Ethics 2014 – The Year in Review

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SUPREME COURT OF OHIO OPINIONS

OPINION 2014-1 Issued January 31, 2014
Standard for Judicial Disqualification When Counsel Is a Participant in the Judge's Current Election Campaign

SYLLABUS: The mere participation by a lawyer in a judge's current election campaign does not require judicial disqualification when the lawyer has a case before the judge. When a lawyer's campaign activities evidence a substantial political relationship with a judge, disqualification is warranted during the campaign fundraising period. A substantial political relationship between a lawyer and a judge does not require the judge to disqualify himself or herself from cases involving the partners and associates of the lawyer's firm. A judge must disclose a substantial political relationship with a lawyer if seeking a waiver of disqualification, but a lawyer is not required to disclose the relationship to opposing counsel. Should a lawyer serve as a judge's legal advisor during an election campaign, and a lawyer-client relationship exists, the judge must disqualify himself or herself from the lawyer's cases until both the campaign fundraising period and lawyer-client relationship have ended. Advisory Opinion 92-9 is withdrawn.

* * *

Factors relevant to determining if a lawyer's campaign activity creates a substantial political relationship with the judge include the length and level of campaign involvement, including whether the lawyer has campaign management responsibilities, the extent of the lawyer's fundraising activities, whether the lawyer's name appears on solicitation letters, emails, and the like, whether the election is contested, and the type of election (statewide, multi-county, or local). A lawyer's title in a judicial campaign may be indicative of a substantial political relationship with the judge, but is not a determining factor in a disqualification analysis. Some campaign titles are honorary, some are bestowed pursuant to statute, and yet others correspond to significant campaign responsibilities. Any political ties between the lawyer and judge occurring outside the campaign relationship are also relevant. After consideration of these factors, if a judge determines that he or she has a substantial political relationship with a lawyer who is connected with the judge's election campaign, there is a reasonable question concerning the judge's ability to remain impartial in matters involving the lawyer, and disqualification is warranted.

OPINION 2014-2 Issued August 8, 2014
Imputation of Conflicts in a Part-Time County Prosecutor's Law Firm

SYLLABUS: When a part-time county prosecutor practices in a firm, the prosecutor is prohibited from representing criminal defendants prosecuted on behalf of the state of Ohio. Such representation creates a conflict of interest under Prof.Cond.R. 1.7(a) that cannot be ameliorated through Prof.Cond.R. 1.7(b). If the part-time county prosecutor is also authorized to prosecute cases brought by a municipal corporation, the prosecutor is further prohibited from representing criminal defendants against that municipal corporation. The other lawyers in a part-time county prosecutor's firm, however, are permitted to represent criminal defendants in cases prosecuted on behalf of the state and municipal corporations represented by the prosecutor. Prof.Cond.R. 1.10(f) and 1.11 indicate that the conflicts of the part-time county prosecutor associated with government practice are not imputed to the other lawyers in the firm. To protect client interests, the part-time prosecutor should be timely screened from the firm's criminal defense matters and the prosecutor should not be apportioned fees from the firm's criminal defense work. Lawyers in an elected part-time prosecutor's firm may not represent criminal defendants in the county in which the part-time prosecutor is the elected official, but may represent criminal defendants outside of the county in which the prosecutor is elected. Advisory Opinion 88-008 is withdrawn in part.

OPINION 2014-3
Issued August 8, 2014
Confession of Judgment Pursuant to Warrant of Attorney in a Cognovit Note

SYLLABUS: It is proper under the Ohio Rules of Professional Conduct for an attorney to sign an answer confessing judgment against a debtor pursuant to a warrant of attorney in a cognovit note when requested to do so by a creditor's attorney, provided that the confession of judgment does not violate applicable law. Advisory Opinion 93-3 is superseded and withdrawn. **QUESTION PRESENTED**: Is Advisory Opinion 93-3 valid following the change from the Ohio Code of Professional Responsibility to the Ohio Rules of Professional Conduct, or does a conflict of interest arise under Prof.Cond.R. 1.7(c) when a lawyer executes a confession of judgment for a cognovit note? **APPLICABLE RULE:** Rule 1.7 of the Ohio Rules of Professional Conduct

* * *

When an attorney confesses judgment against a debtor in favor of a creditor under a cognovit provision of a contract that attorney represents only the creditor, and not the debtor, as that attorney is only acting as authorized under both contract and the statute. *DiBenedetto v. Miller*, 180 Ohio App.3d 69, 72, 2008-Ohio-6506, 904 N.E.2d 554 ¶ 15 (1 Dist.). As a result, a creditor's attorney does not have an attorney-client relationship with the debtor in such a proceeding. *Id.* at ¶ 16. In the case of a cognovit note, the confessing attorney's client is the creditor, not the debtor. Therefore, there can be no conflict of interest under Prof.Cond.R. 1.7(c) because an attorney-client relationship does not exist between the confessing

attorney and the debtor. Further, an attorney is specifically authorized by law under R.C. 2323.13 to confess judgment pursuant to a warrant of attorney in a cognovit note, provided the warrant of attorney contains a provision that the creditor's attorney may confess judgment or contains an express waiver of conflict of interest, and otherwise complies with the law.

Therefore, the Board reaffirms that it is proper under the Ohio Rules of Professional Conduct and the current case law for an attorney to sign an answer confessing judgment against a debtor pursuant to a warrant of attorney in a cognovit note when requested to do so by a creditor, provided that the confession of judgment complies with applicable law.

Upon issuance of this opinion, the Board withdraws Advisory Opinion 93-3.

OHIO ATTORNEY GENERAL OPINIONS

2014-017
SYLLABUS:
County probation department community service workers may not enter upon and clean up private property for the City of Hillsboro pursuant to a municipal ordinance that authorizes City of Hillsboro "employees" or "contractors" to perform the clean-up work.
* * *

Your request explains that the City of Hillsboro "has a municipal ordinance that allows city employees or (employed) contractors to enter private property for cleaning purposes, including mowing grass and trash removal." Your office furnished us additional information about the two ordinances that are of concern. One of these ordinances provides that "the city will enter with its employees or contractors" to mow a lawn, including on private property, in certain circumstances. City of Hillsboro Municipal Ordinance, § 93.101. The other ordinance states that the city "shall employ such contractors as are necessary" to tend to weeds, including on private property, in certain circumstances. City of Hillsboro Municipal Ordinance, § 93.12. The City of Hillsboro has requested the use of county probation department community service workers to perform clean-up work on private property pursuant to these municipal ordinances. Your request states that community service work has been ordered for criminal offenders by a judge of the Hillsboro Municipal Court.

[The Attorney General determined that because community service workers are neither employees nor contractors, the workers may not enter upon private property under the ordinance in question.]

2014-011
SYLLABUS:
A person may serve simultaneously as a part-time assistant county prosecutor in one county where she exclusively prosecutes misdemeanor cases in county court and as a part-time assistant county prosecutor in another county, provided she does not represent or advise clients regarding matters that align her against the other county in which she works, and further provided she is not the final decision maker when deciding where to prosecute a case when prosecution is appropriate in either county.

The following seven questions are used to determine whether two public positions are compatible. 2011 Op. Att'y Gen. No. 2011-043, at 2-351.
1. Is either of the positions a classified employment for purposes of R.C. 124.57?
2. Does a constitutional provision or statute prohibit the holding of both positions at the same time?
3. Is one position subordinate to, or in any way a check upon, the other?
4. Is it physically possible for one person to discharge the duties of both positions?
5. Is there an impermissible conflict of interest between the two positions?
6. Are there local charter provisions, resolutions, or ordinances that are controlling?
7. Is there a federal, state, or local departmental regulation applicable?
Id. All seven questions must yield answers in favor of compatibility in order to conclude that two positions are compatible. 1996 Op. Att'y Gen. No. 96-062, at 2-252.

2014 WL 6780662
Supreme Court of Ohio.
CLEVELAND METROPOLITAN BAR ASSOCIATION
v.
HILL et al.
No. 2014–0518. | Submitted May 14, 2014. | Decided Dec. 3, 2014.

Synopsis

Background: Bar association filed complaint with Board on Unauthorized Practice of Law alleging that former police officer and his business engaged in the unauthorized practice of law by entering into contracts to represent 20 students, giving them legal advice, and attempting to settle their claims of, among other things, "institutional racism" and "discriminatory business practices" against a college. A panel of the Board determined that officer and business had engaged in unauthorized practice of law. The Board primarily adopted panel's findings of fact and conclusions of law.

Holdings: The Supreme Court held that:

[1] former police officer and business engaged in unauthorized practice of law, and

[2] imposition of $20,000 fine was warranted.

Penalty imposed.

Opinion

* * *

[1] { ¶ 5} Hill is a retired police officer with 25 years of law-enforcement experience. The Advocacy Group is a for-profit corporation registered with the Ohio Secretary of State. The corporation's initial articles of incorporation identify Hill as the sole director and authorized representative of the corporation. Hill has not attended law school, and neither he nor the Advocacy Group has been admitted to the practice of law in Ohio or any other jurisdiction or is certified for the limited practice of law pursuant to Gov.Bar R. II.

* * *

***2** { ¶ 7} In 2008, respondents were retained by 20 students of Bryant & Stratton College's Cleveland, Ohio, campus. Each of the students signed a form appointing the Advocacy Group and its representatives as his or her "attorney/advocate(s)-in-fact" with respect to "[a]ll information pertaining to [his or her] enrollment and experiences at Bryant & Stratton College while attending school for their Nursing Program." Hill signed each of those forms with the designations "Attorney/Advocate" and "President, The Advocacy Group, LLC," following his name. Some of those students paid the Advocacy Group a fee of $25, and those funds were deposited into the company's bank account.

* * *

[2] [3] { ¶ 10} "The Ohio Constitution, Article IV, Section 2(B)(1)(g) gives this court original jurisdiction over all matters relating to the practice of law, including the unauthorized practice of law." *Cleveland Metro. Bar Assn. v. Davie,* 133 Ohio St.3d 202, 2012-Ohio-4328, 977 N.E.2d 606, ¶ 18. The unauthorized practice of law is "[t]he rendering of legal services for another by any person not admitted to practice in Ohio * * *." Gov.Bar R. VII(2)(A)(1); *Cleveland Bar Assn. v. Pearlman,* 106 Ohio St.3d 136, 2005-Ohio-4107, 832 N.E.2d 1193, ¶ 7. We restrict the practice of law to licensed attorneys to "protect the public against incompetence, divided loyalties, and other attendant evils that are often associated with unskilled representation." *Cleveland Bar Assn. v. CompManagement, Inc.,* 104 Ohio St.3d 168, 2004-Ohio-6506, 818 N.E.2d 1181, ¶ 40.

{ ¶ 11} "We have consistently held that the practice of law encompasses the drafting and preparation of pleadings filed in the courts of Ohio and includes the preparation of legal documents and instruments upon which legal rights are secured or advanced." *Lorain Cty. Bar Assn. v. Kocak,* 121 Ohio St.3d 396, 2009-Ohio-1430, 904 N.E.2d 885, citing *Akron Bar Assn. v. Greene,* 77 Ohio St.3d 279, 280, 673 N.E.2d 1307 (1997); and *Land Title Abstract & Trust Co. v. Dworken,* 129 Ohio St. 23, 193 N.E. 650, syllabus (1934). We have also held that "one who purports to negotiate legal claims on behalf of another and advises persons of their legal rights and the terms and conditions of settlement engages in the practice of law." *Cleveland Bar Assn. v. Henley,* 95 Ohio St.3d 91, 92, 766 N.E.2d 130 (2002), citing *Cleveland Bar Assn. v. Moore,* 87 Ohio St.3d 583, 722 N.E.2d 514 (2000); and *Cincinnati Bar Assn. v. Cromwell,* 82 Ohio St.3d 255, 695 N.E.2d 243 (1998).

* * *

Sanction

* * *

{ ¶ 18} William Hill and the Advocacy Group, Inc., are enjoined from further acts constituting the unauthorized practice of law, including but not limited to agreeing to represent clients in matters involving legal claims and attempting to negotiate the settlement of legal claims on behalf of others. We also impose against respondents, jointly and severally, a civil penalty in the amount of $10,000 for each of their two offenses, for a total of $20,000.

{ ¶ 19} Costs are taxed to respondents.

2014 WL 6780629
Supreme Court of Ohio.
CLEVELAND METROPOLITAN BAR ASSOCIATION
v.
LEIKEN.
No. 2014–0536. | Submitted April 30, 2014. | Decided Dec. 2, 2014.

Opinion

PER CURIAM.***1 Per Curiam**.

{ ¶ 1} Respondent, Robert Stanley Leiken of Beachwood, Ohio, Attorney Registration No. 0030666, was admitted to the practice of law in Ohio in 1971. On January 27, 2014, relator, Cleveland Metropolitan Bar Association, charged Leiken with professional misconduct after Leiken was retained by a driver and his passenger to recover damages for them for injuries they had suffered

in an automobile accident. It was subsequently alleged that the driver was comparatively negligent in the accident. Leiken later withdrew from representation of the driver and brought suit against him on behalf of the passenger.

{ ¶ 2} A panel of the Board of Commissioners on Grievances and Discipline considered the cause on the parties' consent-to-discipline agreement. *See* BCGD Proc.Reg. 11.

{ ¶ 3} In the consent-to-discipline agreement, Leiken stipulates to the facts alleged in relator's complaint and agrees that his conduct violated Prof.Cond.R. 1.7 (prohibiting a lawyer from accepting or continuing a client's representation if that representation will be directly adverse to another client), 1.9 (prohibiting a lawyer who has formerly represented a client in a matter from representing another person in the same matter in which that person's interests are materially adverse to the interests of the former client), and 1.16(a)(1) (requiring a lawyer to withdraw from the representation of a client if the representation will result in a violation of the Ohio Rules of Professional Conduct).

* * *

***2** { ¶ 6} Accordingly, Leiken is publicly reprimanded. Costs are taxed to Leiken.

Judgment accordingly.

Sheffield lawyer suspended, allegedly hypnotized clients

COLUMBUS, Ohio –
The Sheffield lawyer accused of hypnotizing two of his female clients into performing sex acts and giving them graphic sexual suggestions has agreed to have his law license temporarily suspended.

Michael W. Fine's attorney Robert Housel said that the agreement to suspend Fine's license in no way is an admission to the allegations.

The Ohio Supreme Court suspended Fine's license Monday, and doing that before a disciplinary hearing is rare.

The Lorain County Bar Association had filed an emergency motion with the Ohio Supreme Court Nov. 18, asking for the license suspension.

In that motion, it says Fine poses a substantial threat to the public.

Two women whom Fine represented have told authorities that Fine either tried or succeeded in hypnotizing them. One woman said it happened numerous times over more than a year during phone calls or during meetings at Fine's office and in conference rooms at Lorain County Justice Center.

Housel said his client agreed to the suspension and is undergoing medical treatment.

Sheffield police continue to investigate the case and say that more women have come forward with their own stories.

The first client, called Jane Doe 1, hired Fine in February 2013 for a custody lawsuit. Her case was settled in August 2013 but she continued seeing Fine because of legal issues pertaining to her case.

She told police that she would leave meetings with Fine feeling "wet in the vaginal area," her bra was disheveled and she could not recall the entire duration of the meeting. She met with Fine in his law office as well as in conference rooms in the Lorain County Justice Center in Elyria.

She later recorded her meetings and took them to police. She agreed to wear a wire and, with police nearby, went to Fine's office where he immediately put her in a "trance-like" state and began have a graphically sexual conversation with her.

Police entered the room at this point.

Another client, Jane Doe 2, told police she believed Fine tried to hypnotize her by using meditation and relaxation techniques.

2014 WL 6711491
Supreme Court of Ohio.
LORAIN COUNTY BAR ASSOCIATION LEGAL ETHICS AND GRIEVANCE COMMITTEE
v.
FINE.
No. 2014–2005. | Submitted Nov. 24, 2014. | Decided Nov. 24, 2014.
ON MOTION FOR IMMEDIATE INTERIM REMEDIAL SUSPENSION.
Opinion*1 { ¶ 1} On November 18, 2014, and pursuant to Gov.Bar R. V(5a)(A)(1)(b), relator, Lorain County Bar Association Legal Ethics and Grievance Committee, filed with this court a motion for immediate interim remedial suspension pursuant to Gov.Bar R. V(5a), alleging that respondent, Michael W. Fine, has engaged in conduct that violates the Ohio Rules of Professional Conduct and poses a substantial threat of serious harm to the public. Respondent filed a response, and this matter was considered by the court.

{ ¶ 2} Upon consideration thereof and pursuant to Gov.Bar R. V(5a)(B), it is ordered and decreed that an interim remedial suspension is immediately entered against Michael W. Fine, Attorney Registration No. 0007800, last known business address in Sheffield Village, Ohio, and that the suspension be effective as of the date of this entry, pending final disposition of disciplinary proceedings predicated on the conduct threatening the serious harm.

[I have never seen an attorney summarily suspended before without the benefit of any due process.]

2014 WL 6461865
Supreme Court of Ohio.
DAYTON BAR ASSOCIATION
v.
BALLATO.
No. 2013–1985. | Submitted Feb. 5, 2014. | Decided Nov. 19, 2014.

Synopsis
Background: Disciplinary proceedings were brought against attorney who was convicted of possessing child pornography.
Holdings: The Supreme Court held that:

[1] attorney violated Code of Professional Responsibility Disciplinary Rules, and

[2] indefinite suspension with no credit for time served was warranted.

Suspended indefinitely.

* * *

{ ¶ 3} Over the course of his legal career, Ballato was fired on three separate occasions for using office computers to view internet pornography. He voluntarily enrolled in a six-week residential treatment program for sexual addiction in 2002—although he did not believe that he had a problem at that time—in an effort to save his first marriage. After the marriage ended the following year, he struggled to cope with the divorce and his former wife's efforts to curtail his visitation with their young son.

* * *

***2** { ¶ 6} In September 2006, Ballato was indicted on federal charges of receipt of child pornography and possession of child pornography as a result of the information obtained in the 2004 raid.

{ ¶ 7} Ballato eventually entered a conditional plea of guilty to a single charge of possessing child pornography, for which he received a sentence of 48 months in prison, a $100 fine, 100 hours of community service, and lifetime supervised release. He served 43 months in prison and was released in November 2012.

[1] { ¶ 8} The board found that by ordering and possessing child pornography, Ballato engaged in illegal conduct involving moral turpitude and that that conduct adversely reflected on his fitness to practice, in violation of DR 1–102(A)(3) and 1–102(A)(6). Because this conduct occurred in 2004, however, the board found no violation of the corresponding Rules of Professional Conduct, which were also charged in the complaint, because those rules apply only to conduct occurring on or after February 1, 2007.

* * *

2014 WL 5646234
Supreme Court of Ohio.
DISCIPLINARY COUNSEL
v.
MAKO.
No. 2014–1575. | Submitted Oct. 29, 2014. | Decided Nov. 4, 2014.
ON CERTIFIED ORDER of the Disciplinary Hearing Commission of the State Bar of North Carolina, Case No. 13 DHC 33
Opinion*1 { ¶ 1} This cause is pending before the Supreme Court of Ohio in accordance with the reciprocal discipline provisions of Gov.Bar R. V(11)(F).

{ ¶ 2} On September 10, 2014, relator, disciplinary counsel, filed with this court a certified copy of an order of the Disciplinary Hearing Commission of the State Bar of North Carolina entered July 18, 2014, in *The North Carolina State Bar v. Sue E. Mako,* in Case No. 13 DHC 33, disbarring respondent from the practice of law. On September 22, 2014, this court ordered respondent to show cause why identical or comparable discipline should not be imposed in this state.

2014 WL 5369375
Supreme Court of Ohio.
DISCIPLINARY COUNSEL
v.
OWEN.
No. 2013–1981. | Submitted Feb. 5, 2014. | Decided Oct. 22, 2014.
Holdings: The Supreme Court held that:

[1] attorney's sexual relationship with his client's wife during attorney's representation of client in a capital prosecution gave rise to an impermissible conflict of interest and constituted misconduct, and

[2] two-year suspension, with the second year conditionally stayed, was warranted as sanction.

Suspension ordered.

{ ¶ 1} Respondent, James David Owen of Columbus, Ohio, Attorney Registration No. 0003525, was admitted to the practice of law in Ohio in 1979. On April 6, 2012, relator, disciplinary counsel, filed a one-count complaint charging Owen with violations of the Code of Professional Responsibility[1] alleging that Owen had engaged in misconduct in his representation of Robert Caulley in a criminal matter. Specifically, relator alleged that Owen had had a sexual relationship with Caulley's wife while he represented Caulley in a prosecution for aggravated murder with death-penalty specifications and other offenses, including aggravated robbery.

{ ¶ 2} Owen stipulated to the material facts of relator's complaint and admitted that his conduct violated DR 5–101(A)(1) (prohibiting a lawyer from accepting employment if the exercise of the lawyer's professional judgment will be or reasonably may be affected by the lawyer's personal interests), 1–102(A)(5) (prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice), and 1–102(A)(6) (prohibiting a lawyer from engaging in conduct that adversely reflects on the lawyer's fitness to practice law). The parties stipulated that a two-year suspension is the appropriate

sanction, but Owen asked that a portion of the suspension be stayed.

* * *

{ ¶ 9} Owen told his family members about the affair shortly after it ended in late summer 1998. At no point did Owen inform his client, Caulley, of the affair. Instead, Caulley learned about it years later, long after he and his wife were divorced, from his sister and another woman. Caulley assumed that the affair had occurred posttrial, but in January 2011, his former wife told him that it had begun before his trial and continued during and after the trial.

{ ¶ 10} In April 2011, the Ohio Public Defender called Owen to inform him that Caulley would be filing a motion for a new trial based on Owen's sexual relationship with Mrs. Caulley. Owen admitted to his misconduct and agreed to cooperate in that endeavor. Following that conversation, Owen provided the public defender an affidavit detailing his misconduct that was later filed with Caulley's motion for a new trial. Following a hearing, at which Owen was not called to testify, the court granted the motion. The state moved for leave to appeal the trial court's decision, but the motion was denied by the Tenth District Court of Appeals, and that judgment was affirmed by this court on authority of *State v. Forrest,* 136 Ohio St.3d 134, 2013-Ohio-2409, 991 N.E.2d 1124. 136 Ohio St.3d 325, 2013-Ohio-3673, 995 N.E.2d 227.

{ ¶ 11} On May 16, 2011, Owen reported his misconduct to relator, and on January 19, 2012, he signed a five-year contract with OLAP. He began treatment with a psychiatrist and psychologist for depression, anxiety, and a previously diagnosed severe attention-deficit disorder ("ADD").

***3** { ¶ 12} The board adopted these stipulated facts and found that Owen's conduct violated DR 5–101(A)(1), 1–102(A)(5), and 1–102(A)(6) as charged in the complaint.

* * *

[4] { ¶ 29} **Our Rules of Professional Conduct do not specifically address the subject of a lawyer having sexual relations with the spouse of a client.** As in these other jurisdictions, however, we find that a lawyer's sexual relationship with the spouse of a current client creates an inherent conflict of interest. This conflict of interest compromises the relationship of trust and confidence between the attorney and client. *Artimez,* 208 W.Va. at 300, 540 S.E.2d 156; *In re Anonymous,* 389 S.C. at 465–466, 699 S.E.2d 693. An intimate relationship of this nature necessarily implicates our rules governing the acceptance or continuation of legal representation when the lawyer's ability to exercise independent professional judgment on the client's behalf may be compromised, *see* DR 5–101(A)(1) (for conduct occurring before February 1, 2007), or if there is a substantial risk that the lawyer's ability to represent the client will be materially limited by the lawyer's responsibilities to a third person or by the lawyer's own personal interests, *see* Prof.Cond.R. 1.7(a)(2) and (b) (for conduct occurring on or after February 1, 2007).

* * *

[5] { ¶ 32} We agree that the lawyer who engages in a sexual relationship with a client's spouse during the representation creates an inherent and impermissible conflict between the interests of the lawyer and those of the client. This conflict violates the client's constitutional right to the effective assistance of counsel, *id.*, and undermines public confidence in the criminal justice system. Therefore, we find that Owen's conduct in this matter necessarily violates DR 5–101(A)(1), 1–102(A)(5), and 1–102(A)(6).[2]

* * *

{ ¶ 35} Accordingly, we suspend James David Owen for two years, with the second year stayed on the conditions that he fulfill his contract with OLAP and engage in no further misconduct. If Owen fails to comply with the conditions of the stay, the stay will be lifted, and he will serve the full two-year suspension. Costs are taxed to Owen.

O'CONNOR, C.J., dissents and would impose an indefinite suspension.

Author's Note:

OH ST RPC Rule 1.8

(j) A lawyer shall not solicit or engage in sexual activity with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.

OH ST RPC Rule 1.7

(a) A lawyer's acceptance or continuation of representation of a client creates a conflict of interest if either of the following applies:

(2) there is a substantial risk that the lawyer's ability to consider, recommend, or carry out an appropriate course of action for that client will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by the lawyer's own personal interests.

(b) A lawyer shall not accept or continue the representation of a client if a conflict of interest would be created pursuant to division (a) of this rule

2014 WL 5369328
Supreme Court of Ohio.
In re HUNTER.
No. 2014–1805. | Submitted Oct. 20, 2014. | Decided Oct. 21, 2014.

Opinion*1 { ¶ 1} On October 20, 2014, and pursuant to Gov.Bar R. V(5)(A)(3), the secretary of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio filed with the Supreme Court a certified copy of a judgment entry of a felony conviction against Tracie M. Hunter, an attorney licensed to practice law in the state of Ohio.

{ ¶ 2} Upon consideration thereof and pursuant to Gov.Bar R. V(5)(A)(4), it is ordered and decreed that

Tracie M. Hunter, Attorney Registration No. 0061225, last known business address in Cincinnati, Ohio, is suspended from the practice of law for an interim period, effective as of the date of this entry.

[Typically, interim felony does not occur until the day of sentencing. Although the Court does not say so, it may have moved up her suspension since she was a Judge.]

2014 WL 4922588
Supreme Court of Ohio.
DAYTON BAR ASSOCIATION
v.
SCACCIA.
No. 2013–1982. | Submitted April 30, 2014. | Decided Oct. 2, 2014.

Synopsis
Background: Attorney discipline proceedings were initiated, and the Board of Commissioners on Grievances and Discipline recommended that attorney be suspended for one year with six months of the suspension stayed. Attorney filed objections.

Holdings: The Supreme Court, Kennedy, J., held that:

[1] attorney's alleged conduct in failing to completely manage litigation violated rule of professional conduct;

[2] attorney's conduct in failing to keep complete records of clients' funds violated rules of professional conduct;

[3] attorney's conduct in failing to deposit fees in trust account violated rule of professional conduct;

[4] attorney's fee did not violate rule prohibiting excessive fees;

[5] suspension for one year with six months stayed was appropriate sanction for attorney's conduct; and

[6] restitution to clients was warranted.

Suspension ordered.

{ ¶ 1} Respondent, John Joseph Scaccia of Dayton, Ohio, Attorney Registration No. 0022217, was admitted to the practice of law in Ohio in 1983. In December 2011, relator, the Dayton Bar Association, filed a complaint charging Scaccia with failing to represent clients in a competent manner, failing to maintain complete records of client funds, and failing to maintain a client trust account.

* * *

3. Violations

[Long story short – Attorney's employer signed up 47 members of the Mound Nuclear Facility to sue for employment related causes of action. Attorney left his employer taking the 47 clients and the IOLTA money with him. He spent the IOLTA money and could not explain how it was spent. He neglected the litigation and managed to infuriate the Court, and his clients. The lawsuit was lost.]

[1] [2] [3] { ¶ 17} We agree with the board that there is clear and convincing evidence that Scaccia violated former DR 6–101 (prohibiting neglect of a legal matter entrusted to an attorney) by failing to competently manage the litigation for the Mound clients. We also agree that Scaccia violated former DR 9–102(B)(3) (requiring a lawyer to maintain complete records of all client property coming into the lawyer's possession and render appropriate accounts to each client) by failing to keep complete records of the Mound clients' funds from 2004 to 2007. Finally, we agree that Scaccia violated Prof.Cond.R. 1.15(a)(2) (requiring lawyers to keep complete records of clients' funds), 1.15(a)(3) (requiring lawyers to maintain bank account records), and 1.15(a)(4) (requiring lawyers to maintain bank statements, deposit slips, and canceled checks) by failing to maintain client and bank records from 2007 to 2010.

* * *

[4] [5] { ¶ 22} The board concluded, and we agree, that there is clear and convincing evidence that Scaccia violated Prof.Cond.R. 1.5(d)(3) (prohibiting nonrefundable fee agreements) by charging a client a nonrefundable fee, 1.15(a) (requiring attorneys to keep clients' fund in a trust account), and 1.15(c) (requiring a lawyer to deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred) by failing to deposit Grider's fee in Scaccia's trust account.

* * *

{ ¶ 27} Finally, the board also found, and we agree, that there is not clear and convincing evidence that Scaccia violated Prof.Cond.R. 1.5(d)(3) (prohibiting nonrefundable fees) or 1.15(d)(3) (requiring a full accounting of a client's funds).

* * *

{ ¶ 34} Having considered Scaccia's misconduct and the aggravating and mitigating factors, we agree with the board's recommendation that Scaccia be suspended from the practice of law for one year with six months stayed. The stay will be on conditions set forth below, and reinstatement will be conditioned on payment of restitution as set forth below.

B. Restitution

* * *

{ ¶ 37} Given his duty not only to hold these fees in trust for his clients but also to maintain complete records of all client funds held in his possession and his corresponding failure to do so, we find that restitution is warranted. Therefore, we order Scaccia to make full restitution to each of the Mound clients affected by his misconduct and further order him to provide to relator and this court, within 90 days of the date of this order, a complete list of all of the Mound clients, and a complete accounting of the payments he received from each of those clients, as well as the amount (if any) that he has previously refunded to each of those clients.

2014 WL 4358004
Supreme Court of Ohio.
TOLEDO BAR ASSOCIATION
v.
HARVEY.
No. 2013–1995. | Submitted May 13, 2014. | Decided Sept. 4, 2014.

Synopsis

Background: Attorney disciplinary proceeding was brought.

Holdings: The Supreme Court, Lanzinger, J., held that

[1] attorney violated various rules of professional conduct arising from his representation of four clients, and

[2] two-year suspension from the practice of law, with six months stayed on condition, was appropriate sanction.

Suspension ordered.

* * *

{ ¶ 10} Based on the evidence presented at the hearing and the stipulations filed, the panel found with respect to Count One that relator had proved, by clear and convincing evidence, that Harvey lacked the knowledge necessary to represent a debtor in a Chapter 13 bankruptcy and failed to provide Hassall with competent representation in violation of Prof.Cond.R. 1.1. The panel also found that he had violated Prof.Cond.R. 1.3, 1.4(a)(1), 1.4(a)(2), 1.4(a)(3), and 1.4(b) by failing to inform his client and obtain consent and by not consulting with his client or keeping her reasonably informed so that she could make informed decisions about her bankruptcy case. The panel also found a violation of Prof.Cond.R. 8.4(a).[1] The board adopted the findings of fact and conclusions of law of the panel.

* * *

{ ¶ 13} Harvey was charged with the following rule violations: Gov.Bar R. V(4)(G) (requiring a lawyer to cooperate with a disciplinary investigation) and Prof.Cond.R. 8.1(b) (prohibiting a lawyer from knowingly failing to respond to a demand for information by a disciplinary authority during an investigation), 8.4(d), and 8.4(h).[2]

{ ¶ 14} The panel found that relator had proved misconduct by clear and convincing evidence. Based on Gov.Bar R. III(3)(A) ("Participation in a legal professional association, corporation, legal clinic, limited liability company, or limited liability partnership shall not relieve an attorney of or diminish any obligation under the Ohio Rules of Professional Conduct or under these rules"), it found Harvey's argument that the judgment was faulty in that it was against him individually and not his company to be unpersuasive. Because he had not paid any money to Degens, the panel found clear and convincing evidence that he had violated Prof.Cond.R. 8.4(d). The board adopted the findings of fact and conclusions of law of the panel for Count Two.

* * *

{ ¶ 18} Harvey was charged with the following rule violations: Prof.Cond.R. 1.1, 1.3, 1.4(a)(4) (requiring a lawyer to comply as soon as practicable with reasonable requests for information from the client), 1.5(d)(3) (prohibiting a lawyer from charging a flat fee without simultaneously advising the client in writing that she may be entitled to a refund of all or part of the fee if the lawyer does not complete the representation), 1.15(c) (requiring a lawyer to deposit into a client trust account legal fees that are paid in advance), 1.16(d) (requiring a lawyer to promptly return property to the client upon termination of the representation), 1.16(e) (requiring a lawyer to promptly refund any unearned fee to the client upon termination of the representation), 8.4(c), and 8.4(d).

* * *

{ ¶ 22} The panel found that relator had proved, by clear and convincing evidence, that Harvey had committed all the rule violations alleged in Count Four by breaching his duty to cooperate in relator's investigation in violation of Gov.Bar R. V, Section 4(G); failing to maintain the requisite records of client funds and escrow accounts in violation of Prof.Cond.R. 1.15(a)(1) and (2); failing to maintain all bank statements, deposit slips, and canceled checks for each bank account in violation of Prof.Cond.R. 1.15(a)(4); and refusing to provide material facts in response to relator's demand for information in violation of Prof.Cond.R. 8.1(b). The board adopted the panel's findings of fact and conclusions of law.

Count Five—Improper Communication with Matt Spaulding

[5] { ¶ 23} Harvey represented Andre Zepeda, who sued his former employer, Cumulus Broadcasting, L.L.C. ("Cumulus"). Ashley Herd, corporate counsel for Cumulus, sent a letter to Harvey in February 2013 regarding Zepeda's contractual obligations with Cumulus. She requested that Harvey contact her before March 1, 2013, to discuss Zepeda's breach of the employment agreement. Matt Spaulding, Cumulus's vice president and market manager, was copied on the letter. Harvey stipulated in this case that he was aware that Spaulding worked for Cumulus and was represented by counsel.

{ ¶ 24} Harvey responded to Herd's letter by e-mail, refuting her claim and offering to "allow Cumulus to settle [its] potential liabilities by paying [his] client $25,000." On February 28, 2013, Harvey sent the following text messages to Matt Spaulding:

> [2:01 p.m.] You should seriously convince them to pay 25k or else face my wrath ....it will be fun for sure.
>
> [2:02 p.m.] And, your company is on the losing end on this one.

Spaulding texted the following response to Harvey:

> [2:06 p.m.] As I have told you multiple times, this is not a discussion I will get into. Your threats would be better served elsewhere.

Harvey then sent the following replies to Spaulding:

***6** [2:07 p.m.] Come on Matt, this surely isn't a threat ....don't be silly.

[2:09 p.m.] I don't think you understand ....this is fun stuff. Its intellectually challenging and it matters to someone. I only throw you shit on the side bc I like you.

(Ellipsis points sic.)

{ ¶ 25} Harvey implied in his testimony before the panel that he and Spaulding were friends. He stated that in texting Spaulding, he was merely "bantering" with him. But Spaulding testified that he and Harvey were not friends and that he interpreted the text messages as extortion.

{ ¶ 26} Regarding Count Five, the panel found, by clear and convincing evidence, that Harvey had violated Prof.Cond.R. 4.2 (prohibiting a lawyer from communicating about the subject of his representation of a client with a person known to be represented by another lawyer in the matter, unless he has the consent of the other lawyer or is authorized by law or court order) and 8.4(d). The panel dismissed the allegation that Harvey violated Prof.Cond.R. 8.4(h).[3] The board adopted the findings of fact and conclusions of law of the panel.

Rule 1.4 Communication

(a) A lawyer shall do all of the following:

(1) promptly inform the client of any decision or circumstance with respect to which the client's *informed consent* is required by these rules;

(2) *reasonably* consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client *reasonably* informed about the status of the matter;

(4) comply as soon as practicable with *reasonable* requests for information from the client;

140 Ohio St.3d 391
Supreme Court of Ohio.
CLEVELAND METROPOLITAN BAR ASSOCIATION
v.
McELROY.
No. 2013–1626. | Submitted Dec. 11, 2013. | Decided Sept. 4, 2014.

Synopsis

Background: Attorney disciplinary proceeding was brought.

[Holding:] The Supreme Court held that indefinite suspension from practice of law was appropriate sanction.

Indefinite suspension ordered.

* * *

Misconduct

{ ¶ 5} The record demonstrates that McElroy has a disposition for not telling the truth. Many of his ethics violations arose from a relationship with a woman who, in May 2004, attempted to run over him with her automobile.

* * *

{ ¶ 13} To summarize, McElroy was convicted of forgery and tampering with evidence, made false statements in an affidavit, made false statements to a disciplinary investigator, made false statements to the trial court in his filings, allowed false statements to be made to the trial court without correction, made false statements to this court in his filing, notarized a signature without observing the person sign or administering the oath, and failed to report his felony convictions to a disciplinary body.

{ ¶ 14} The parties stipulated, and the panel and board found, that McElroy's conduct violated DR 1–102(A)(3) (prohibiting a lawyer from engaging in illegal conduct involving moral turpitude), (4) (prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), (5) (prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice), and (6) (prohibiting a lawyer from engaging in conduct that adversely reflects on the lawyer's fitness to practice law) and 1–103(A) (requiring a lawyer possessing unprivileged knowledge of a violation of DR 1–102 to report the ***395** knowledge to a tribunal or other legal authority empowered to investigate or act upon the violation) and Prof.Cond.R. 8.1(a) (prohibiting knowingly making a false statement of material fact in connection with a disciplinary matter), 8.3(a) (requiring an attorney to self-report his violations of the Rules of Professional Conduct that raise a question about his honesty, trustworthiness, or fitness as a lawyer), 3.3(a)(1) (prohibiting a lawyer from knowingly making a false statement of fact or law to a tribunal), and 8.4(c) (prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), (d) (prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice), and (h) (prohibiting a lawyer from engaging in conduct that adversely reflects on the lawyer's fitness to practice law).

2014 WL 4358441
Supreme Court of Ohio.
DISCIPLINARY COUNSEL
v.
PAPPAS.
No. 2013–1625. | Submitted Dec. 11, 2013. | Decided Sept. 4, 2014.

Synopsis

Background: Attorney disciplinary proceeding was brought.

Holdings: The Supreme Court held that:

[1] attorney's conduct, including conduct that led to his

felony conviction for making false statement to federal authorities, violated professional rules, and

[2] two-year suspension from practice of law with no credit for time served under interim felony suspension was appropriate sanction.

Suspension ordered.

* * *

***2** [1] { ¶ 5} Between 1995 and 2010, Pappas was a sole practitioner in Urbana, focusing primarily on criminal-defense work. In February 2004, Pappas's law-school classmate and long-time best friend, Aristotle Matsa, was in the midst of a divorce. According to Pappas, Matsa told him that his ex-wife was attempting to "take everything and destroy him." Matsa therefore requested that Pappas falsely claim ownership of Matsa's Columbus law firm in order to prevent Matsa's ex-wife from obtaining firm records. Pappas agreed and executed an affidavit, which was filed in Matsa's divorce case in an effort to quash a subpoena. In the affidavit, Pappas averred:

> 2. I am the sole shareholder and principal in charge of the Law Offices of Aristotle R. Matsa, A Legal Professional Association, which [is] referred to by some as the Law Offices of Aristotle R. Matsa, and have been such from the date of the creation of this entity through the present.
> 3. It has recently come to my attention that someone has attempted to subpoena banking records relating to the entity referred to in item 2 above. I believe that any such attempt is in clear violation of my rights, and the attorney client privilege, as well as other statutory and common law rights.
> 4. The attempt to delve into my/my entity's banking records is intended to intimidate and harass me and my clients. Any release of such records would cause my clients, me, and my entity irreparable harm. It would obviously be a violation of privacy as well given that I have no interest in the above captioned case.
> 5. As Mr. Golden and his firm well know, I do represent the Plaintiff [Matsa] in another civil case and it is my belief that this action by Mr. Golden is intended to damage, harass, and intimidate me and my practice; and to attempt to gain privileged information that his firm might use in an unrelated lawsuit wherein I represent the Plaintiff and others.

Despite these averments, Pappas had in fact never had any ownership interest in Matsa's law firm.

* * *

{ ¶ 7} Apparently unbeknownst to Pappas, Matsa had been carrying out a tax-fraud scheme for nearly three decades. According to the parties' stipulations, Matsa had set up a complex web of shell C-corporations, trusts, limited-liability companies, churches, and other nominee entities purportedly owned or associated with others. Matsa's criminal scheme led to a federal investigation by the Internal Revenue Service ("IRS") and the United States Justice Department for alleged tax fraud, money laundering, and conspiracy to obstruct justice.

* * *

On September 19, 2006, Pappas appeared before the grand jury and falsely stated, under oath, that he was the owner of Matsa's Columbus law firm. Immediately following that testimony, Pappas sent a letter to the Department of Justice stating, again, that he was the owner of Matsa's law practice, that he had always been the sole shareholder of the firm, and that many of the entities listed on the subpoena were not associated with Matsa but were clients of Pappas's law practice.

* * *

{ ¶ 11} In June 2012, a federal judge convicted Pappas of making a false statement based on his 2010 guilty plea and sentenced him to probation for one year, including four months of home confinement, along with a $100 fine and a $100 assessment. The parties here stipulated, and the board found, that Pappas did not financially benefit from his false representations regarding his ownership of Matsa's law firm, and no evidence established that Pappas was even aware of Matsa's illegal activity. Indeed, in its sentencing memorandum in Pappas's federal case, the government stated the following:

> Matsa's aim was to obstruct the fact that he (Matsa) controlled all the entities and was the mastermind behind the fraudulent tax filings, not only of the corporate law firm, but of the other corporate and trust entities which he controlled. Pappas' aim was to conceal his prior lie to the divorce court and to the Ohio Supreme Court and to again help his best friend out of a jam he perceived to have been created by Matsa's ex-wife. Pappas did not financially benefit from his conduct. In fact, there is no evidence that Pappas knew of Matsa's illegal conduct involving the clients, the corporations or the trusts.

***4** The district court judge agreed, stating at Pappas's sentencing hearing that Pappas was essentially "taken advantage of by a friend who was involved in a much more aggravated and criminal scheme than what [Pappas] involved himself with."

{ ¶ 12} Based on these facts, we agree with the board's findings of misconduct in this case. In count one, Pappas's false statements to federal authorities, which led to his criminal conviction, violated DR 1–102(A)(4) (prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), 1–102(A)(5) (prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice), and 1–102(A)(6) (prohibiting a lawyer from engaging in conduct that adversely reflects on the lawyer's fitness to practice law). In count two, Pappas's false statements in response to relator's 2004 letter of inquiry violated DR 1–102(A)(4), 1–102(A)(5), and 1–102(A)(6). And in count three, Pappas's execution of the false affidavit in Matsa's 2004 divorce proceeding

violated DR 1–102(A)(4), 1–102(A)(5), 1–102(A)(6), 7–102(A)(4) (prohibiting a lawyer from knowingly using perjured testimony or false evidence in his or her representation of a client), and 7–102(A)(5) (prohibiting a lawyer from knowingly making a false statement of fact in his or her representation of a client).

Conclusion

{ ¶ 22} For the reasons explained above, George Zane Pappas is suspended from the practice of law in Ohio for two years, with no credit for time served under his interim felony suspension. Costs are taxed to Pappas.

Judgment accordingly.

140 Ohio St.3d 299
Supreme Court of Ohio.
DISCIPLINARY COUNSEL
v.
BECKER.
No. 2013–1257. | Submitted Jan. 7, 2014. | Decided Sept. 3, 2014.

Synopsis

Background: Attorney disciplinary proceeding was brought.

Holdings: The Supreme Court, Pfeifer, J., held that:

[1] attorney's misappropriation of funds violated professional rules prohibiting engaging in conduct involving moral turpitude, dishonesty, fraud, deceit, or misrepresentation, and conduct that is prejudicial to the administration of justice, and

[2] disbarment from practice of law was appropriate sanction.

Disbarment ordered.

* * *

The board found that Becker's conduct violated DR 1–102(A)(3), 1–102(A)(4), and 1–102(A)(6) and Prof.Cond.R. 8.4(b) (prohibiting illegal acts that reflect adversely on the lawyer's honesty or trustworthiness), 8.4(c) (prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(h) (prohibiting conduct that adversely reflects on the lawyer's fitness to practice law). We adopt the board's findings of fact and misconduct with respect to Count II.

* * *

{ ¶ 25} Becker offered no reliable evidence that he suffered from a mental disability or a chemical dependency when the violation occurred. Accordingly, we presume that he was healthy and unhindered at those times. *Disciplinary Counsel v. McCord,* 121 Ohio St.3d 497, 2009-Ohio-1517, 905 N.E.2d 1182, ¶ 5.

{ ¶ 26} It is obvious, given how much of the converted and misappropriated money went to pay casinos, that Becker has a gambling problem. But Becker has not established all the elements necessary to establish this condition as a mitigating factor under BCGD Proc.Reg. 10(B)(2)(g). His former psychologist did testify that Becker was a pathological gambler, but he did not testify that this disorder caused Becker's misconduct, BCGD Proc.Reg. 10(B)(2)(g)(ii), or that ***304** Becker had undergone a sustained period of successful treatment, BCGD Proc.Reg. 10(B)(2)(g)(iii). *See Stark Cty. Bar Assn. v. Williams,* 137 Ohio St.3d 112, 2013-Ohio-4006, 998 N.E.2d 427, ¶ 23. Becker's failure to pursue any kind of consistent help for his problem eliminates this factor as possible mitigation.

140 Ohio St.3d 383
Supreme Court of Ohio.
CINCINNATI BAR ASSOCIATION
v.
DAMON.
No. 2013–1984. | Submitted May 28, 2014. | Decided Sept. 3, 2014.

Synopsis

Background: Lawyer disciplinary proceeding was instituted based on conduct that led to attorney's felony conviction for theft.

Holdings: The Supreme Court, Kennedy, J., held that:

[1] attorney's conduct that led to his felony conviction for theft involving fees from law firm that employed, and his representation of clients, violated professional rules, and

[2] disbarment was appropriate sanction for attorney's misconduct, which included his felony theft conviction, and acceptance of legal fees without doing the work.

Disbarment ordered.

* * *

Misconduct

Factual Findings of the Panel and the Board

Butkovich & Crosthwaite Company, L.P.A.

{ ¶ 6} On January 1, 2009, Damon became employed as a full-time associate by the law firm of Butkovich & Crosthwaite Company, L.P.A., in Cincinnati, Ohio. In return for an annual salary, Damon agreed to remit to the firm all the fees he would earn during his employment, whether from work in progress before joining the firm or from new client matters undertaken after January 1, 2009.

{ ¶ 7} Notwithstanding this agreement, Damon accepted payments from clients and deposited those funds into his own trust account, rather than into the firm's trust account. Damon did not report or remit any of these receipts to Butkovich & Crosthwaite. The exact amount stolen from the law firm is unknown. However, Damon declared approximately $84,000 in gross receipts for the "Damon Law Office" on his 2009 federal tax filings.

{ ¶ 8} After he was no longer employed by the firm, Damon began making restitution to the firm. The parties stipulated that he had paid approximately $55,000 to the law firm.

* * *

Findings of Misconduct

{ ¶ 28} The board found by clear and convincing

evidence that Damon violated Prof.Cond.R. 1.15(a)(2) (a lawyer shall not fail to maintain a record of client *388 funds) in his representation of Thompson, Robinson, and Jemison; 1.15(d) (a lawyer shall not fail to render a full accounting of a client's funds upon request by the client) in his representation of the Pattersons, Thompson, Robinson, Jemison, Johnson, Long, Gehring, and DuBose; 1.2(a) (a lawyer shall not fail to consult with a client as to the means of pursuing the objectives of representation), 1.3 (a lawyer shall not fail to act with reasonable diligence and promptness in representing a client), 1.4(a) (a lawyer shall not fail to inform a client of a decision or circumstance with respect to which the client's informed consent is required), and 1.4(b) (a lawyer shall not fail to explain the nature of the representation to permit the client to make informed decisions regarding that representation) in his representation of DuBose; 1.5(a) (a lawyer shall not charge or collect a clearly excessive fee) in his representation of Thompson, Long, and Gehring; 1.5(c) (a lawyer shall not enter into a contingent-fee agreement without a written fee contract signed by the client and the lawyer) in his representation of Johnson; 1.15(e) (a lawyer shall not fail to maintain legal fees and expenses that had been paid in advance in a client's trust account until the fees are earned or the expenses incurred) in his representation of the Pattersons; 8.4(c) (prohibiting an attorney from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation) by misappropriating funds from Butkovich and Crosthwaite; and 8.4(b) (prohibiting an attorney from committing an illegal act that reflects adversely on the lawyer's honesty or trustworthiness) due to his criminal conviction.

* * *

First, Damon was convicted of theft for misappropriating funds from his employer. We have determined that disbarment is warranted when an attorney is convicted of theft offenses. *See, e.g., Cincinnati Bar Assn. v. Banks,* 94 Ohio St.3d 428, 763 N.E.2d 1166 (2002) (attorney convicted of interstate transportation of stolen laptop computers disbarred for violations of former DR 1–102(A)(3) [a lawyer shall not engage in illegal conduct involving moral turpitude], (4) [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation], and (5) [a lawyer shall not engage in conduct that is prejudicial to the administration of justice]).

{ ¶ 37} Second, we have recognized that accepting legal fees but failing to carry out contracts of employment is tantamount to theft of the fee from the client and that the presumptive sanction for that offense is disbarment. *See, e.g., Columbus Bar Assn. v. Moushey,* 104 Ohio St.3d 427, 2004-Ohio-6897, 819 N.E.2d 1112, ¶ 16, citing *Disciplinary Counsel v. Sigall,* 14 Ohio St.3d 15, 17, 470 N.E.2d 886 (1984), and *Disciplinary Counsel v. France,* 97 Ohio St.3d 240, 2002-Ohio-5945, 778 N.E.2d 573, ¶ 11. Damon knowingly accepted and kept retainers that were intended to be used for pursuing claims that he knew or should have known were frivolous. He also accepted a $2,500 retainer from Long for a claim that he should have known was meritless. The same is true with respect to the action he filed for Thompson in federal court. Second, he took fees from clients and failed to do any work. Gehring paid him $1,500, he did nothing, and he failed to return any of the money. Robinson paid him $25,000, but he failed to account for his work and failed to return any of the money.

{ ¶ 38} Further, the harm caused by Damon goes beyond the sum of money he stole from the law firm and the fees he has yet to return to his clients. The law firm spent more than $60,000 in an attempt to calculate the amount Damon stole and to defend malpractice suits filed against the firm arising from Damon's misconduct. Additionally, as a result of Damon's misconduct, the firm suffered increased unemployment-compensation expenses, a 40 percent increase in its malpractice-insurance premiums, and a reduction in work force and was forced to spend countless hours dealing with disgruntled clients.

140 Ohio St.3d 229
Supreme Court of Ohio.
OHIO STATE BAR ASSOCIATION
v.
McCAFFERTY.
No. 2013–0939. | Submitted Aug. 21, 2013. | Decided July 17, 2014.

Synopsis

Background: Bar association filed disciplinary complaint against attorney, who had served as a court of common pleas court judge until she was convicted on multiple counts of making false statements to the FBI.

Holdings: The Supreme Court, O'Neill, J., held that:

[1] attorney violated Rules of Professional Conduct (RPC) and Rules of Judicial Conduct, and

[2] indefinite suspension was warranted.

Suspended.

Lanzinger, J., dissented and filed opinion in which O'Connor, C.J., and French, J., concurred.

Opinion

O'NEILL, J.*230 { ¶ 1} Respondent, Bridget Marie McCafferty of Westlake, Ohio, Attorney Registration No. 0055367, was admitted to the practice of law in Ohio in 1991. Prior to this, McCafferty had no disciplinary history.

{ ¶ 2} McCafferty served as a judge on the Cuyahoga County Court of Common Pleas from January 11, 1999, until September 15, 2010, when she was arrested. In February 2011, McCafferty was indicted by a federal grand jury on multiple counts of making false statements to the Federal Bureau of Investigation in violation of 18 U.S.C. 1001. In August of that year, a jury found McCafferty guilty on all counts.

Misconduct

[1] { ¶ 7} In the summer of 2007, the FBI formally

opened an investigation based on allegations of widespread corruption among public officials and public employees in and around Cuyahoga County. The primary focus of the investigation was on Cuyahoga County Commissioner James Dimora and Cuyahoga County Auditor Frank Russo. The FBI intercepted some 44,000 telephone conversations between various public officials and private citizens in furtherance of the investigation. These calls included conversations between McCafferty, Frank Russo, and others in which she revealed that she had used or intended to use her influence in cases in her courtroom to advance the interests of Russo and Dimora and to get more favorable settlement terms for local businessman Steve Pumper. This misuse of her judicial position was not charged in the criminal complaint and is not part of the instant case.

{ ¶ 8} On September 23, 2008, FBI Agents Oliver and Curtis pulled into McCafferty's driveway unannounced as she was taking her garbage cans to her garage. They asked if they could talk to her about the Cuyahoga County corruption investigation. McCafferty agreed and invited them inside to sit at her kitchen table.

{ ¶ 9} The agents asked McCafferty numerous questions about Dimora, Russo, and Pumper. McCafferty denied that Dimora had ever attempted to influence or intervene in any cases before her court. She also denied that Dimora had any involvement in any cases before her court. When questioned about Russo, McCafferty told the federal agents that she had never spoken to Russo about any of her cases. And when asked about Steve Pumper, McCafferty denied ever attempting to sway settlement negotiations for Pumper. And she denied ever telling Pumper that she had tried to settle his case for less money.

{ ¶ 10} The agents stopped the interview and told McCafferty that they knew she was being dishonest. They warned her that lying to federal agents was a federal crime. They even told her about the wiretapped conversations and offered, multiple times, to play the tapes for her. McCafferty **524 repeatedly refused to listen to the recordings.

*232 { ¶ 11} McCafferty was indicted, tried, and convicted on ten counts of violating 18 U.S.C. 1001, making false statements to federal law enforcement. In sentencing McCafferty, the trial court merged the counts, reducing the number to four. The court applied an upward variance from a standard sentence due to the fact that McCafferty was a sitting judge at the time she committed her crimes. McCafferty received the maximum sentence of 14 months in prison, with three years of supervised release. She was also ordered to serve 150 hours of community service and pay a fine of $400.

* * *

{ ¶ 3} On September 14, 2011, we imposed an interim suspension on McCafferty's license to practice law based on her conviction. *In re McCafferty,* 129 Ohio St.3d 1467, 2011-Ohio-4605, 953 N.E.2d 334. On August 6, 2012, the Ohio State Bar Association, relator, filed a complaint with the Board of Commissioners on Grievances and Discipline against McCafferty, requesting that McCafferty be disciplined.

{ ¶ 4} On January 23, 2013, a three-member panel of the board held a hearing. The parties stipulated that McCafferty's convictions constituted certain rule violations. In accordance with this stipulation, the panel found that McCafferty's conduct violated Prof.Cond.R. 8.4(b) (prohibiting a lawyer from committing an illegal act that reflects adversely on the lawyer's honesty or trustworthiness), 8.4(c) (prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), 8.4(d) (prohibiting a lawyer from engaging in conduct that is prejudicial to **523 the administration of justice), and 8.4(h) (prohibiting a lawyer from engaging in conduct that adversely reflects on the lawyer's fitness to practice law). The panel further found that McCafferty violated Jud.Cond.R. 1.1 (a judge shall comply with the law), 1.2 (a judge shall act in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary), 1.3 (a judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others), and 2.4(B) (a judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment). The panel recommended that McCafferty be indefinitely suspended from the practice of law with no credit for time served under the 2011 interim felony suspension.

*231 { ¶ 5} On June 6, 2013, the board adopted the findings of fact, conclusions of law, and recommendation of the panel and recommended that McCafferty be suspended indefinitely from the practice of law in Ohio with no credit for time served, with costs taxed to McCafferty.

{ ¶ 6} We adopt the board's findings of fact, misconduct, and recommended sanction. We find that an indefinite suspension from the practice of law with no credit for time served during the felony suspension is the appropriate sanction in this case.

Conclusion

{ ¶ 26} Accordingly, Bridget Marie McCafferty is indefinitely suspended from the practice of law in Ohio with no credit for any period of earlier suspension. Her interim felony suspension continues until she completes all terms of her federal supervised release and has been discharged by the federal district court, and this indefinite suspension will begin at that time. Costs are taxed to McCafferty.

Judgment accordingly.

139 Ohio St.3d 597
Supreme Court of Ohio.
DISCIPLINARY COUNSEL
v.
WEXLER.

No. 2013–1250. | Submitted Oct. 9, 2013. | Decided July 9, 2014.

Synopsis

Background: Disciplinary proceeding was brought against attorney. The Board of Commissioners on Grievances and Discipline recommended public reprimand.

Holdings: The Supreme Court held that:

[1] attorney violated rule, and

[2] six-month suspension was warranted.

Suspension ordered.

Opinion

PER CURIAM.*597 { ¶ 1} Respondent, Ilan Wexler of Youngstown, Ohio, Attorney Registration No. 0005859, was admitted to the practice of law in Ohio in 1980.

{ ¶ 2} In a complaint certified to the Board of Commissioners on Grievances and Discipline on December 6, 2012, relator, disciplinary counsel, alleged that Wexler violated the Disciplinary Rules of the Code of Professional Responsibility and the Rules of Professional Conduct by engaging in a sexual relationship with a *598 client, providing her with gifts and financial assistance, and making false and misleading statements during the course of relator's disciplinary investigation.[1]

{ ¶ 3} A panel of the board conducted a hearing and, at the conclusion of relator's evidence, **unanimously voted to dismiss alleged violations** of DR 1–102(A)(5) (prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice) and 5–101(A)(1) (prohibiting a lawyer from accepting employment if the exercise of the lawyer's professional judgment will be or reasonably may be affected by the lawyer's personal interests), DR 5–103(B) and Prof.Cond.R. 1.8(e) (both prohibiting a lawyer from providing financial assistance to a client for expenses other than litigation costs), and Prof.Cond.R. 8.4(c) (prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), based on relator's failure to prove by clear and convincing evidence that Wexler's conduct violated these rules.

{ ¶ 4} At the conclusion of the hearing, **the panel also voted to dismiss alleged violations** of DR 1–102(A)(6) and Prof.Cond.R. 8.4(h) (both prohibiting a lawyer from engaging in conduct that adversely reflects on the lawyer's fitness to practice law) and an alleged violation of Prof.Cond.R. **1170 1.8(j) (prohibiting a lawyer from soliciting or engaging in sexual activity with a client unless a consensual sexual relationship existed prior to the client-lawyer relationship), again based on relator's failure to prove them by clear and convincing evidence.

{ ¶ 5} Thus the only allegation remaining is that Wexler made false statements of material fact in connection with relator's investigation of the underlying grievance, in violation of Prof.Cond.R. 8.1(a) (prohibiting knowingly making a false statement of material fact in connection with a disciplinary matter). The panel found by clear and convincing evidence that Wexler had violated Prof.Cond.R. 8.1(a) by making a false and misleading statement to relator regarding a December 2010 hotel bill and recommended that he be publicly reprimanded for that conduct.

* * *

{ ¶ 11} At his July 24, 2012 deposition, Wexler admitted that his written response to Moore–Brown's grievance was not accurate and was misleading. He testified that his name was on the hotel bill because he had paid for the room and that he had provided his brother's address to the hotel clerk in an effort to hide the transaction from his wife. He also admitted that he had "skirt[ed] around the issue" of whether his credit card had been used to pay for the hotel stay despite "knowing that it was [his] credit card."

**1171 { ¶ 12} The board found that these facts clearly and convincingly demonstrate that Wexler knowingly made a false statement of material fact in connection with a disciplinary matter, in violation of Prof.Cond.R. 8.1(a).

* * *

140 Ohio St.3d 123

Supreme Court of Ohio.

DISCIPLINARY COUNSEL

v.

OLDFIELD.

No. 2013–1623. | Submitted March 12, 2014. | Decided July 9, 2014.

Synopsis

Background: Disciplinary proceeding was brought against judge. The Board of Commissioners on Grievances and Discipline recommended public reprimand.

Holdings: The Supreme Court, Kennedy, J., held that:

[1] judge violated rules, and

[2] public reprimand was warranted.

Public reprimand ordered.

O'Connor, C.J., filed an opinion that dissented in part, in which Lanzinger, J., joined.

Opinion

KENNEDY, J.*123 { ¶ 1} Respondent, Judge Joy Malek Oldfield of Akron, Ohio, Attorney Registration No. 0073065, was admitted to the practice of law in Ohio in November 2000. Judge Oldfield has served on the Akron Municipal Court since January 2012.

{ ¶ 2} On April 26, 2013, relator, disciplinary counsel, filed a one-count complaint charging Judge Oldfield with violations of the Code of Judicial Conduct and the Rules of Professional Conduct. Judge Oldfield answered,

denying that she had committed any violations.

{ ¶ 3} The complaint centers on Judge Oldfield's conduct from February 5 to February 17, 2012, and alleges that during that time, she violated Jud.Cond.R. 1.2 ("A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety"), 1.3 ("A judge shall not abuse the ***124** prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so"), and 2.11(A) ("A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned * * * "). Relator also alleges that Judge Oldfield engaged in conduct prejudicial to the administration of justice in violation of Prof.Cond.R. 8.4(d).

* * *

Facts

{ ¶ 6} The following facts are supported by the record. On Saturday, February 4, 2012, Judge Oldfield and her husband attended a social engagement that lasted into Sunday. Catherine Loya, the public defender assigned to Judge Oldfield's courtroom, also attended. Judge Oldfield's husband left around midnight, and Loya agreed, at the husband's request, to drive Judge Oldfield home later. Sometime after 1:00 a.m. on Sunday, Judge Oldfield and Loya left the party and stopped in a shopping-center parking lot, where they remained in the car, smoking and talking.

{ ¶ 7} Fifteen to 30 minutes later, Copley police officer Tom Ballinger noticed Loya's car and investigated. He requested identification from Judge Oldfield and ***125** Loya. They provided it, and shortly thereafter, two other police officers, including Copley Township police officer Brian W. Price, arrived in separate cars.

{ ¶ 8} Smelling alcohol, Ballinger asked Loya to perform field sobriety tests. When she refused, Ballinger arrested her for having physical control of a vehicle while under the influence of alcohol. During exchanges with the police at the time of the arrest, Judge Oldfield remarked that she was a judge.

{ ¶ 9} Loya was placed in the cruiser to be taken to the police station. At Judge Oldfield's request, Price drove her to the station to be with Loya. During that trip, Judge Oldfield told the officer that she was not asking for special treatment because she was a judge.

{ ¶ 10} Because Loya refused to perform the field sobriety tests or take a breath-alcohol test, her driving privileges were immediately suspended. After Loya was booked, a Copley police officer drove Loya and Judge Oldfield to the judge's house, where Loya spent the next three nights until her driving privileges were restored, apparently at her arraignment. During those three days, Judge Oldfield drove Loya to and from work. Judge Oldfield did not disqualify herself from cases in which Loya represented clients in her courtroom. After obtaining the permission of the municipal prosecutor and public defender, Judge Oldfield presided over 53 such cases until February 17, when Loya's supervisor rotated Loya out of Judge Oldfield's courtroom to avoid adverse publicity. In September 2012, a jury found Loya guilty of the physical-control violation.

* * *

[2] ***127** { ¶ 16} We also agree with the panel and board that Judge Oldfield's conduct violated Jud.Cond.R. 1.2 and 2.11 and Prof.Cond.R. 8.4(d). Because Loya was temporarily living with Judge Oldfield and because the judge was a potential witness in Loya's criminal prosecution, Judge Oldfield should have recused herself from cases in which Loya was representing clients. Under the circumstances, her "impartiality might reasonably be questioned." Jud.Cond.R. 2.11(A). By creating this appearance of impropriety, Judge Oldfield failed to promote public confidence in the judiciary as required by Jud.Cond.R. 1.2. This violation is of all the more concern because the association with Loya occurred in the context of Loya's arrest. "The sight or thought of a judge providing a ride home to a person who has just been detained for breaking the law surely gives the impression of bias on the judge's part when it comes time to hear that case." *Disciplinary Counsel v. Medley*, 93 Ohio St.3d 474, 476–477, 756 N.E.2d 104 (2001). This impression of bias arises whether the law-breaking associate appears in the judge's courtroom as a defendant or as a lawyer. We also find that these violations of the Code of Judicial Conduct comprise a violation of Prof.Cond.R. 8.4(d).

139 Ohio St.3d 462
Supreme Court of Ohio.
DAYTON BAR ASSOCIATION
v.
HOOKS.
No. 2013–1624. | Submitted Dec. 11, 2013. | Decided June 19, 2014.

Synopsis

Background: Disciplinary proceedings were brought against attorney. The Board of Commissioners on Grievances and Discipline recommended six-month suspension.

Holdings: The Supreme Court held that:

[1] attorney violated rules, and

[2] suspension was warranted.

Suspension ordered.

Opinion

PER CURIAM.***462** { ¶ 1} Respondent, Shawn Patrick Hooks of Dayton, Ohio, Attorney Registration No. 0079100, was admitted to the practice of law in Ohio in 2005.

{ ¶ 2} In April 2013, relator, Dayton Bar Association, filed a complaint alleging that Hooks had violated the

Rules of Professional Conduct by neglecting a client's legal matter, failing to reasonably communicate with the client, and failing to cooperate in the ensuing disciplinary investigation. A probable-cause panel of the Board of Commissioners on Grievances and Discipline certified the complaint to the board, and the secretary of the board appointed a panel to hear the matter.

{ ¶ 3} Hooks stipulated to the material facts of relator's complaint and admitted that his conduct violated Prof.Cond.R. 1.3 (requiring a lawyer to act with reasonable diligence in representing a client), 1.4 (requiring a lawyer to reasonably communicate with a client), and 8.1(b) (prohibiting a lawyer from knowingly failing to respond to a demand for information by a disciplinary authority during an investigation). The panel made findings of fact and agreed that Hooks's conduct violated Prof.Cond.R. 1.3 and 1.4. Based on Hooks's testimony, however, the panel recommended that the alleged violation of Prof.Cond.R. 8.1 be dismissed. Citing just one aggravating factor and several mitigating factors, the panel recommended that Hooks be suspended from the practice of law for six months, all stayed on conditions. The board adopted the findings and recommendations of the panel.

{ ¶ 4} We adopt the board's findings of fact and misconduct and agree that a six-month suspension, stayed on conditions, is the appropriate sanction for Hooks's misconduct.

***463 Misconduct**

[1] { ¶ 5} Michael Staup retained Hooks in October 2011 to seek modification of existing child-custody and child-support orders in Montgomery County, ****1214** Ohio, because the child who was the subject of the orders had come to reside with him.

{ ¶ 6} Because Staup lived in Tennessee, all contact he had with Hooks was by telephone, facsimile transmission, and e-mail. He sent Hooks the necessary paperwork and a retainer of $1,500 on November 14, 2011. In a conversation about ten days later, Hooks acknowledged receipt of the documents and retainer, requested copies of the child's medical bills, and advised Staup that he would file the necessary pleadings after Thanksgiving. After the holiday, Staup attempted to reach Hooks a number of times by telephone and e-mail. And in early January 2012, Hooks told him that he was attending to the matter.

{ ¶ 7} Staup repeatedly called and left messages for Hooks after that because he had heard nothing and continued to pay $291 in child support each month for the child who was then living with him. Having received no response, he eventually filed a grievance with relator.

{ ¶ 8} In September 2012, relator contacted Hooks and requested a copy of Staup's file. At that time, Hooks acknowledged that he represented Staup and promised to provide a copy of Staup's file to relator. Despite several additional requests from relator, Hooks never provided a copy of the file.

{ ¶ 9} Hooks admitted that by failing to file documents seeking to modify Staup's custody and child-support obligations, he failed to act with reasonable diligence in violation of Prof.Cond.R. 1.3, that by failing to keep Staup reasonably informed as to the status of his legal matter, he violated Prof.Cond.R. 1.4, and that by failing to provide a copy of Staup's file to relator on request, he violated Prof.Cond.R. 8.1. The board agreed that his conduct violated Prof.Cond.R. 1.3 and 1.4. But it excused his failure to respond to the inquiry of the first investigator assigned to the matter who was later replaced—a magistrate who routinely presided over cases in which he appeared as an attorney—based on his belief that she would step down, necessitating the appointment of a new investigator. And although Hooks was unable to provide the file within the time constraints imposed by relator, the board believed that Hooks had made a good-faith effort to locate and produce the Staup file, which had been misplaced. Therefore, the board recommended that the alleged violation of Prof.Cond.R. 8.1 be dismissed.

* * *

139 Ohio St.3d 456
Supreme Court of Ohio.
CLEVELAND METROPOLITAN BAR ASSOCIATION
v.
SCHIFF.
No. 2013–1251. | Submitted Oct. 9, 2013. | Decided June 18, 2014.

Synopsis

Background: Disciplinary proceedings were brought against attorney. The Board of Commissioners on Grievances and Discipline recommended 12-month suspension.

Holdings: The Supreme Court held that:

[1] attorney violated rules, and

[2] two-year sanction was warranted.

Suspension ordered.

Opinion

PER CURIAM.***456** { ¶ 1} Respondent, Marvin Hermann Schiff of Cleveland, Ohio, Attorney Registration No. 0000681, was admitted to the practice of law in Ohio in 1984.

{ ¶ 2} On October 8, 2012, relator, Cleveland Metropolitan Bar Association, filed a ten-count complaint charging Schiff with violations of the Code of Professional Responsibility and the Rules of Professional Conduct arising from his representation ***457** of multiple clients.[1] The majority of the claims related to significant defects in the contingent-fee contract Schiff used with his clients. The contract failed to disclose Schiff's division of fees with an attorney who was not a member of Schiff's firm and the manner in which the fees would be divided. In accordance with BCGD Proc.Reg. 11, the parties submitted a consent-to-

discipline agreement containing stipulations of fact and misconduct and a recommendation that Schiff be suspended for 12 months with the entire suspension stayed on the condition that Schiff obtain 12 credit **1209 hours of continuing legal education on the subject of law-office management in addition to meeting his obligations under Gov.Bar R. X(3).

* * *

[1] { ¶ 5} Schiff opened his own law firm as a solo practitioner in February 2005 and occasionally would refer cases to attorney Bryan Scott Freeman. In July 2010, Schiff contacted the FBI and disciplinary counsel to raise his concerns about Freeman's conduct in handling matters that Schiff had referred to him.[2]

{ ¶ 6} Counts One through Eight of relator's complaint involve contingent-fee contracts that Schiff used with eight different clients in 2005 and 2006 that *458 identified Freeman as an attorney with Schiff's firm who was also retained by the client. These contracts stated:

> I (We), the undersigned client(s) _____, hereby retain and employ SCHIFF LAW OFFICES, L.L.C. (Marvin H. Schiff and Bryan Freeman) and its associated counsel (hereinafter referred to as "my lawyers"), to represent me (us) in my (our) claim for damages and injuries caused by the events of _____, 20__, against any person, firm, or corporation which/who is, or may be liable to me (us).

{ ¶ 7} The contingent-fee contracts failed to disclose that Freeman was not a member of Schiff's firm and did not disclose Schiff's intent to refer the case to an attorney (Freeman) outside Schiff's law firm. The contracts also did not disclose that the fees would be divided between Schiff and Freeman, nor did they identify how the fees would be divided. Accordingly, in each instance the client was not afforded an opportunity to give written consent to the division of fees between Schiff and Freeman or to the manner in which the fees would be divided.

{ ¶ 8} This conduct violated DR 2–107(A) (permitting division of fees by lawyers who are not in the same firm only with prior consent of the client and if certain conditions are met), 1–102(A)(4) (prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), **1210 and 2–102(C) (prohibiting a lawyer from holding himself or herself out as having a partnership with one or more lawyers unless they are in fact partners). The parties stipulated to all these violations regarding Counts One through Eight.

{ ¶ 9} Count One involves an additional matter regarding Schiff's client Ellis Bradley, with whom Schiff used the same contingent-fee contract noted above. In April 2008, Schiff signed an "Initial Closing Statement," which was not signed by Bradley and which did not specify the division of fees between Schiff and Freeman. Instead, the closing statement listed "The Freeman Law Office, L.L.C./Marvin H. Schiff, Esq." as a single line item. The panel and board found that in addition to the previously noted violations, this conduct violated Prof.Cond.R. 1.5(c)(2) (requiring a lawyer entitled to compensation under a contingent-fee agreement to prepare a closing statement to be signed by the lawyer and the client detailing the calculation of the lawyer's compensation, any costs and expenses deducted from the judgment or settlement, and any division of fees with a lawyer not in the same firm). The parties stipulated to this additional violation regarding Count One.

Count Nine—The Buchanan Matter

{ ¶ 10} Kathryn G. Buchanan signed a contingent-fee contract with Schiff on May 14, 2008. That contract stated that Buchanan was retaining "MARVIN H. *459 SCHIFF." After Schiff's name, the phrase "+ BRYAN FREEMAN" was handwritten on the contract to indicate Freeman as an attorney Buchanan also allegedly retained. The contingent-fee contract did not disclose that the fees would be divided between Schiff and Freeman and did not identify how the fees would be divided. Because Buchanan was not afforded an opportunity to give written consent to the division of fees between Schiff and Freeman nor to the manner in which the fees would be divided, the panel and board found that Schiff violated Prof.Cond.R. 1.5(e) (permitting attorneys who are not in the same firm to divide fees only if the division is reasonable and proportional to the work performed, the client consents to the arrangement in writing after full disclosure, and a written closing statement is prepared and signed by the client and each lawyer). The parties stipulated to this violation.[3]

* * *

139 Ohio St.3d 346
Supreme Court of Ohio.
LAKE COUNTY BAR ASSOCIATION
v.
MISMAS.
No. 2013–1248. | Submitted Oct. 9, 2013. | Decided June 12, 2014.

Synopsis

Background: Attorney disciplinary proceeding was brought.

Holdings: The Supreme Court held that:

[1] attorney violated professional conduct rule prohibiting conduct adversely reflecting on fitness to practice law by exchanging numerous text messages with student law clerk in which he suggested that she perform sexual favors for him, indicated that her continued employment depended on her compliance with his demands, repeatedly insisted that he was not joking, and pressured her to travel out of state with him even after being rebuffed; and

[2] one-year suspension with six months conditionally stayed, as opposed to lesser sanction of public reprimand, was appropriate sanction.

Suspension ordered.

Opinion

PER CURIAM.*346 { ¶ 1} Respondent, John Daniel Mismas of Willoughby, Ohio, Attorney Registration No. 77434, was admitted to the practice of law in Ohio in 2004.

{ ¶ 2} On June 11, 2012, a probable-cause panel of the Board of Commissioners on Grievances and Discipline certified a complaint filed by relator, Lake County Bar Association, to the board. Having considered the parties' stipulated facts and the hearing testimony of Mismas and five other witnesses, a panel of the board found that Mismas had engaged in conduct that adversely reflected on his fitness to practice law by sending inappropriate, sexually explicit text messages to a third-year law student who had interviewed for, and later accepted, a position as a law clerk at his **1182 law firm. The panel recommended that Mismas be publicly reprimanded for this conduct.

{ ¶ 3} The board adopted the panel's findings of fact and misconduct and, despite a modification to the aggravating and mitigating factors found by the panel, adopted its recommendation that Mismas be publicly reprimanded for his misconduct. Having independently reviewed the record, however, we find that Mismas did not just send sexually explicit text messages to a law student he sought to employ—he abused the power and prestige of our profession to demand sexual favors from her as a condition of her employment. Therefore, we conclude that a harsher sanction is warranted and suspend Mismas from the practice of law for one year, with the final six months stayed on conditions.

Misconduct

{ ¶ 4} In November 2011, Mismas contacted Professor J. Dean Carro at the University of Akron School of Law, seeking to hire a student law clerk. Three students responded to his posting. He contacted Ms. C., a female student at the school, and scheduled a face-to-face interview for December 9, 2011. From the *347 evening of the interview through December 28, 2011, Mismas and Ms. C. exchanged numerous text messages.

{ ¶ 5} The board found that some of the text messages that Mismas sent to Ms. C. on December 9 and 10 were sexually explicit and inappropriate. Notwithstanding the inappropriate content of those messages, Ms. C. accepted employment with Mismas's firm on December 11, 2011. On December 22, 2011, Mismas sent Ms. C. a text inviting her to travel with him to Washington, D.C. on business. After she informed him that she had a prior commitment and would not travel with him, Mismas sent her a text stating, "That's strike 1 for you. 3 strikes and you are out." Ms. C. resigned her employment the next day.

{ ¶ 6} In January 2012, Professor Carro asked Ms. C. about her employment with Mismas and learned of her resignation. When the professor asked for additional information, Ms. C. stated that Mismas had acted inappropriately toward her and that she felt uncomfortable continuing in his employ. Shortly thereafter, Professor Carro filed a grievance with relator.

[1] { ¶ 7} The parties stipulated, and the panel and board found, that Mismas's conduct toward Ms. C. violated Prof.Cond.R. 8.4(h) (prohibiting a lawyer from engaging in conduct that adversely reflects on the lawyer's fitness to practice law).

{ ¶ 8} In order to fully recognize the gravity of the misconduct in this case, however, it is necessary to consider the content of the text messages that Mismas sent to this third-year law student who sought employment as a law clerk in his firm—facts that the parties do not set forth in their stipulations and neither the panel nor the board set forth in its report. Although the conversation began with a general discussion of Ms. C.'s commitment to Mismas's primary area of practice—asbestos litigation—and the psychological toll that the clients' circumstances can have on those who assist them, it soon took an inappropriate turn.

{ ¶ 9} Mismas advised Ms. C. that she would "need to take a few beatings" before she could learn to give one. He rephrased this statement in sexual terms and then asked Ms. C. if she had ever engaged in the type of sex act he had referred to. Ms. C. told him to stop, stating that they were only speaking metaphorically, but Mismas insisted that he was serious. Ms. C. advised him that his question was inappropriate and that she would not answer it. Mismas then told her that there needed to be some level of trust between them saying, **1183 "[I]f you can't trust me with personal issues then that's a problem." When she continued to refuse to answer, he texted, "Just was checking how offended you would get. This job is not for the weak." He indicated that honesty and loyalty were important qualities to him.

{ ¶ 10} A little before midnight, Mismas began to quiz Ms. C. about an arbitration agreement that he had given her to review. The conversation then *348 turned to how Mismas could ensure that Ms. C. would be loyal to him. He told her, "I have an idea but your [sic] not going to like it," and stated that she would "bolt" if he said it. After she responded that he had already taken the conversation pretty far and that she had not bolted, he suggested that she perform a sex act for him. Ms. C. flatly rejected Mismas's suggestion, but he continued to press the issue. When she told him to stop and urged him to admit that he was joking, he repeatedly refused and insisted that her employment depended on her compliance, telling her, "If you show up at 11 you know what's expected." He further stated, "So its your choice. Ok. I'll be there at 11. If you show up great. You know what you gptt. GoTta do [sic]. If not Good luck to you." At approximately 1:30 a.m., Ms. C. gave Mismas one last chance to say that he had just been messing around, but he replied, "Nope. Not kidding."

{ ¶ 11} At 9:56 that morning, Mismas sent Ms. C.

another text, suddenly proclaiming that their prior exchange had been a joke after all. When Ms. C. expressed her doubts, he apologized and told her that it would not happen again. But at the panel hearing, Ms. C. testified that she had believed, and continued to believe, that he was serious about his proposition.

{ ¶ 12} The following week, Mismas suggested that Ms. C. join him at his next out-of-town deposition. And just one week after making that suggestion, he invited her to join him on an overnight trip to Washington, D.C. When Ms. C. demurred, stating that she had already accepted an invitation to a judicial function, Mismas belittled her for her rejection and pressured her to go by suggesting that her refusal would have adverse consequences for her employment, texting her, "That's strike 1 for you. 3 strikes and you are out." The following day, Ms. C. resigned her employment.

{ ¶ 13} On these facts, we agree that Mismas engaged in conduct that adversely reflects on his fitness to practice law in violation of Prof.Cond.R. 8.4(h).

* * *

{ ¶ 22} Legal clerkships play an important role in developing the practical skills necessary for law students to become competent, ethical, and productive members of the legal profession. Often, the skills, professional relationships, and reputations that students develop in these entry-level positions open the doors to their first full-time legal employment once they graduate and pass the bar exam. These first jobs can set the course for a new attorney's entire legal career. Attorneys who hire law students serve not only as employers but also as teachers, mentors, and role models for the next generation of our esteemed profession. To that end, we expect that attorneys will conduct themselves with a level of dignity and decorum befitting these professional relationships.

{ ¶ 23} Unwelcome sexual advances are unacceptable in the context of any employment, but they are particularly egregious when they are made by attorneys with the power to hire, supervise, and fire the recipient of those advances. Here, Mismas not only suggested that Ms. C. perform sexual favors for him, but he also indicated that her continued employment depended on her compliance with his demands and repeatedly insisted that he was not joking. And even after ***351** being rebuffed, he continued to exert his leverage over Ms. C. by pressuring her to travel out of state—and away from her support system—with him. When an attorney engages in sexually inappropriate conduct of this nature, it causes harm not only to the individual to whom the conduct is directed but also to the dignity and reputation of the profession as a whole. Thus, we conclude that Mismas's conduct is more serious than "simply operating a cellphone when under the influence," as his counsel suggests, or sending sexually explicit and inappropriate text messages, as the board found.

{ ¶ 24} Moreover, we reject the parties' stipulation and the board's finding that Mismas made a timely good-faith effort to rectify the consequences of his misconduct. BCGD Proc.Reg. 10(B)(2)(c) provides that a respondent's "timely good faith effort to make restitution or rectify consequences of misconduct" may be considered in favor of recommending a less severe sanction. While the record contains substantial evidence of the efforts that Mismas has taken to rectify his alcoholism, his alcohol dependency is a contributing *cause* rather than the *consequence* of his misconduct. And here, the only evidence of Mismas's efforts to rectify the consequences of his actions toward Ms. C. consists of several texts that he sent to her following his request for sexual favors—one stating that he was kidding, several others stating that he was sorry and that the conduct would not happen again, and another acknowledging that his conduct was unprofessional.

{ ¶ 25} But Ms. C. testified that when she resigned her employment, Mismas became hostile, put her down for being naïve, ****1186** and threatened to contact her professors to tell them what a stupid decision she had made. His brief apology to her at the panel hearing and his efforts to have her testimony placed under seal to protect her from future harm, although appropriate, do little to meliorate Ms. C.'s anxiety, embarrassment, frustration, disappointment, and fear of harm to her professional reputation.

{ ¶ 26} Based on the foregoing, we conclude that more than a public reprimand is necessary to protect the public from future misconduct. Accordingly, John Daniel Mismas is suspended from the practice of law in Ohio for one year, with the last six months stayed on the conditions that he engage in no further misconduct and continue to comply with all recommendations of his treating medical and psychological professionals. Costs are taxed to Mismas.

Judgment accordingly.

139 Ohio St.3d 452
Supreme Court of Ohio.
DISCIPLINARY COUNSEL
v.
THOMPSON.
No. 2013–1262. | Submitted Oct. 9, 2013. | Decided June 12, 2014.

Synopsis
Background: Attorney disciplinary proceeding was brought.

[Holding:] The Supreme Court held that two-year suspension, with last 18 months conditionally stayed, was appropriate sanction for misconduct including misappropriating settlement funds owed to client from client trust account and using client trust account as a personal and operating account.

Suspension ordered.

Misconduct

Count I—Use of Client Trust Account for Personal and Business Expenses

{ ¶ 5} From December 2010 through April 2012, Thompson used his client trust account to hold funds belonging to clients and third parties, but also used it as if it were his personal bank account and law-office operating account. He used the account to pay his law-office rent, his residential rent, the fee for his office parking space, and credit-card and telephone bills. **1205 During this time he also issued 77 separate checks to himself for amounts ranging from $25 to $26,750. He further deposited his personal funds into his client trust account, including $9,600 from an advertising refund deposited on February 22, 2011.

{ ¶ 6} The parties stipulated, the board found, and we agree that this conduct violated Prof.Cond.R. 1.15(a) (requiring a lawyer to hold the property of clients in an interest-bearing client trust account, separate from the lawyer's own property) and 8.4(h) (prohibiting a lawyer from engaging in conduct that adversely reflects on the lawyer's fitness to practice law).

Count II—Failure to Timely Withdraw Earned Fees

{ ¶ 7} From December 2010 through September 2011, Thompson settled eight contingency-fee cases for gross settlement amounts ranging from $4,480 to $129,340. He prepared a closing statement for each client that stated the total amount of the settlement, expenses, and attorney fees and the amount that the client was entitled to receive. While he paid each client his or her share of the settlement proceeds, he failed to promptly withdraw his own fees from his client trust account. Instead, Thompson withdrew his fees using multiple checks issued to himself and his creditors over a period of weeks or months in amounts ranging from a few dollars to thousands of dollars. Consequently, he commingled personal and client funds in his client trust account. He also failed to maintain appropriate accounting records regarding the ownership of client funds and earned fees in the account, which resulted in four overdrafts of the account in September 2011.

{ ¶ 8} The parties stipulated and the board found that this conduct violated Prof.Cond.R. 1.15(a), 1.15(a)(2) (requiring a lawyer to maintain a record for each client on whose behalf funds are held), 1.15(a)(3) (requiring a lawyer to maintain a *454 record for the lawyer's client trust account, setting forth the name of the account, the date, amount, and client affected by each credit and debit, and the balance in the account), and 8.4(h). We adopt these findings of fact and misconduct.

Count III—Misappropriation

{ ¶ 9} On January 26, 2011, Thompson deposited a $100,000 settlement check received on behalf of his client, A.G. Pursuant to his contingency-fee agreement with A.G., Thompson was to receive a fee of $33,333, and A.G. was entitled to receive $29,000 from the settlement proceeds. Because Thompson did not distribute the $29,000 to A.G. until July 2011, the balance in his client trust account should not have gone below that amount. But the balance in his client trust account dropped as low as $25,467.15 in March 2011 and remained below $29,000 from April through June 2011, when it reached a low of $6,556.47. Thus, the parties have stipulated and the board has found that Thompson misappropriated at least $22,443.53 in funds owed to A.G.

{ ¶ 10} Thompson deposited a $29,000 check drawn on his operating account into his client trust account on July 1, 2011. And on July 19, 2011, he distributed $29,000 from his client trust account to A.G.

{ ¶ 11} The parties stipulated and the board found that this conduct violated Prof.Cond.R. 8.4(b) (prohibiting a lawyer from committing an illegal act that reflects adversely on the lawyer's honesty or trustworthiness), 8.4(c) (prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), 8.4(d) (prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice), and 8.4(h). We adopt these findings of fact and misconduct.

139 Ohio St.3d 428
Supreme Court of Ohio.
DAYTON BAR ASSOCIATION
v.
STENSON.
No. 2013–1308. | Submitted Oct. 9, 2014. | Decided June 4, 2014.

Synopsis

Background: Attorney disciplinary proceeding was brought.

Holdings: The Supreme Court held that:

[1] attorney committed professional misconduct by failing to fully communicate or confirm in writing to client the intended scope or limits on his representation when he signed and filed pro se complaint on her behalf, and voluntarily dismissing client's suit before trial without her approval or consent;

[2] attorney committed misconduct by failing to submit timely request for hearing after being hired to represent security-services company in license-revocation proceeding; and

[3] conditionally-stayed six-month suspension was appropriate sanction.

Judgment accordingly.

* * *

In February 2009, Stenson sent Huger a proposed pro se complaint with a letter, advising her:

> After thoroughly reviewing your causes of action, my office at this time is unable to go any further in representation of you with regard to your issues with the aforementioned [organization].
> I've provided you with the research showing that your action has slim chance of being successful.

My office cannot go forward based on this research.

{ ¶ 7} Despite having advised Huger that he could not continue with the representation, **1185 Stenson revised the proposed pro se complaint at her request. Although that pro se complaint did not comport with Huger's wishes, Stenson filed it in the Montgomery County Court of Common Pleas on Huger's behalf on March 10, 2009. Huger received the answer and scheduling order providing for a telephone status conference. Stenson did not enter a formal appearance in the proceeding, but participated in the telephone conference on Huger's behalf. He continued to correspond and meet with Huger for several months, primarily to advise her on discovery issues.

{ ¶ 8} The defendant in Huger's case moved for summary judgment and sanctions for frivolous conduct on September 24, 2009. Without obtaining Huger's permission, Stenson voluntarily dismissed her complaint on November 9, 2009. While the dismissal rendered the defendant's motion for summary judgment moot, the motion for sanctions remained pending.

{ ¶ 9} Stenson continued to represent Huger at the hearing on the motion for sanctions and received approximately $5,000 from her during his representation. On February 22, 2010, the court granted the motion and ordered Huger to pay sanctions of $10,400, stating: "To file a lawsuit under these circumstances is unjustified. This conduct is designed to harass the defendants. It lacks evidentiary support."

[1] { ¶ 10} Stenson admitted that he failed to fully communicate or confirm in writing to Huger the intended scope of or limits on his representation when he signed and filed the pro se complaint on her behalf.[3] He also stipulated that while he believed that there was a strategic advantage to voluntarily dismissing Huger's suit before trial, she did not approve of or consent to this strategy. He acknowledged, and the board agreed, that by signing and filing the voluntary *431 dismissal without Huger's consent, he failed to abide by her decisions concerning the objectives of the representation and whether to settle the matter in violation of Prof.Cond.R. 1.2(a) (requiring a lawyer to abide by the client's decisions concerning the objectives of representation, to consult with the client as to means by which they are to be pursued, and to abide by a client's decision whether to settle a matter), and 8.4(a) (prohibiting a lawyer from violating or attempting to violate the Ohio Rules of Professional Conduct).

{ ¶ 11} We adopt these findings of fact and misconduct.

* * *

Accordingly, David Edmund Stenson is suspended from the practice of law in Ohio for six months, all stayed on the conditions that he refund $2,500 of the fees he received from Huger within 90 days of this order and commit no further misconduct. Costs are taxed to Stenson.

Judgment accordingly.

140 Ohio St.3d 2
Supreme Court of Ohio.
DISCIPLINARY COUNSEL
v.
JACOBS.
No. 2013–1230. | Submitted Oct. 9, 2013. | Decided May 27, 2014.

Synopsis

Background: Attorney disciplinary proceeding was brought following interim suspension of attorney's license in connection with felony conviction for filing false tax return.

[Holding:] The Supreme Court held that two-year suspension, with credit for time served under interim suspension, was appropriate sanction for attorney's disciplinary violations arising from felony conviction for filing false tax return.

Suspension ordered.

Opinion

PER CURIAM.*2 { ¶ 1} Respondent, Leslie William Jacobs of Gates Mills, Ohio, Attorney Registration No. 0020387, was admitted to the practice of law in Ohio in 1968. On April 3, 2012, we suspended his license to practice law on an interim basis following his January 17, 2012 felony conviction for filing a false tax return. *In re Jacobs,* 131 Ohio St.3d 1495, 2012-Ohio-1485, 964 N.E.2d 436.

{ ¶ 2} On October 8, 2012, relator, disciplinary counsel, filed a complaint charging Jacobs with violations of the Code of Professional Responsibility and the Rules of Professional Conduct arising from the conduct that led to his felony conviction.[1] The parties submitted stipulations of fact and misconduct and a recommendation that Jacobs be suspended from the practice of law for two years with credit for time served under the interim suspension.

{ ¶ 3} A panel of the Board of Commissioners on Grievances and Discipline conducted a hearing and adopted the parties' stipulations of fact and misconduct and agreed with the recommended sanction. **986 The board adopted the panel's report in its entirety, and no objections have been filed.

{ ¶ 4} We adopt the board's findings of fact and misconduct and conclude that a two-year suspension from the practice of law with credit for time served under the interim suspension is the appropriate sanction in this case.

Misconduct

{ ¶ 5} For the tax years 2004 through 2007, Jacobs, a senior partner with a large law firm, prepared federal income tax returns for himself and his wife without the assistance of a professional tax preparer. During 2004 and through *3 2007, he incurred substantial business

expenses for which he received reimbursement from his firm, including travel expenses on client matters, costs of attending meetings and events for bar associations and other professional and civic organizations, seminar costs, and business entertainment expenses. Under his firm's procedures, he submitted detailed expense-reimbursement vouchers, supported by receipts, for items that he personally paid for, usually by charges to his personal credit card. The firm then issued reimbursement checks payable to Jacobs that he deposited into his personal bank account.

{ ¶ 6} Each year, Jacobs received an IRS Schedule K–1 from the law firm, which reported his ordinary business income from the firm and other items. On each of his income tax returns for 2004 through 2007, Jacobs included a Schedule E on which he reported his partnership income. On that form he also listed the amount of ordinary business income from his Schedule K–1 and subtracted an amount that he claimed as deductions for business expenses, resulting in a net amount of partnership income that he then reported on his tax return. Each year in that period, Jacobs knew that the amount that he claimed as business-expense deductions was inflated, which resulted in understating his income, which in turn falsely reduced his tax obligation.

{ ¶ 7} He falsely inflated his business-expense deductions in a number of ways. For the years 2004 through 2006, he inflated his deductions by reporting business expenses for which he had received reimbursement from the law firm and thus had no net out-of-pocket expense. He deducted such reimbursed expenses both for travel on client matters, for which the firm sought reimbursement from the clients, and for nonclient expenses borne by the law firm.

{ ¶ 8} Jacobs also claimed deductions for nondeductible dues for personal memberships at private clubs and charges for personal meals and other personal uses of the clubs. He deducted meal and entertainment expenses at 100 percent of the cost, even though he knew that those expenses, even when properly deducted, were deductible at only 50 percent of the cost.

{ ¶ 9} Jacobs leased one or two automobiles per year that he used to commute to his office and to drive for both business and personal purposes. He improperly deducted all those vehicle expenses even though he made personal and nondeductible use of the cars and also received reimbursement from his firm for the business miles he traveled.

{ ¶ 10} Jacobs testified that he engaged in this misconduct because of his frustrations with the federal government for falsely advising that his father died in a plane crash in World War II and concealing the fact that he had been executed in a Japanese prisoner-of-war camp. He also was angry at the IRS for its alleged harassment of his mother—up to her death—about her failure to timely withdraw funds from her retirement account.

**987 *4 { ¶ 11} In February 2008, an IRS revenue agent notified Jacobs and his wife that their 2005 income tax return was under audit. Jacobs met with the agent and an IRS supervisor later that month, provided the requested records, and was interviewed. Later in 2008, the revenue agent expanded the audit to include 2004. In July 2008, Jacobs met with the agent and a supervisor and provided the requested 2004 records and was interviewed about his 2005 taxes. Following that meeting, Jacobs faxed a written statement to the agent, discussing some of the issues addressed in that meeting. In July 2009, the IRS advised Jacobs that he was under a criminal investigation for his 2004 through 2007 income taxes, and a special agent and revenue agent interviewed him.

{ ¶ 12} During the two audit meetings, in the faxed letter, and during the criminal-investigation interview, Jacobs made false statements regarding the items for which he claimed inflated deductions. On November 2, 2011, Jacobs pled guilty to a federal information charging him with one count of making and subscribing false tax returns in violation of 26 U.S.C. 7206(1) for the years 2004 through 2007. In the false returns for those four years, Jacobs understated his taxable income by $256,380 and overstated his expenses by $253,256, resulting in unpaid taxes of $75,385. He paid this shortfall in full on January 17, 2012, the day he was sentenced.

{ ¶ 13} Jacobs was sentenced to serve 12 months and one day of incarceration and one year of supervised release, including four months minus one day of home confinement, and to pay a fine and special assessment totaling $10,100. He paid the special assessment of $100 on the day he was sentenced and the $10,000 fine on February 19, 2012. Jacobs completed his term of imprisonment, less good-time credit, on January 17, 2013, his term of home confinement on May 16, 2013, and his supervised release on January 17, 2014.

{ ¶ 14} The parties stipulated, and the panel and board found, that Jacobs's conduct violated DR 1–102(A)(3) (prohibiting a lawyer from engaging in illegal conduct involving moral turpitude) and Prof.Cond.R. 8.4(b) (prohibiting a lawyer from committing an illegal act that reflects adversely on the lawyer's honesty or trustworthiness); DR 1–102(A)(4) and Prof.Cond.R. 8.4(c) (both prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); and DR 1–102(A)(6) and Prof.Cond.R. 8.4(h) (both prohibiting a lawyer from engaging in conduct that adversely reflects on the lawyer's fitness to practice law).

* * *

{ ¶ 26} Accordingly, we accept the recommendation of the Board of Commissioners on Grievances and Discipline and in this case suspend Jacobs from the

practice of law in Ohio for two years with credit for the time served under the interim suspension that began on April 3, 2012. Costs are taxed to Jacobs.

Judgment accordingly.

139 Ohio St.3d 332
Supreme Court of Ohio.
DISCIPLINARY COUNSEL
v.
BENDER.
No. 2013–1260. | Submitted Oct. 9, 2013. | Decided May 27, 2014.

Synopsis
Background: Attorney disciplinary proceeding was brought.
[Holding:] The Supreme Court held that conditionally-stayed one-year suspension was appropriate for failure to settle personal-injury claim or file suit before statute-of-limitations deadline, and for attempting after taking office as judge to settle personal injury client's potential malpractice claim without mentioning missed statute of limitations or advising her to seek independent counsel.

* * *

{ ¶ 3} The parties submitted stipulations of fact and stipulated exhibits and agreed that Bender's conduct violated Prof.Cond.R. 1.3 (requiring a lawyer to act with reasonable diligence in representing a client), 1.4(a)(3) (requiring a lawyer to keep the client reasonably informed about the status of a matter), 1.7(a)(2) (prohibiting **1170 representation if a lawyer's personal interests will materially limit his ability to carry out appropriate action for the client), 1.15(a) (requiring a lawyer to hold the property of clients in an interest-bearing client trust account, separate from the lawyer's own property), and 8.4(h) (prohibiting a lawyer from engaging in conduct that adversely reflects on the lawyer's fitness to practice law) and Jud.Cond.R. 3.10 (prohibiting a judge from practicing law). The parties also stipulated to the dismissal of the remaining violations alleged in the complaint.

* * *

{ ¶ 5} At the time of his judicial appointment, Bender was pursuing a personal-injury claim on behalf of Carl Everetts. Brenda Kelly was appointed as the guardian for Everetts, her uncle, by the Probate Court of Pickaway County in December 2010. Bender had made a $60,000 demand against the tortfeasor's insurer in January 2011, and in March 2011, the insurer made a counteroffer of $14,000. Bender met with Kelly to discuss the offer and ascertained that her goal was to obtain a settlement sufficient to satisfy all outstanding subrogation claims and cover Everetts's projected funeral expenses. Therefore, they agreed that Bender should attempt to negotiate for a larger settlement. But Bender did not respond to the insurer's offer before taking judicial office.

* * *

{ ¶ 11} In addition to commingling personal and client funds in his client trust account, Bender did not distribute all of the client funds in his client trust account until at least December 31, 2011—approximately eight months after he took the bench. Before he closed the account, he had to forward $375 to the Unclaimed Funds Division of the Ohio Department of Commerce because some clients did not cash their refund checks. He testified that his delay in reconciling and closing the account was due to his failure to recognize the "enormity of the task," the need to determine the amount of his earned fees, the need to verify with the clerk of courts whether all fees and court costs had been paid, and, in some cases, the need to locate clients who were entitled to refunds.

{ ¶ 12} On at least two occasions after becoming a judge, Bender deposited settlement funds belonging to former clients into his client trust account even *335 though he had ceased working on their cases. He testified that he did so at the request of his successor counsel, who did not want to receive tax forms for the insurance proceeds. While he issued checks to the former clients for their portion of the settlement proceeds, he did not promptly disburse the balance of the proceeds that were allocated for fees and expenses.

[3] { ¶ 13} The board adopted the parties' stipulations that Bender's commingling of personal and client funds in his client trust account violated Prof.Cond.R. 1.15(a) and that he continued to practice law in violation of Jud.Cond.R. 3.10 by depositing settlement funds into his client trust account months after he became a judge—and after another attorney had taken over the clients' representation.

* * *

{ ¶ 25} Accordingly, David Bryan Bender is suspended from the practice of law in **1174 Ohio for one year, all stayed on the condition that he engage in no further misconduct. Costs are taxed to Bender.

138 Ohio St.3d 357
Supreme Court of Ohio.
DISCIPLINARY COUNSEL
v.
LAND.
No. 2013–0940. | Submitted Aug. 21, 2013. | Decided March 27, 2014.

Synopsis
Background: Disciplinary proceedings were brought against attorney. The Board of Commissioners on Grievances and Discipline recommended indefinite suspension.

Holdings: The Supreme Court held that:

[1] attorney violated rules, and

[2] indefinite suspension was warranted.

Suspension ordered.

***359 Misconduct**

[1] { ¶ 5} For most of her career, Land worked for large

law firms and provided estate-planning advice to wealthy clients. As explained in detail below, in two separate incidents in early 2010, Land created fraudulent documents and submitted them to the IRS in an attempt to cover mistakes she had made in drafting estate-planning documents. And in another case, also in early 2010, she created a fraudulent e-mail to bolster her credibility with regard to **1185 advice she had given the administrator of an estate. Land testified at the hearing that her conduct was precipitated by her concern that her clients would lose tax benefits, that she would suffer repercussions professionally if the clients lost those benefits, and that she would be embarrassed if others knew of her drafting mistakes.

* * *

{ ¶ 11} The parties stipulated, and the panel and board concluded, that this conduct, which forms the basis of Count Four of the complaint, violated Prof.Cond.R. 8.4(c) (prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), 8.4(d) (prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice), and 8.4(h) (prohibiting a lawyer from engaging in conduct that adversely reflects on the lawyer's fitness to practice law).

* * *

Felony Conviction

{ ¶ 22} In March 2012, based on the facts as noted above, Land pled guilty to a **1187 federal information charging her with corruptly endeavoring to obstruct and impede the due administration of the Internal Revenue Code, in violation of 26 U.S.C. 7212(a). In August 2012, she was sentenced to five years of probation, including three years of home detention, and was ordered to abstain from alcohol use, to continue to receive mental-health treatment as deemed necessary by her probation officer, and to pay criminal monetary penalties of $75,000 and an assessment of $100.

*362 { ¶ 23} The parties stipulated, and the panel and board concluded, that by being convicted of a felony, which forms the basis of Count One of the complaint, Land violated Prof.Cond.R. 8.4(b) and 8.4(h).

{ ¶ 24} We adopt these findings and agree with these conclusions.

* * *

Conclusion

{ ¶ 30} Accordingly, Suzanne Prieur Land is indefinitely suspended from the practice of law in Ohio. Land may not petition for reinstatement until she has completed her federal probation. In addition, upon petitioning for reinstatement, Land must present proof that she either satisfactorily completed her OLAP contract or is in compliance with the conditions of her current OLAP contract and that she either continues to receive treatment from a therapist or that the therapist determined that treatment is no longer necessary. We credit Land for the time she has served under the September 6, 2012 interim suspension. Costs are taxed to Land.

Judgment accordingly.

138 Ohio St.3d 346
Supreme Court of Ohio.
DISCIPLINARY COUNSEL
v.
SCHULER.
No. 2012–1714. | Submitted Oct. 9, 2013. | Decided March 26, 2014.

Synopsis

Background: Disciplinary proceedings were brought against attorney. The Board of Commissioners on Grievances and Discipline recommended indefinite suspension.

Holdings: The Supreme Court held that:

[1] attorney violated rules, and

[2] indefinite suspension was warranted.

Suspension ordered.

* * *

Misconduct

[1] { ¶ 5} In March 2011, Schuler pled guilty to one felony count of filing a false tax return in violation of 26 U.S.C. 7206(1) in the United States District Court for the Southern District of Ohio. As part of his plea agreement, Schuler admitted that he knowingly and willfully made and subscribed to a tax return for calendar year 2002 that he did not believe to be true and correct. Specifically, Schuler's 2002 tax return reported a total adjusted gross income of $1,162,087, but Schuler knew that he had received an additional $360,000 in business income that he did not include on the return. The United States dismissed two other counts against Schuler—a count for conspiracy to commit mail and wire fraud and a count for false declarations before a grand jury.

{ ¶ 6} On September 20, 2011, the federal court sentenced Schuler to one year of probation in a home-confinement program and assessed him a $50,000 fine. The court and probation authorities ordered Schuler to pay the fine in installments of $1,000 per month, and the judge waived the requirement that he pay interest.

{ ¶ 7} At the May 2013 panel hearing, Schuler testified that he had completed his probation in September 2012 and was current on the installment payments for his fine. Schuler also testified that in 2009, during the course of the federal investigation, he had sent the Internal Revenue Service ("IRS") a check for approximately $80,000, which was the amount of taxes that his accountant had determined he **1175 should have paid on the unreported $360,000 in income. According to Schuler, the IRS accepted his check, although he acknowledged that the agency has authority to issue other civil penalties for late payment.

{ ¶ 8} Based on this record, the board found that Schuler's conduct violated DR 1–102(A)(4) (prohibiting

a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation) and (A)(6) (prohibiting a lawyer from engaging in conduct that adversely reflects on the lawyer's fitness to practice law). We agree with the board's findings of misconduct.

* * *

{ ¶ 16} Having reviewed the record, weighed the aggravating and mitigating factors, and considered the sanctions imposed for comparable conduct, we adopt the board's recommended sanction. Accordingly, Robert Carl Schuler is indefinitely suspended from the practice of law in Ohio, with credit for time served under the interim felony suspension imposed on October 6, 2011. Costs are taxed to Schuler.

Judgment accordingly.

Relator charged Schuler with misconduct under the Disciplinary Rules of the Code of Professional Responsibility for acts occurring before February 1, 2007, the effective date of the Rules of Professional Conduct.

138 Ohio St.3d 522
Supreme Court of Ohio.
DISCIPLINARY COUNSEL
v.
SHAW.

No. 2013–0923. | Submitted Aug. 21, 2013. | Decided March 25, 2014.*522 { ¶ 1} Respondent, Kenneth Norman Shaw of Warren, Ohio, Attorney Registration No. 0005525, was admitted to the practice of law in Ohio in 1980. We suspended Shaw for two years on September 23, 2010, after finding that he had named his five children as beneficiaries in a trust he prepared for a client, borrowed $13,000 from the same client without advising her of the inherent conflict of interest, and failed to repay the loan as agreed and that, with regard to a different client, he had accepted attorney fees for a guardianship without obtaining prior approval from the probate court. *Disciplinary Counsel v. Shaw,* 126 Ohio St.3d 494, 2010-Ohio-4412, 935 N.E.2d 405. On December 10, 2010, we found Shaw in contempt for failing to file his affidavit of compliance on or before October 25, 2010, as required by the September 23, 2010 order. **930 *Disciplinary Counsel v. Shaw,* 127 Ohio St.3d 1455, 2010-Ohio-6038, 938 N.E.2d 42. Shaw has not applied for reinstatement, nor has he been reinstated to the practice of law.

{ ¶ 2} In the present matter, on December 10, 2012, relator, disciplinary counsel, filed a two-count complaint against Shaw with each count charging him with multiple disciplinary-rule violations. The violations in Count I relate to his representing clients while he was under suspension, and the violations in Count II *523 relate to his paying himself fees in probate actions without first receiving court approval.

{ ¶ 3} The parties submitted stipulations and joint exhibits and waived a formal hearing on this matter. Shaw stipulated to numerous facts and to having committed multiple violations of both the Rules of Professional Conduct and the Code of Professional Responsibility.[1] He also stipulated that a sanction of indefinite suspension was appropriate. A panel of the Board of Commissioners on Grievances and Discipline accepted the parties' stipulations of fact and misconduct but found two additional aggravating factors. The panel recommended that Shaw be suspended from the practice of law indefinitely. The board adopted the panel's findings of fact and misconduct and its recommended sanction of an indefinite suspension from the practice of law. After reviewing the record, we adopt the board's findings of fact and misconduct, but we reject the recommended sanction. The circumstances here require Shaw's permanent disbarment.

Misconduct

Count I—Practicing law while under suspension

Mildred Patterson

[1] { ¶ 4} In March 2011, Mildred Patterson and her son met with her financial advisor, David Gollner, and Shaw at Gollner's office. The purpose of the meeting was to introduce Patterson to Shaw so that Shaw could provide her with legal services. Shaw's license to practice law was under suspension at that time, yet he failed to advise either Gollner or Patterson of that suspension at that meeting or any time thereafter. Shaw drafted a quitclaim deed for Patterson and notarized her signature. Shaw's notary stamp identified him as an attorney, indicated that his notary commission had no expiration, and referred to R.C. 147.03, which requires that an attorney be in good standing in order to maintain a valid notary commission.

* * *

Shaw responded by e-mail, and his signature block identified him as "Kenneth N. Shaw, Esq."; thus, he was holding himself out as an attorney while his license was under suspension.

* * *

[In probate court] Shaw had taken the fees without the court approval required by the probate court's local rules, the court instructed him to return the funds immediately to the fiduciary. Shaw did not have the money, so the court accepted Shaw's proposed payment plan. Although the July 2011 plan called for Shaw to repay the $2,050 at the rate of $200 per month, as of May 2013, Shaw had made only one payment of $100.

{ ¶ 10} Regarding Count I, the parties stipulated and the board found that Shaw violated Prof.Cond.R. 5.5(a) (prohibiting a lawyer from practicing law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction) and 8.4(h) (prohibiting a lawyer from engaging in conduct that adversely reflects on the lawyer's fitness to practice law) and Gov.Bar R. V(8)(E) (requiring a suspended lawyer to notify all clients being represented in pending matters of his suspension and consequent disqualification to act as an attorney after the effective date of the order). Regarding Count II, the parties stipulated and the board found that

Shaw had violated Prof.Cond.R. 3.4(c) (prohibiting a lawyer from knowingly disobeying an obligation under the rules of a tribunal), 8.4(d) **__932__ (prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice), and 8.4(h) and, for those acts that occurred prior to February 1, 2007, DR 1–102(A)(5) (prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice), 1–102(A)(6) (prohibiting a lawyer from engaging in conduct that adversely reflects on the lawyer's fitness to practice law), and 7–106(A) (prohibiting a lawyer from disregarding a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding).

* * *

{ ¶ 13} We have stated that "[t]he normal penalty for continuing to practice law while under suspension is disbarment."

* * *

Accordingly, Kenneth Norman Shaw is permanently disbarred from the practice of law in the state of Ohio. Costs are taxed to Shaw.

Judgment accordingly.

138 Ohio St.3d 333
Supreme Court of Ohio.
CINCINNATI BAR ASSOCIATION
v.
ALSFELDER.
No. 2013–0223. | Submitted June 4, 2013. | Decided March 13, 2014.

Synopsis

Background: Disciplinary proceedings were brought against attorney. The Board of Commissioners on Grievances and Discipline recommended indefinite suspension.

Holdings: The Supreme Court held that:

[1] attorney violated rules, and

[2] indefinite suspension was warranted.

Suspension ordered.

* * *

{ ¶ 2} In August 2010, a probable-cause panel of the Board of Commissioners on Grievances and Discipline certified a two-count complaint submitted by relator, Cincinnati Bar Association. The complaint alleged that Alsfelder had failed to maintain records of client funds in his possession, converted client funds to his own use, and failed to provide a full accounting to his client, that he had engaged in dishonesty, fraud, deceit, or misrepresentation by using information obtained in the course of his representation to the client's disadvantage, and that he had entered into a business relationship with the client to the client's detriment. In an amended complaint filed in July 2012, relator added two additional counts, alleging that over a five-year period, Alsfelder had failed to report certain income on his state and federal income tax returns and that he had failed **__1164__ to cooperate in relator's investigation of his alleged misconduct.

{ ¶ 3} We found Alsfelder in contempt of court on May 19, 2011, and ordered him to comply with orders issued by the board, including a subpoena duces tecum that required him to appear at a deposition and to produce certain documents relevant to this disciplinary proceeding. *Cincinnati Bar Assn. v. Alsfelder,* 128 Ohio St.3d 1495, 2011-Ohio-2384, 947 N.E.2d 177. On September 7, 2011, we suspended Alsfelder from the practice of law pending proof of his compliance with the prior orders of this court and the board. *Cincinnati Bar Assn. v. Alsfelder,* 130 Ohio St.3d 1201, 2011-Ohio-5514, 955 N.E.2d 1011. Because Alsfelder has steadfastly refused to comply with those orders, that suspension remains in effect.

{ ¶ 4} On November 2, 2012, the chair of the panel appointed to hear the case issued an entry stating that the panel had unanimously found that the evidence *__335__ was insufficient to support the allegations contained in Count Two of the complaint and dismissing that count in its entirety. Later, the panel issued a report, in which it found that Alsfelder had failed to cooperate in relator's investigation as charged in Count Four of the complaint, but that there was insufficient evidence to establish that he committed the misconduct charged in Counts One and Three of the complaint. The panel recommended that Counts One and Three be dismissed and that Alsfelder be indefinitely suspended for his misconduct. The board adopted the findings of fact, conclusions of law, and recommendation of the panel.

* * *

Proposed Sanction

* * *

[7] [8] [9] { ¶ 37} " 'One of the fundamental tenets of the professional responsibility of **__1170__ a lawyer is that he should maintain a degree of personal and professional integrity that meets the highest standard. The integrity of the profession can be maintained only if the conduct of the individual attorney is above reproach. He should refrain from any illegal conduct. Anything short of this lessens public confidence in the legal profession—because obedience to the law exemplifies respect for the law.' " *Cincinnati Bar Assn. v. Hennekes,* 110 Ohio St.3d 108, 2006-Ohio-3669, 850 N.E.2d 1201, ¶ 13, quoting *Cleveland Bar Assn. v. Stein,* 29 Ohio St.2d 77, 81, 278 N.E.2d 670 (1972).

{ ¶ 38} Here, Alsfelder's misconduct goes far beyond the typical failure to cooperate in a disciplinary investigation. It encompasses a complete and contumacious disregard of this court's orders over a period of years. Alsfelder's recalcitrance flies in the face of his oath of office, his duties to this court, and his duties to the legal profession as a whole. If he is unable or unwilling to conduct himself with dignity, civility, and respect in the conduct of his own legal affairs, we cannot expect him to competently, ethically, or professionally represent the clients who entrust him with their most

important affairs. Therefore, we adopt the board's recommendation that he be indefinitely suspended from the practice of law. However, that suspension shall not commence until Alsfelder has purged his contempt of the prior orders of this court.

{ ¶ 39} Accordingly, Robert F. Alsfelder Jr. is indefinitely suspended from the practice of law in Ohio; however, that indefinite suspension will not go into effect until Alsfelder purges his contempt of this court's prior orders in case No. 2011–0625. Costs are taxed to Alsfelder.

Judgment accordingly.

138 Ohio St.3d 399
Supreme Court of Ohio.
CLEVELAND METROPOLITAN BAR ASSOCIATION
v.
FONDA.
No. 2013–0571. | Submitted Aug. 20, 2013. | Decided March 12, 2014.

Synopsis
Background: Attorney disciplinary proceeding was brought arising from attorney's alleged neglect of two separate client matters.
Holdings: The Supreme Court held that:

[1] attorney who filed his client's tax returns late violated Rules of Professional Conduct;

[2] attorney who was retained to file an action on client's behalf, but did not do so violated Rules of Professional Conduct; and

[3] suspension was warranted.

Suspension ordered.

* * *

{ ¶ 6} Without requesting an extension of time, Fonda filed the Ohio estate tax return on May 10, 2010—almost 20 months late. As a result of this delay, the estate paid $1,080.66 in accrued interest.

{ ¶ 7} Fonda filed the decedent's 2007 federal income tax return on July 19, 2011—39 months late. Due to Schub's own efforts, the Internal Revenue Service waived the penalty for late filing and reduced the interest on the late payment to $180.65. Because Fonda waited until July 2011 to file the federal estate tax return—making it approximately 42 months late—the estate paid $436.95 in penalties and interest. On these facts, the board found that Fonda violated Prof.Cond.R. 1.3 (requiring a lawyer to act with reasonable diligence in representing a client).

{ ¶ 8} By March 2010, Fonda stopped returning Schub's calls, and when he did not respond to her letters and e-mails, she resorted to sending him a letter by certified mail. Schub terminated his services and requested her file in January 2012—approximately four and one-half years after she retained him. At the time of the hearing in December 2012, Schub had still not received her file.

{ ¶ 9} The board found that Fonda's failure to keep Schub reasonably informed about the status of her case and his failure to respond to her calls violated Prof.Cond.R. 1.4(a)(3) (requiring a lawyer to keep the client reasonably informed about the status of a matter) and 1.4(a)(4) (requiring a lawyer to comply as soon as practicable with reasonable requests for information from the client) and that his failure to promptly return her file on request violated Prof.Cond.R. 1.16(d) (requiring a lawyer withdrawing from representation to take steps reasonably practicable to protect a client's interest).

Count Two—The Walton Matter

* * *

{ ¶ 15} The board found that Fonda failed to act with reasonable diligence during the 33 months that he represented Walton, in violation of Prof.Cond.R. *__402__ 1.3, that he failed to reasonably communicate with Walton in violation of Prof.Cond.R. 1.4(a)(4), and that he failed to promptly return Walton's file in violation of Prof.Cond.R. 1.16(d).

* * *

He contends that pursuant to the terms of his written agreement with Walton, he was not obligated to render further services until Walton signed a litigation agreement and advanced court costs. He claims that without such an agreement, he could not have violated Prof.Cond.R. 1.4(a)(3) or 1.4(a)(4) because his representation was complete and there was no additional information for him to provide to Walton. He further claims that he had nothing to return to Walton and, therefore, could not have violated Prof.Cond.R. 1.16(d).

{ ¶ 17} The written representation agreement that Fonda and Walton signed provides:
**__1168__ The CLIENT has retained and hereby does retain the ATTORNEY to prepare a demand letter on his behalf to Auto Rite (salesman/finance manager Von) for the return of his vehicle and/or funds deposited with Auto–Rite relating to a vehicle transaction with Auto–Rite, which transpired at the end of March, 2009. The attorney is specifically retained to prepare such demand letter, and to proceed with follow-up negotiations, if any. Should a lawsuit be required, the parties hereto will proceed under a separate agreement.

* * *

Fonda attempted to limit the scope of his representation in his written agreement with Walton, but his actions after that contract was signed—including his representations that the case would soon go to court, his acceptance of the $100 check for court costs, his corresponding failure to present Walton with a new agreement, and perhaps most importantly, his failure to correct Walton's obvious belief that Fonda's representation extended to litigation without a new agreement—conveyed a different message. Walton's testimony clearly and convincingly demonstrates that Fonda's actions led him to reasonably *__404__ believe that the representation continued until he terminated

Fonda's services in January 2012. Consequently, we find that Fonda's conduct continued to violate Prof.Cond.R. 1.3, 1.4(a)(3) and 1.4(a)(4) until that time.

{ ¶ 23} Fonda also challenges the board's finding that he violated Prof.Cond.R. 1.16(d), which provides:

> As part of the termination of representation, a lawyer shall take steps, to the extent reasonably practicable, to protect a client's interest. The steps include giving due notice to the client, allowing reasonable time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules. Client papers and property shall be promptly delivered to the client. "Client papers and property" may include correspondence, pleadings, deposition transcripts, exhibits, physical evidence, expert reports, and other items reasonably necessary to the client's representation.

* * *

{ ¶ 25} Based on the foregoing, we find that there is sufficient evidence to establish that Fonda has violated Prof.Cond.R. 1.3, 1.4(a)(3), 1.4(a)(4), and 1.16(d) as found by the board. Therefore, we overrule Fonda's objections as to those findings of misconduct, adopt the board's findings of fact and misconduct, and dismiss the alleged violation of Prof.Cond.R. 8.4(d) as recommended by the board.

* * *

Accordingly, we suspend Charles Walter Fonda from the practice of law for one year, but stay the entire suspension on the conditions that he make restitution of $707.33 to Schub within 90 days of the date of this order, that he remain in compliance with his August 1, 2012 OLAP contract, and that he engage in no further misconduct. Costs are taxed to Fonda.

Judgment accordingly.

O'CONNOR, C.J., and LANZINGER, KENNEDY, FRENCH, and O'NEILL, JJ., concur.

PFEIFER and O'DONNELL, JJ., dissent and would impose a public reprimand.

Parallel Citations

7 N.E.3d 1164, 2014 -Ohio- 850

139 Ohio St.3d 152
Supreme Court of Ohio.
DISCIPLINARY COUNSEL
v.
WRAGE.
No. 2013–0931. | Submitted Aug. 21, 2013. | Decided March 11, 2014.

Synopsis

Background: Disciplinary proceedings were brought against attorney. The Board of Commissioners on Grievances and Discipline recommended two-year suspension.

Holdings: The Supreme Court held that:

[1] attorney violated rules, and

[2] suspension was warranted.

Suspension ordered.

* * *

{ ¶ 2} On October 19, 2009, the secretary of the Board of Commissioners on Grievances and Discipline submitted a certified copy of a determination that Wrage was in default of a child-support order. In accordance with Gov.Bar R. V(5)(A), we entered an interim suspension order and referred the matter to relator, disciplinary counsel, for investigation and the commencement of disciplinary proceedings. *In re Wrage*, 123 Ohio St.3d 1498, 2009-Ohio-6095, 916 N.E.2d 1077.

{ ¶ 3} In a complaint certified to the board on February 13, 2012, relator charged Wrage with violations of DR 1–102(A)(6) (prohibiting a lawyer from engaging in conduct that adversely reflects on the lawyer's fitness to practice law), Prof.Cond.R. 8.1(b) (prohibiting a lawyer from knowingly failing to respond to a demand for information by a disciplinary authority during an investigation), 8.4(d) (prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice), and 8.4(h) (prohibiting a lawyer from engaging in conduct that adversely reflects on the lawyer's fitness to practice law) and Gov.Bar R. V(4)(G) (prohibiting a lawyer from neglecting or refusing to assist in a disciplinary investigation).[1] The conduct giving rise to these alleged violations includes a 2006 misdemeanor conviction for aggravated menacing, Wrage's default on his child-support obligation beginning in 2009, various contempt orders ***153** arising out of his child-support default, and his failure to cooperate in the resulting disciplinary investigation.

{ ¶ 4} Although Wrage accepted service of the complaint, he did not timely file an answer; several months after relator moved for default, Wrage finally answered the complaint, and the matter was set for hearing.

* * *

{ ¶ 20} Accordingly, Eric Andrew Wrage is suspended for two years, with the second year stayed on the conditions that Wrage (1) submits satisfactory proof to the board that he is no longer in default on his child-support obligation, or that he is subject to and in compliance with a withholding or deduction notice or a new or modified child-support order to collect current support or any arrearage due under the child-support order that was in default, (2) continues to participate in counseling through the Scioto Paint Valley Mental Health Center for not less than three years or for one year after he is reinstated to the practice of law, whichever is longer, (3) serves a one-year period of monitored probation in accordance with Gov.Bar R. V(9) upon his reinstatement to the practice of law, and (4) commits no further misconduct. Costs are taxed to Wrage.

Judgment accordingly.

138 Ohio St.3d 320
Supreme Court of Ohio.
DISCIPLINARY COUNSEL
v.
GONZALEZ.
No. 2013–0222. | Submitted June 5, 2013. | Decided March 11, 2014.

Synopsis

Background: Disciplinary proceedings were brought against attorney. The Board of Commissioners on Grievances and Discipline recommended indefinite suspension.

Holdings: The Supreme Court held that:

[1] attorney violated rules, and

[2] two-year suspension was warranted.

Suspension ordered.

Count one—notice of lack of liability insurance

[1] { ¶ 4} Gonzalez is a solo practitioner concentrating in the areas of domestic relations, criminal defense, civil litigation, real estate, and personal injury. He has not maintained professional liability insurance since February 2007. Under Prof.Cond.R. 1.4(c), if a lawyer does not maintain professional liability insurance over certain amounts, the lawyer must notify ****1152** clients of this fact on a "separate form * * * signed by the client." The prescribed "separate form" is set forth at the end of Prof.Cond.R. 1.4. At the panel hearing, Gonzalez testified that he notified clients in his fee contract that he did not carry malpractice insurance, but at oral argument, he acknowledged that he does not always use a fee or retainer contract. Because Gonzalez did not use the prescribed separate notice form, the board found, and we agree, that Gonzalez violated Prof.Cond.R. 1.4(c).

Count two—commingling personal and client funds

[2] { ¶ 5} In 2009, a jury awarded damages to Gonzalez's wife in a personal-injury case filed by her and Gonzalez. In July 2009, Gonzalez deposited his wife's award of $122,169.86 into his client trust account, and by the end of August 2009, Gonzalez had disbursed $38,065 to pay their attorney's fees and $50,500 to himself, his wife, and to cash. Gonzalez, however, kept the remaining amount of his wife's personal injury award, $33,604.86, in his client trust account, and over the next five months, he issued 25 checks drawn on his trust account to various individuals and entities for personal items and services. For example, in September 2009, he issued trust-account checks for car repairs and to purchase kitchen cabinets; in November 2009, he issued a trust-account check for chimney work; and in January 2010, he issued a trust-account check for tile work. During that same time period, Gonzalez held another client's funds in his trust account. As a result, the board found that Gonzalez violated Prof.Cond.R. 1.15(a) (requiring a lawyer to hold property of clients in an interest-bearing client trust account, separate from the lawyer's own property).

* * *

Gonzalez's objections

{ ¶ 6} Gonzalez appears to object to the board's findings here, stating in his brief that the trust-account disbursements from his wife's settlement were requested by her, that he "did not hold money for clients," and that his trust ***322** account was "primarily used for insurance settlements." Whether Gonzalez's wife authorized the trust-account disbursements, however, is irrelevant to the alleged violation of Prof.Cond.R. 1.15(a). The problem was that Gonzalez held his wife's personal funds in his trust account for five months, during which time period he had also deposited client funds. Prof.Cond.R. 1.15(a) expressly requires a lawyer to hold property of clients "separate from the lawyer's own property" in an interest-bearing account.

* * *

Count three—Fernando Perez matter

[3] { ¶ 7} On October 21, 2010, Gonzalez deposited a $20,000 settlement check into his trust account on behalf of Fernando Perez, whom Gonzalez represented in a ****1153** personal-injury case. Over the next two weeks, Gonzalez disbursed $6,000 to himself for his attorney fees in the Perez matter, $5,000 to a doctor related to Perez's case, and $7,697.73 to Perez. Gonzalez, however, failed to produce any records accounting for the remaining $1,302.27 from Perez's settlement. And within five months of depositing Perez's settlement funds into his trust account, Gonzalez overdrew the account by issuing trust-account checks unrelated to Perez's case. Specifically, in January 2011, Gonzalez issued a check to the clerk of a court of appeals, although he could not establish the owner of the funds for that check, and he also issued a $1,000 check to himself. And in March 2011, he issued two checks on behalf of a client who had no money in the account.

* * *

{ ¶ 8} Relator charged Gonzalez with misappropriating $1,302.27 from Perez. Gonzalez disputed the allegation, claiming that he used the remaining $1,302.27 from the settlement for expenses and fees relating to Perez's case. Although Gonzalez could not produce any receipts accounting for these alleged case-related expenditures, he testified that Perez's settlement statement indicated how all of Perez's settlement proceeds were disbursed. Gonzalez, however, refused to produce a copy of the settlement statement to relator, insisting that it was protected by the attorney-client privilege and that relator had the burden to first obtain a release from Perez. Gonzalez also refused to ask Perez for a release himself, claiming that Perez had no complaints about him, and therefore Gonzalez did not want to unnecessarily involve Perez in the disciplinary matter.

{ ¶ 9} Based on this record, the board determined that Gonzalez had violated Prof.Cond.R. 1.15(a)(2) (requiring a lawyer to maintain a record for each client on ***323** whose behalf funds are held).

* * *

Count four—trust-account recordkeeping violations

[7] { ¶ 19} Since February 2007, Gonzalez has not maintained client ledgers for funds deposited in his trust account, nor has he performed monthly reconciliations of his trust account or retained client records required for reconciliations. Based on these recordkeeping improprieties, the board found that Gonzalez had violated Prof.Cond.R. 1.15(a)(2) and 1.15(a)(5) (requiring a lawyer to perform and retain a monthly reconciliation of transactions involving the lawyer's client trust account). We concur with the board's findings.

Count five—Ramon Colon matter

[8] { ¶ 20} In March 2011, Ramon Colon, a client of Gonzalez, gave him $400 to retain an expert. Gonzalez, however, placed Colon's money in a client file, rather than his trust account, and Gonzalez then paid the expert with a trust-account check. Gonzalez also admitted that he did not maintain client ledgers for Colon's funds. Based on this conduct, the board found, and we agree, that Gonzalez violated Prof.Cond.R. 1.15(a)(2) and 1.15(c) (requiring a lawyer to deposit into a client trust account legal fees and expenses that have been paid in advance).

Count six—Maria Samame matter

[9] { ¶ 21} In 2009, Maria Samame, a Venezuelan native, hired Gonzalez to represent her in a divorce case. According to Gonzalez, Samame discharged him in July 2010 for financial reasons, but the trial judge would not release him as counsel. Trial commenced in January 2011, and Gonzalez claimed that Samame had discharged him again on the morning of the fourth day of trial. According to the trial transcript, Gonzalez stated the following to the magistrate:

> I am formally requesting that I be allowed to withdraw since I've been discharged twice in this case, and it was only at the behest of Judge Karner that I remain, because I was trying to help Miss Samame with understanding the process here.
>
> And at this point, in as much as, again, it's been very clear to me that this court is not going to award any attorney fees to Miss Samame, then I wish to withdraw. I'm not going to work for free.

{ ¶ 22} The magistrate denied Gonzalez's request to withdraw and ordered him to continue his representation of Samame. Samame indicated that she could not afford to pay Gonzalez, but the magistrate explained to her that he had not yet ***326** made any decision on attorney fees and that because she had no legal background, he would not allow her attorney to withdraw in the middle of trial.[1]

{ ¶ 23} At that point, Gonzalez was in the middle of cross-examining plaintiff, Samame's ****1156** husband, but after the magistrate denied his withdrawal request, Gonzalez stated that he had no further questions. He then withdrew two previously marked exhibits. The magistrate asked Gonzalez whether he understood the position in which his actions were placing his client, but Gonzalez insisted again—despite the fact that the magistrate had already denied his request to withdraw—that he had been discharged by his client.

{ ¶ 24} Plaintiff's counsel then testified regarding his attorney fees, and Gonzalez again offered no questions on cross-examination. After plaintiff rested his case, Gonzalez informed the magistrate that Samame wanted to testify in narrative form, but the magistrate ordered him to ask his client questions under direct examination. The magistrate also pleaded with Gonzalez to represent his client, explaining that the court had to make findings of fact for spousal support and division of property and without evidence for her case, Samame would be in a "dangerous position" and "really vulnerable." The magistrate further questioned whether Samame genuinely appreciated the danger that could result if she did not offer any evidence into the record. Despite the magistrate's pleading, Gonzalez's direct examination consisted of one question—"what do you wish to tell the court?"—and after a brief narrative response by Samame, Gonzalez did not offer any substantive follow-up questions. Nor did he call any other witnesses to support Samame's case-in-chief. In addition, the magistrate had to order Gonzalez to make a closing argument, which lasted only 30 seconds.

{ ¶ 25} Despite Gonzalez's fears regarding not getting paid, the magistrate ultimately awarded attorney fees to Samame. Specifically, in his April 2011 entry granting the parties' divorce, the magistrate ordered plaintiff to pay Gonzalez $1,754.05 in attorney fees.

{ ¶ 26} At the panel hearing, relator called the magistrate and plaintiff's counsel to testify about Gonzalez's conduct during the fourth day of Samame's divorce trial. The magistrate described Gonzalez's effort as "[h]alf-hearted at best," and he testified that Gonzalez placed his client in an "untenable position" and that he "wasn't doing his job." For his part, Gonzalez testified that Samame discharged him because she could not afford to pay him and that he was only following her instructions not to cross-examine any witnesses or otherwise participate in the trial.

***327** { ¶ 27} The board determined that relator's witnesses corroborated relator's contention that Gonzalez "had failed to take the necessary measures to protect Samame's interests." Further, the board concluded that Gonzalez's conduct was "motivated by financial considerations and not by the wishes or needs of Samame," as evidenced by his statement to the magistrate that he would not "work for free." Accordingly, the board found that Gonzalez had violated Prof.Cond.R. 1.3 (requiring a lawyer to act with reasonable diligence in representing a client), 1.16(c) (prohibiting a lawyer from withdrawing from representation in a proceeding without leave of court if the rules of the tribunal so require),[2] 8.4(d) (prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice), and 8.4(h).

1157 ***Gonzalez's objections*

{ ¶ 28} Gonzalez claims that relator has not proven any rule violations regarding his representation of Samame. Specifically, he reiterates his position that Samame instructed him not to continue with the divorce case, and he further points to the testimony of plaintiff's counsel, who stated that Samame ultimately received everything from the divorce to which she was entitled.

{ ¶ 29} We overrule Gonzalez's objections with respect to the board's findings that he violated Prof.Cond.R. 1.3, 1.16(c), 8.4(d), and 8.4(h). The fact that Samame ultimately received a fair judgment in the divorce proceeding—to the extent that is true—does not absolve Gonzalez's professional misconduct. After the magistrate denied Gonzalez's request to withdraw and ordered that he proceed with his representation of Samame, Gonzalez nonetheless continued to insist that he had been discharged and displayed little, if any, effort to protect his client's best interests. He affirmatively withdrew exhibits that he had previously marked, and the magistrate had to order him to conduct a direct examination of his client and a closing argument.

* * *

[W]e hold that the appropriate sanction in this case is a two-year suspension with the second year stayed on the condition that Gonzalez commit no further misconduct during the term of his suspension. If Gonzalez fails to comply with the condition of the stay, the stay will be lifted and he will serve the full two-year suspension. In addition, reinstatement is contingent on the condition that Gonzalez make restitution to Perez in the amount of $1,302.27. Costs are taxed to Gonzalez.

Judgment accordingly.

NOTE:

Loc.R. 7 of the Court of Common Pleas of Cuyahoga County, Domestic Relations Division, provides that an attorney of record may not be relieved of his or her responsibilities unless the court permits the attorney's withdrawal. The local rule further states that the trial court may deny an attorney's request to withdraw if a trial date has been scheduled.

5 F.Supp.3d 922
United States District Court,
S.D. Ohio,
Eastern Division.
WAITE, SCHNEIDER, BAYLESS & CHESLEY CO., L.P.A., Plaintiff
v.
Allen L. DAVIS, Defendant.
Case No. 1:11CV851. | Filed March 5, 2014.

Synopsis

Background: Law firm brought action against its former client, seeking to recover unpaid legal fees. Client counter-claimed for breach of contract, breach of fiduciary duty, and legal malpractice. Firm moved to dismiss breach of contract and breach of fiduciary duty counter-claims.

* * *

The Waite Firm argues that, under Ohio law, an attorney involved in a controversy with a client may reveal any confidences necessary which are pertinent to the dispute. The Waite Firm contends that it asserted a quantum meruit claim and thus evidence of achieved success, which is indicated by the disclosures, is necessary to prove its claim.

[10] I find the disclosures do not constitute a breach of fiduciary duty. As the Waite Firm contends, it is able to disclose *any* confidences, not just those protected under the attorney-client privilege, in establishing its defense or asserting its rights. *E.g., Squire, Sanders & Dempsey, LLP v. Givaudan Flavors Corp.*, 127 Ohio St.3d 161, 169, 937 N.E.2d 533 (2010) ("[W]hen an attorney becomes involved in a legal controversy with a client or former client, the attorney may reveal *any confidences necessary* to defend himself or herself or to vindicate his or her rights with regard to the disputed issues.") (emphasis supplied) (citations omitted).

The Ohio Rules of Professional Conduct also supports this proposition:

> A lawyer may reveal information relating to the representation of a client, including information protected by the attorney-client privilege under applicable law, to the extent the lawyer reasonably believes necessary ... to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client ...

Prof. Cond. R. 1.6(b)(5).

This Rule, titled "Confidentiality of Information," includes attorney-client confidences as a *subset* of information that can be revealed. Thus, the lawyer may reveal other confidences, when pertinent to the controversy between the lawyer and client.

Here, the Waite Firm asserted a claim for breach of fee agreement and, in the alternative, quantum meruit. To make its case, the Waite Firm disclosed the two confidences to establish that Davis breached the February 21 Fee Agreement by failing to disclose the terms of settlement with CNG and that it provided services to Davis by attempting to sell his stock to CNG. Thus, the confidences disclosed are directly related to the Waite Firm's claims and were appropriately made.

* * *

2014 WL 260514

CHECK OHIO SUPREME COURT RULES FOR REPORTING OF OPINIONS AND WEIGHT OF LEGAL AUTHORITY.

Court of Appeals of Ohio,
Fifth District, Fairfield County.
Janet GUAY, Plaintiff–Appellee

v.
LLOYD WARD, P.C., et al., Defendant–Appellant.
No. 13 CA 42. | Jan. 17, 2014.
Civil Appeal from the Court of Common Pleas, Case No.2012CV637.

OPINION

WISE, J.

***1** { ¶ 1} Defendants–Appellants Lloyd Ward, P.C., et al. appeal the judgment of the Court of Common Pleas of Fairfield County, Ohio, denying its motions to enforce arbitration and to transfer venue.

{ ¶ 2} Plaintiff–Appellee is Janet Guay.

STATEMENT OF THE FACTS AND CASE

{ ¶ 3} On July 1, 2010, Appellee Janet Guay contacted Appellants Lloyd Ward, P.C. dba Lloyd Ward & Associates, Lloyd Ward Group, Lloyd Ward, Individually and as Director/Officer/Owner of Lloyd Ward, P.C. after viewing their website on the internet.

{ ¶ 4} On July 13, 2010, Appellee signed an online "Client Services Agreement" ("Agreement") with Appellants, hiring them to negotiate a reduction of debt she had incurred. Over a period of several months, Appellee paid Appellants $1,456 for such services and Appellants commenced efforts to negotiate down her debt.

{ ¶ 5} The Agreement signed by Appellee contained a conflict of law and forum selection clause:

{ ¶ 6} "10. Governing Law: Severability: This Agreement is governed by the laws of the State of Texas, without regard to the conflict of law rules of that state. Further, venue and jurisdiction for any dispute or conflict arising from or in any way related to this Agreement shall be exclusively in Dallas, Dallas County, Texas."

{ ¶ 7} This Agreement also contains an arbitration clause:

{ ¶ 8} "11. Arbitration of Dispute: In the event of a dispute regarding LWG's (The Lloyd Ward Group, a Professional Corporation) representation of Client's claims and defenses, or monies owed by client to LWG, Client hereby agrees to notify LWG in writing of any such complaint so that LWG can attempt to reasonably address and, if appropriate, remedy the complaint to Client's complete satisfaction. LWG representatives will be happy to discuss policies and procedures set forth herein with you at any time. If you have any questions, please inquire of us openly and frankly. We encourage you to discuss with the principal attorney or assistant providing legal services to you any problems you may have with our attorneys, accounting department, paralegal personnel, secretarial staff or other matters that may arise in connection with our representation. If, after giving LWG thirty (30) days notice of any complaint, you remain unsatisfied with LWG's response to your complaint, you hereby agree to mediate and/or arbitrate any complaint against the firm prior to the initiation of any public or private complaints or claims of any kind against LWG or any of its attorneys. You agree to submit any dispute over the amount of fees charged to you to the Fee Dispute Committee of the Collin County Bar Association, State Bar of Texas. Client understands that this agreement is performable in Collin County, Texas and hereby consents to venue and jurisdiction in Collin County, Texas under Texas state law for any dispute arising hereunder. The parties will submit all disputes arising under or related to this agreement to binding arbitration according to the then prevailing rules and procedures of the American Arbitration Association. Texas law will govern the rights and obligations of the parties with respect to the matters in controversy. The arbitrator will allocate all costs and fees attributable to the arbitration between the parties. The arbitrator's award will be final and binding and judgment may be entered in any court of competent jurisdiction.

***2** { ¶ 9} Appellee eventually terminated the services of Appellants and filed the lawsuit which is the subject of this appeal in the Fairfield County Common Pleas Court on June 11, 2012, alleging claims for:

- Violations of the Ohio Debt Adjustment Companies Act
- Violations of the Ohio Consumer Sales Practices Act
- Fraud and Fraud in the inducement

* * *

II.

{ ¶ 43} In their Second Assignment of Error, Appellants argue that the trial court erred in denying its motion to compel arbitration. We disagree.

{ ¶ 44} Upon review, this Court finds that the relationship between Appellants and Appellee was that of Attorney–Client. We therefore find that the Ohio Rules of Professional Conduct apply. Specifically, Rule 1.8 provides:

{ ¶ 45} "(h) A lawyer shall not do any of the following:

{ ¶ 46} "(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice or requiring arbitration of a claim against the lawyer unless the client is independently represented in making the agreement."

{ ¶ 47} On the issue of whether an attorney's retainer agreement may contain an agreement to arbitrate attorney-client disputes, the Eighth District Court of Appeals in *Thornton v. Haggins*, 8th Dist., Cuyahoga App. 830555, 2003–Ohio–7078, found that the Ohio Supreme Court Board of Commissioners on Grievances and Discipline Opinion 96–9 "advise[d] that an engagement letter between an attorney and client should not contain language requiring a client to prospectively agree to arbitrate legal malpractice disputes."

{ ¶ 48} The Eighth District found that although the Board did not conclude that such provisions constitute a

per se attempt to limit attorney liability in violation of DR 6–102(A), it admonished that such agreements run contrary to the fundamental duty to represent the client zealously. The Board indicated that before entering into such prospective agreements most clients would benefit from the advice of separate counsel and that it reflects poorly on the profession for clients to have to "hire a lawyer to hire a lawyer."

{ ¶ 49} The Eighth District went on to find that "[w]hile no Ohio case has addressed the issue of whether a provision requiring a client to arbitrate legal malpractice claims is valid and enforceable, other jurisdictions have reached divergent conclusions. *See McGuire, Cornwell & Blakely v. Grider* (1991 D.C. Col.), 765 F.Supp. 1048 (the court ordered the matter submitted to arbitration over the client's objection that the agreement was void in light of a rule of professional conduct prohibiting an attorney from prospectively limiting his or her liability for malpractice); *Derfner & Mahler, LLP v. Rhoades* (1999), 683 N.Y.S .2d 509, 257 A.D.2d 431 (on its face, arbitration provision in retainer did not violate rules of ethics); cf. *Lawrence v. Walzer & Gabrielson* (1989), 207 Cal.App.3d 1501, 256 Cal.Rptr. 6 (1989) (arbitration agreement did not apply to client's claims of malpractice and breach of fiduciary duty); *In re Godt,* 28 S.W.3d 732 (Tex.App.Corpus Christi 2000) (arbitration provision was not enforceable because the client did not act on the advice of independent counsel, nor did independent counsel sign the agreement) ."

***5** { ¶ 50} The Eighth District Court then went on to hold that "[w]e are persuaded by the cases finding such agreements unenforceable with regard to the malpractice disputes, and we find the reasoning set forth in Opinion 96–9 compelling. We agree that the best interests of the client require consultation with an independent attorney in order to determine whether to prospectively agree to arbitrate attorney-client disputes. Such agreements are therefore not knowingly and voluntarily made absent such independent consultation. We therefore conclude that, to the extent that the trial court relied upon Opinion 96–9 in denying defendant's request for a stay for arbitration, it acted well within its discretion."

* * *

{ ¶ 53} For the foregoing reasons, the judgment of the Court of Common Pleas of Fairfield County, Ohio, is affirmed.

* * *

138 Ohio St.3d 307
Supreme Court of Ohio.
DISCIPLINARY COUNSEL
v.
TROLLER.
No. 2013–0572. | Submitted June 5, 2013. | Decided Jan. 14, 2014.

Synopsis

Background: Attorney disciplinary proceedings were commenced. Parties entered into joint stipulations of fact, misconduct, and recommended sanction. A probable cause panel of the Board of Commissioners on Grievances and Discipline certified complaint to full board, which adopted findings of fact, conclusions of law, and panel's recommended sanction.

[Holding:] The Supreme Court held that two-year suspension, with six months stayed on conditions, was appropriate sanction for attorney's continuation of law practice after his license was suspended.

Suspension ordered.

* * *

[1] { ¶ 4} Troller was hired by the Clopay Corporation as senior corporate counsel in 1999 and had no other clients during his employment. From April 2002 to April 2012, he served as the chief legal officer and secretary of the company and used the title "chief legal officer" on his stationery and business cards. A January 16, 2012 document signed by Clopay's board of directors designates Troller as vice president and secretary—deleting the board's earlier reference to him as chief legal **1140 counsel—but Troller testified that he held the title of chief legal officer until April 2012.

{ ¶ 5} Troller failed to register as an attorney for the 2005–2007 biennium. Consequently, we suspended his license to practice law on December 2, 2005. *See Troller I*. The order of suspension prohibited him from giving legal advice or counsel, preparing legal instruments for others, or in any manner performing legal services for others. *Id.;* Gov.Bar R. VI(6)(C). On May 16, 2006, we imposed a second suspension for his failure to comply with CLE requirements for the 2003–2004 reporting period and his failure to comply with a previously ordered monetary sanction for his noncompliance in the 2001–2002 reporting ***309** period. *See Troller II*; Gov.Bar R. X(5)(A)(4) and (6)(B). To date, Troller has not been reinstated to the practice of law.

{ ¶ 6} Although Troller never signed pleadings or appeared in court proceedings on behalf of Clopay, the parties have stipulated that after he was suspended, he held himself out as being authorized to practice law and actually engaged in the practice of law in at least three respects: (1) working with outside counsel on pending litigation matters, (2) negotiating and drafting contracts on behalf of the company, and (3) advising human-resources personnel regarding the termination of employees. During his cross-examination at the panel hearing, Troller was hesitant to admit that his work constituted the practice of law, but on further questioning, he admitted that he had been practicing law.

* * *

{ ¶ 9} The panel and board found that Troller had continued to practice law following the suspension of his license and that this conduct violated DR 1–102(A)(6) and Prof.Cond.R. 8.4(h) (prohibiting a lawyer from engaging in conduct that adversely reflects on the lawyer's fitness to practice law), DR 3–101(B) and

Prof.Cond.R. 5.5(a) (prohibiting a lawyer from practicing law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction), and Gov.Bar R. VI(5)(C) (prohibiting an attorney who has been suspended from the practice of law for a registration violation from practicing law or holding himself out as authorized to practice law in Ohio). We adopt these findings of fact and misconduct.

* * *

{ ¶ 17} Accordingly, David Edward Troller is suspended from the practice of law in Ohio for two years, with six months stayed on the conditions that he (1) extend his OLAP contract for two and a half years beyond the date of this court's final order in this matter and remain in compliance with its terms, (2) within 30 days of the date of this order, pay the applicable attorney-registration fees for the 2005–2007 biennium and the three subsequent bienniums during which he practiced law without a license, and (3) engage in no further misconduct. On applying ***312** for reinstatement to the practice of law, he must, in addition to demonstrating that he has satisfied the general requirements of Gov.Bar R. V(10)(A), submit a letter from OLAP or a qualified mental-health professional approved by OLAP stating that he is capable of returning to the competent, ethical, and professional practice of law. Costs are taxed to Troller.

Judgment accordingly.

138 Ohio St.3d 129
Supreme Court of Ohio.
DISCIPLINARY COUNSEL
v.
ANTHONY.
No. 2013–0226. | Submitted April 10, 2013. | Decided Dec. 24, 2013.

Synopsis

Background: Attorney disciplinary action was brought. The Board of Commissioners on Grievances and Discipline recommended that attorney be indefinitely suspended and that reinstatement be conditioned on the successful completion of a treatment plan for attorney's gambling addiction and the establishment of a plan to pay restitution.

Holdings: The Supreme Court held that:

[1] indefinite suspension, requiring attorney to make restitution of $127,649.15, and conditioning reinstatement on payment of the loss were appropriate sanctions for attorney who embezzled church funds, and

[2] attorney's suspension for failure to comply with attorney-registration requirements is prior discipline and therefore is an aggravating factor.

Judgment accordingly.

Lanzinger, J., dissented and filed opinion in which O'Connor, C.J., and French, J., joined.

* * *

****1007 SYLLABUS OF THE COURT**

An attorney's suspension for failure to comply with attorney-registration requirements is prior discipline and therefore is ****1008** an aggravating factor pursuant to BCGD Proc.Reg. 10(B)(1)(a).

* * *

Misconduct

[1] { ¶ 4} In 2004, Anthony voluntarily ceased the active practice of law and focused on his employment as the business manager at St. Francis de Sales Catholic Church. Over a period of almost four years, Anthony embezzled church funds to pay for personal expenses and to maintain a gambling addiction. Specifically, Anthony wrote at least 60 checks to himself or to cash from parish funds, withdrew cash from various church accounts, and improperly used the parish credit card more than 60 times. In February 2007, Anthony pled guilty to grand theft, and the Warren County Court of Common Pleas sentenced him to a 12–month prison term and ordered him to pay restitution to St. Francis. After Anthony had served four months in prison, the court modified his sentence to five years of community control.

* * *

{ ¶ 6} We agree with the board's conclusion that Anthony violated DR 1–102(A)(3) (prohibiting a lawyer from engaging in illegal conduct involving moral turpitude), 1–102(A)(4) (prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and 1–102(A)(6) (prohibiting a lawyer from engaging in conduct that adversely reflects on the lawyer's fitness to practice law).[1]

Anthony's criminal restitution order

{ ¶ 7} At the time of Anthony's thefts, the Archdiocese of Cincinnati maintained an employee-dishonesty insurance policy with Lloyd's of London. The terms of that policy specified that the archdiocese was responsible for the first $100,000 of any employee-dishonesty claim, and the insurer was obligated for losses over that amount. The archdiocese created a self-insured retention ("SIR") fund and required its parishes and other entities to pay a predetermined amount to cover any claimed losses under the policy. In 2007, the SIR fund of the archdiocese issued payment of $100,000 to St. Francis, and in 2008, Lloyd's of London issued its check for $27,149.15 to St. Francis, representing the remainder of the claimed loss less a $500 deductible.

{ ¶ 8} In 2011, upon learning that St. Francis had been made whole, Anthony moved the trial court to modify its restitution order, arguing that Ohio law prohibited restitution to a victim in an amount in excess of the victim's actual economic loss. The trial court agreed and terminated Anthony's community-control ***132** supervision. Up to that time, Anthony had paid $13,425 in restitution—$10,000 to St. Francis and $3,425 to Lloyd's of London. Since then, Anthony has not paid any restitution.

* * *

{ ¶ 19} Accordingly, Mark Allen Anthony is hereby

indefinitely suspended from the practice of law in Ohio. To petition for reinstatement, Anthony must show (1) successful completion of an OLAP-approved treatment plan for gambling addiction and (2) the payment of restitution in the amount of $127,649.15. Costs are taxed to Anthony.

Judgment accordingly.

137 Ohio St.3d 572
Supreme Court of Ohio.
TOLEDO BAR ASSOCIATION
v.
HETZER.
No. 2013–0567. | Submitted June 5, 2013. | Decided Dec. 19, 2013.

Synopsis
Background: Disciplinary proceedings were brought against attorney. The Board of Commissioners on Grievances and Discipline recommended public reprimand.
Holdings: The Supreme Court held that:

[1] attorney violated rules, and

[2] public reprimand was warranted.

Public reprimand ordered.

* * *

***573 Misconduct**

[1] { ¶ 4} Mark McKarus retained Hetzer on July 13, 2009, to represent him in a domestic-relations matter. At that time, McKarus gave Hetzer a $10,000 retainer. McKarus gave Hetzer an additional cash payment of $5,000 in September 2009, though Hetzer had not requested it. Hetzer admitted that he never deposited the $5,000 payment in his client trust account and that his receipt of those funds is not reflected on the escrow summary sheet where he kept records of the funds received ****249** from and expended on behalf of McKarus. He testified, however, that McKarus "got full and complete credit for that [$]5,000 in subsequent bills." Hetzer also stipulated that he did not perform a monthly reconciliation of his client trust account.

{ ¶ 5} On October 26, 2009, McKarus gave Hetzer a $64,762.12 check representing the proceeds from the sale of a marital asset—a boat. Hetzer did not deposit that check until January 27, 2010—one day after McKarus gave him a $5,400 check representing the proceeds from the sale of a Jeep, which was also a marital asset. Hetzer testified that there was no reason for the delayed deposit other than "general procrastination" and his belief that his relationship with McKarus might soon end.

{ ¶ 6} McKarus terminated Hetzer's representation on February 9, 2010. That day, Hetzer wrote a $4,277.50 check to himself for the balance of his fees, deducting that amount from the $70,162.12 in marital funds that he held on behalf of McKarus and his spouse. In addition to admitting that he had deducted his fees from the marital assets he held in trust, Hetzer admitted that he also had issued a check for the remaining balance—$65,884.62—directly to McKarus. Hetzer testified that when he advised McKarus that the funds needed to be turned over to his new counsel, McKarus insisted that Hetzer write the check out to him and that he would deliver it to his new attorney. Stipulated exhibits submitted by the parties following the panel hearing show that the full $70,162.12 was ultimately deposited into the trust account of McKarus's new counsel and that McKarus's spouse suffered no financial harm as a result of Hetzer's conduct.

* * *

{ ¶ 9} The parties stipulated and the board found that Hetzer's conduct violated Prof.Cond.R. 1.15(a) (requiring a lawyer to maintain a record for each bank account, maintain the current balance for each client, and perform a monthly reconciliation), 1.15(e) (requiring a lawyer in possession of funds in which two or more persons claim an interest to hold those funds in his client trust account until the dispute is resolved), and 1.3 (requiring a lawyer to act with reasonable diligence in representing a client).

* * *

{ ¶ 16} Accordingly, Nicholas Wayne Hetzer is publicly reprimanded for violating Prof.Cond.R. 1.3, 1.15(a), 1.15(a)(2)(ii), 1.15(a)(5), and 1.15(e). Costs are taxed to Hetzer.

Judgment accordingly.