/2009)  
 Lentes (12/11/2008)  
 Lewis (4/21/2009)  
 Maher (2/5/2009)  
 McCord (4/7/2009)  
 McNerney (5/28/2009)

Meade (12/22/2010)  
Medley (1/27/2011)  
Miller (7/20/2010)  
Miller (9/7/2011)  
Mishler (12/14/2010)  
Mitchell (1/26/2010)  
Muntean (12/20/2010)  
Murraine (11/17/2011)  
Nance (11/19/2009)  
Nicks (2/25/2010)  
Niles (6/10/2010)  
Nittskoff (11/10/2011)  
Peskin (4/29/10)  
Pfundstein (12/21/2010)  
Potter (6/10/2010)  
Pullins (12/23/2010)  
Ranke (9/22/2011)  
Rathburn (9/28/2010)  
Ridenbaugh (8/20/2009)  
Ricketts (12/23/2010)  
Riek (4/12/2010)  
Robinson (8/25/2010)  
Rohrer (11/17/2009)  
Sabroff (8/27/2009)  
Sakmar (12/1/2010)  
Schiller (9/23/2009)  
Scott (8/25/2011)  
Shaw (9/23/2010)  
Shuler (8/30/2011)  
Siehl (11/18/2009)  
Siewert (11/23/2011)  
Simon (2/16/2011)  
Smith (12/3/2008)  
Squire (11/3/2011)  
Stafford (4/5/2011)  
Stubbs (2/15/2011)  
Thomas (2/25/2010)  
Troxell (7/6/2011)  
Van Sickle (2/24/2011)  
Vogel (2/14/2008)  
Wineman (5/6/2009)  
Zaccagnini (9/21/2011)  
Zapor (12/2/2010)



**THE SUPREME COURT *of* OHIO**

**BOARD OF COMMISSIONERS ON GRIEVANCES & DISCIPLINE**

**65 South Front Street, 5TH Floor  
Columbus, Ohio 43215-3431**

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