BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO

08-0352

In Re:	:	
Complaint against	:	**Case No. 06-034**
Honorable Jeffrey Jay Hoskins **Attorney Reg. No. 0017133**	:	**Findings of Fact,** **Conclusions of Law and**
Respondent	:	**Recommendation of the** **Board of Commissioners on**
Disciplinary Counsel	:	**Grievances and Discipline of** **the Supreme Court of Ohio**
Relator	:	
	:	

This matter came on for hearing on October 29, 30, 31 and November 1 and 2 of 2007 before Walter Reynolds, Esq., Panel Chair, and Judge Otho Eyster of Knox County and Judge Joseph Vukovich of the Seventh Appellate District. None of the Board Panel Members resides in the judicial district from which the Complaint originated or served on the Probable Cause Panel that reviewed the Complaint. The Relator has filed a nine count second amended complaint against the Respondent. For clarity, this Recommendation discusses the findings of fact and conclusions of law as to each separately alleged Count.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW AS TO COUNT I.

1. Prior to the hearing, the Relator and the Respondent entered into stipulations (the "Stipulations") attached hereto as Exhibit 1. The Stipulations, testimony, and the admitted

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Exhibits are relied upon to support the facts and conclusions. Count I of the Complaint relates to the Respondent commenting in public on a pending criminal matter.

2. Respondent Jeffrey J. Hoskins was admitted to the practice of law in the State of Ohio on January 7, 1975. Respondent is subject to the Code of Professional Responsibility, the Code of Judicial Conduct, the Rules for the Government of the Judiciary and the Rules for the Government of the Bar of Ohio.

3. Respondent was elected to the Highland County Court of Common Pleas in November 2002 and took the bench in February 2003.

4. Except for a five-year period in the 1980's, Respondent engaged in the private practice of law from the date of his admission until his elevation to the bench.

5. Sometime in 2000, while he was in private practice, Respondent hired Tammy Sandlin as his secretary. Respondent hired Tammy Sandlin to work as a member of his staff once he became the Highland County Common Pleas Judge in 2003.

6. Sandlin's duties included being an office administrator, chief assignment commissioner, Respondent's part-time bailiff, and Respondent's part-time secretary.

7. In the spring of 2005, Sandlin was the subject of a criminal investigation concerning the alteration of an entry in her 1994 Highland County divorce case. The alleged alteration related to which party would be obligated to pay court costs.

8. In connection with that investigation, Sandlin took a privately-administered polygraph exam. The polygraph exam was administered to Sandlin on May 13, 2005. During the exam Sandlin was asked whether she altered the magistrate's decision in her divorce case. The polygraph examiner incorrectly referred to the magistrate's decision as August of 1999.

9. The magistrate's decision was actually filed with the Court on November 15, 1999. Sandlin was aware of the inaccurate date. The polygraph examiner found that Sandlin was not deceptive in her answers.

10. Magistrate Cindy Williams approached Respondent about the polygraph exam. Magistrate Williams pointed out to Respondent that the polygraph exam was flawed because the polygraph examiner used the wrong date in his questioning of Sandlin. Respondent agreed with Magistrate Williams that the polygraph results were meaningless because the incorrect dates were used.

11. On June 7, 2005, Sandlin was indicted by a Highland County Grand Jury for tampering with evidence and forgery (3rd and 5th degree felonies). Respondent had a meeting with his staff regarding the proper response to any questions regarding the Sandlin matter. Magistrate Williams attended this meeting. The Respondent advised his staff that if questioned they were to say that there is a pending criminal investigation and that it was impermissible to comment on the case because they could be potential witnesses.

12. Respondent issued a press release concerning Sandlin's indictment and her employment status. In the press release, Respondent stated that Sandlin had passed the polygraph exam.

13. When Respondent met with his staff to discuss the Sandlin matter, he read a copy of the press release he intended to disclose to the public. The statement that Sandlin had passed the polygraph exam was not read by Respondent to his staff.

14. Respondent testified that he issued the press release to explain and defend his decision to continue Sandlin's employment following her indictment. A true, accurate, and complete copy of that press release is attached as Stipulation Exhibit 6. The Respondent's press

release was printed in its entirety in *The Times Gazette*, a local Highland County newspaper. After reading the press release, Magistrate Williams confronted Respondent regarding the date used in the polygraph and accused Respondent of being misleading in the press release. Respondent stated to Magistrate Williams that Sandlin had the opportunity and motive to change the entry, and that she appeared to be the only person who stood to benefit from the alteration.

15. At the disciplinary hearing, Respondent admitted that he should not have stated that Sandlin passed the polygraph because that statement violated Canon 3(B)(9)'s prohibition against commenting on a matter which might reasonably be expected to affect its outcome or impair its fairness.

16. Respondent contends that his comment was inadvertent. The Panel believes that it was otherwise. From the first time Magistrate Williams made Respondent aware of the alleged alteration by Sandlin, Respondent was aware of the seriousness of the forgery and of the circumstantial evidence pointing to Sandlin as the guilty party. At the time of making the statement that Sandlin had passed the polygraph, Respondent knew that the tape recording of the divorce hearing confirmed that Sandlin was ordered to pay court costs. Also, Respondent knew that the copy of the order in Attorney William Armintrout's files (the attorney who represented Sandlin's spouse) did not have the alteration. Moreover, Respondent had stated to Magistrate Williams that Sandlin was the only person who had the opportunity, the motive and stood to gain by making the alteration. Based on what Respondent knew at the time he made the statement, and considering the credibility of Magistrate Williams (a witness who had nothing to gain by lying), the Panel does not accept Respondent's representation and testimony that the statement was inadvertent.

17. Sandlin was ultimately convicted on all counts in the indictment on September 23, 2005.

18. Regarding Count I of the Second Amended Complaint, Relator charges Respondent with the following violations:

(a) Canon 1 [A judge shall uphold the integrity and independence of the judiciary];

(b) Canon 2 [A judge shall act in a manner that promotes the public confidence in the integrity and impartiality of the judiciary];

(c) Canon 3(B)(9) [While a proceeding is pending or impending in any court, a judge shall not make any public comment that might reasonably be expected to affect its outcome or impair its fairness];

(d) Canon 4 [A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities];

(e) Canon 4 (A) [A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interest of others and shall not permit others to convey the impression that they are in a special position to influence the judge];

(f) DR 1-102(A)(4) [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation];

(g) DR 1-102(A)(5) [A lawyer shall not engage in conduct that is prejudicial to the administration of justice]; and,

(h) DR 1-102(A)(6) [A lawyer shall not engage in any other conduct that adversely reflects on the lawyer's fitness to practice law].

19. Based upon the foregoing, the Panel finds by clear and convincing evidence that Respondent violated Canon 3(B)(9) and DR 1-102(A)(5). The Panel does not find sufficient evidence to find that Respondent violated Canon 1, Canon 2, Canon 4, Canon 4(A), DR 1-102(A)(4) and DR 1-102(A)(6).

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW AS TO COUNT II.

20. Count II relates to whether Respondent should have disqualified himself from presiding over a criminal matter involving James Lykins. James Lykins is Tammy Sandlin's son. As discussed in Count I, Sandlin was an employee of the Court and worked for Respondent.

21. On January 18, 2001, while Respondent was engaged in the private practice of law, the Highland County Grand Jury indicted James Lykins for Vandalism, in violation of R.C. 2909.05 (B)(1)(a), a fourth degree felony and the matter was assigned case number 01CR008.

22. Respondent was counsel of record for Lykins and represented him throughout the proceeding, including appearing at his sentencing on April 27, 2001.

23. When Lykins was cited for a probation violation on July 5, 2001, Respondent again represented Lykins and appeared on his behalf through to the conclusion of the probation violation proceeding on December 28, 2001.

24. In 2004, while Sandlin was still working as one of Respondent's court employees, Lykins was arrested for possession of controlled substances (Oxycontin) and OVI.

25. On July 8, 2004, Lykins waived presentment to the Grand Jury. The felony possession of a controlled substance was charged by way of information; the matter was assigned to Respondent's docket on or about July 19, 2004.

26. On or about July 19, 2004, Lykins appeared before Respondent and entered a guilty plea to the bill of information charging him with violating R.C. 2925.11 (possession of controlled substance, a fifth degree felony). As part of the plea bargain, the State of Ohio agreed to withhold prosecution of a pending secret indictment charging Lykins with Aggravated Trafficking and Possession of Drugs.

27. Respondent accepted Lykins' plea in open court. Prior to accepting the plea, Respondent informed each counsel that he had previously represented Lykins and presently employed Lykins' mother, Tammy Sandlin. Respondent then asked each counsel whether they had any objection to Respondent presiding over the case. Neither counsel voiced an objection.

28. On August 5, 2004, Respondent sentenced Lykins to community control for three years and up to six months at a treatment program entitled "MonDay" program. Lykins was to be incarcerated for no less than 72 hours prior to admission into the "MonDay" program. On August 17, 2004, Lykins through his counsel filed a motion for extension of the August 5, 2004 furlough. Respondent granted Lykins' motion.

29. On or about September 17, 2004, Lykins—through counsel—filed a motion requesting a stay of his August 5, 2004 sentence until January 15, 2005. As part of this motion, Lykins' motion stated he needed medical and dental care and that he intended to attend the Family Recovery Out-Patient Program during the stay.

30. On September 17, 2004, Respondent granted Lykins' motion to stay the execution of his sentence. Respondent granted Lykins' request for occupational driving privileges on or about September 17, 2004. On or before November 8, 2004, Respondent was notified that Lykins had violated conditions of his probation by, among other violations, testing positive for controlled substances.

31. On November 8, 2004, Respondent terminated Lykins' stay of execution of sentence and ordered he begin serving his sentence forthwith. Lykins completed the "MonDay" program on February 16, 2005. On June 10, 2005, Respondent signed a document from the Adult Parole Authority stating additional violations by Lykins. Respondent issued a capias and

suspended Lykins' supervision until such time as he was brought before the Court for further action.

32. Sandlin was an employee of the Court throughout this time period.

33. Relator charged Respondent with the following violations:

(a) Canon 1 [A judge shall uphold the integrity and independence of the judiciary];

(b) Canon 2 [A judge shall act in a manner that promotes the public confidence in the integrity and impartiality of the judiciary];

(c) Canon 3(E)(1) [A judge shall disqualify himself in a proceeding in which the judge's impartiality might reasonably be questioned];

(d) Canon 4 [A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities];

(e) DR 1-102(A)(5) [A lawyer shall not engage in conduct that is prejudicial to the administration of justice]; and,

(f) DR 1-102(A)(6) [A lawyer shall not engage in any other conduct that adversely reflects on the lawyer's fitness to practice law].

34. Respondent admits that he did not follow the literal procedure set forth in Canon 3(E)(1) which requires that a judge disqualify himself from a proceeding in which the judge's impartiality might be reasonably questioned. Respondent contends that he did not first disqualify himself and then wait for counsel to request he remit his disqualification because counsel had already engaged in a discussion about his recusal off the record in his chambers. Respondent contends that he cut short the procedure set forth in the Canon but maintained the spirit and principle of the Canon. Moreover, Respondent points out that Ms. Horrell, the prosecuting attorney assigned to the case, testified that she would have been comfortable asking the Respondent to remove himself from the case if she thought the Respondent could not be fair and impartial.

35. Although Respondent admits that he did not comply with Canon 3(E)(1), he fails to appreciate that the consent given by the lawyers in a direct discussion in the Court's chambers might not be evidence that the consent was completely voluntary. A prosecuting attorney who regularly appears before the Respondent might be reluctant to object to the Respondent presiding over the case when the question is asked off the record and in the Court's chambers. Canon 3(E)(1) provides that the judge shall disqualify himself if his impartiality might reasonably be questioned. In this case, Respondent's impartiality would surely be questioned because he represented Lykins before taking the bench, employed Lykins' mother when he (Respondent) was in private practice, and supervised Lykins' mother as a court employee at all times while the case was pending before him. Respondent not only presided over the plea by Lykins, he then proceeded to resolve numerous subsequent proceedings. Respondent acknowledged that everyone in the courthouse was aware that Lykins' mother was a court employee and that his case was pending before the Respondent. Respondent admitted that the circumstances regarding the prior and continuing employment relationships were well known throughout the courthouse. Thus, based on the totality of the circumstances, the Panel is of the opinion that Respondent should have complied with Canon 3(E)(1) and disqualified himself. Thereafter and pursuant to subsection (F), the joint request of the lawyers would be required in order for the Respondent to remit his disqualification.

36. The Panel finds that Respondent's conduct violated the following:

(a) Canon 1- A judge shall uphold the integrity and independence of the judiciary;

(b) Canon 2 – A judge shall act in a manner that promotes public confidence in the integrity and impartiality of the judiciary;

(c) Canon 3(E)(1) – A judge shall disqualify himself in a proceeding in which the judge's impartiality might reasonably be questioned;

(d) Canon 4 – A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities; and,

(e) DR 1-102(A)(5) – A lawyer shall not engage in conduct that is prejudicial to the administration of justice.

37. The Panel does not find a violation of as DR 1-102(A)(6) - A lawyer shall not engage in any other conduct that adversely reflects on the lawyer's fitness to practice law.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW AS TO COUNT III.

38. Count III relates to Respondent's presiding over a foreclosure case wherein the defendants were Tammy Sandlin and Gregory Sandlin. On March 22, 2005, the plaintiff, Mortgage Electronic Registration Systems, Inc., filed a complaint for money judgment, foreclosure and relief against Gregory and Tammy Sandlin in the Highland County Court of Common Pleas. This matter was assigned to Respondent's docket. On April 18, 2005, the Sandlins filed a *pro se* answer in the case.

39. On June 9, 2005, Respondent ruled on plaintiff's unopposed motion for summary judgment. Respondent's written entry acknowledged that Tammy Sandlin was one of the defendants in the action and granted the relief sought by plaintiff. Tammy Sandlin was an employee of the Court during the course of this lawsuit.

40. Regarding the foreclosure action, Respondent testified that he failed to advise plaintiff's counsel that Tammy Sandlin was his employee. Respondent also testified that he could have disqualified himself and had a visiting judge handle the motion but since there was no opposition such seemed unnecessary. Counsel for Respondent argued that obtaining a visiting judge to merely approve a judgment granting an uncontested motion for summary judgment would have been an impractical misuse of the Court's available resources.

41. Relator contends that the conduct in Count III violates Canon 1 [A judge shall uphold the integrity and independence of the judiciary]; Canon 2 [A judge shall act in a manner that promotes the public confidence in the integrity and impartiality of the judiciary]; Canon 3(E)(1) [A judge shall disqualify himself in a proceeding in which the judge's impartiality might reasonably be questioned]; and, Canon 4 [A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities].

42. Respondent's arguments fail to acknowledge that his conduct went beyond merely ruling on an uncontested motion. First, Respondent admitted that he never disclosed to plaintiff's counsel that Tammy Sandlin was an employee of the Court. Second, Respondent for some unexplained reason did not follow the informal procedure he used in the Lykins case wherein he informed counsel of the potential conflict of interest problem in chambers. Third, Respondent did not follow the procedure contained in Canon 3(E)(1). Had this procedure been followed, plaintiff's counsel would have been advised of Tammy Sandlin's employment status. If this foreclosure were truly an uncontested dispute, then plaintiff's counsel and the *pro se* defendants could have followed the remittal procedure in Canon 3(F). In this case, the Respondent admitted that he had an *ex parte* conversation with Tammy Sandlin, and ascertained that she did not intend to dispute the foreclosure. Thereafter, he granted the plaintiff's motion for summary judgment.

43. The Panel finds that Respondent's conduct charged in Count III violated the following Canons:

a. Canon 1 – A judge shall uphold the integrity and independence of the judiciary;

b. Canon 2 – A judge shall act in a manner that promotes public confidence in the integrity and impartiality of the judiciary;

c. Canon 3(E)(1) - A judge shall disqualify himself in a proceeding in which the judge's impartiality might reasonably be questioned; and

d. Canon 4 – A judge shall avoid the appearance of impropriety in all of the judge's activities.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW AS TO COUNT IV.

44. Count IV relates to alleged misconduct involving the ownership of a building, a portion of which is leased to the Adult Parole Authority (the "APA"). As the only Highland County Common Pleas Judge, Respondent presides over criminal cases in which representatives of the APA appear as witnesses. Carroll McKinney, attorney for Respondent and his spouse, Maureen Hoskins, filed the Articles of Incorporation for an Ohio corporation entitled "Three Irish Sons" on or about April 13, 2005. At the time of the filing, Respondent was listed as the statutory agent for Three Irish Sons, Inc.

45. Also, on April 22, 2005, Three Irish Sons purchased a building located at 100 S. High St., Hillsboro, Ohio, commonly known as the Fifth Third building, for $253,200.00. At the time Three Irish Sons purchased the Fifth Third building, Respondent believed that the APA would be interested in renting part of the Fifth Third building. After the purchase, Respondent then apparently realized that renting to the APA (an agency that regularly appears before him) would cause a conflict.

46. On or about April 22, 2005, Three Irish Sons, Respondent and his wife individually borrowed approximately $253,200.00 from NCB Bank, Hillsboro, Ohio. At the time of the loan, NCB Bank had appraised the Fifth Third building at $295,000.00.

47. The note required payment on demand or if no demand then one (1) payment of $261,789.91 on October 21, 2005. The note was secured by a first mortgage on the Fifth Third building and on property owned by Respondent and his wife.

48. On August 30, 2005, Maureen Hoskins, as president of Three Irish Sons, issued herself 500 shares of stock with no par value. Thus, once the loan transaction was completed, the Fifth Third building was owned by the Three Irish Sons corporation, Maureen Hoskins owned the stock in the corporation and the borrowers on the loan were Respondent, Maureen Hoskins and the corporation.

49. On or about September 6, 2005, Respondent masterminded the transformation of Three Irish Sons and its ownership of the Fifth Third Building so as to make it appear that he had no ownership interest. Step 1 required Maureen Hoskins, as president of Three Irish Sons, to executed a "Close Corporation Agreement" wherein she named herself as the only director as well as the President, Secretary and Treasurer of the Three Irish Sons. Step 2 required Respondent to resign as statutory agent for Three Irish Sons.

50. Step 3 occurred on September 9, 2005 when Maureen Hoskins, as president of Three Irish Sons, leased to herself in her individual capacity all of the Fifth Third building, with the exception of those portions of the building the APA was interested in leasing. Those portions in which the APA was interested included the first floor (except the bank vault and elevator) and the lunch room in the basement. The term of this lease from Three Irish Sons to Maureen Hoskins was for 20 years at $1.00 per year, payable on or before September 1 of each year.

51. Step 4 also occurred on September 9, 2005. Maureen Hoskins sold all 500 shares of Three Irish Sons to Gordon Yuellig, Respondent's close personal friend and local businessman. The written agreement for the sale of Three Irish Sons' stock called for 500 shares to be sold to Yuellig for $200,000.00, the payment being made by Yuellig assuming approximately $200,000.00 of the April 22, 2005 note owed by Respondent, his spouse and the corporation to NCB Bank.

52. The stock certificate for 500 shares of Three Irish Sons issued to Yuellig states that the transfer of the shares is subject to the following restrictions:

a. The provisions of the Close Corporation Agreement;

b. The lease agreement to Maureen Hoskins;

c. A mortgage with NCB Bank, Hillsboro, Ohio;

d. A right of first refusal of Maureen Hoskins prior to transferring ownership of the stock.

53. Step 5 apparently required NCB Bank to refinance the Note executed on April 22, 2005, so that $200,000.00 of the obligation was assigned to and assumed by Yuellig and the remaining $65,000.00 was due from Respondent and his wife. Respondent testified that Schoettle, the NCB Bank President agreed to this proposal; however when Schoettle was fired from his position, the new President, Tim Priest, stated that it could not be done.

54. The APA did lease those portions of the building allegedly owned by Yuellig and which are not subject to the 20-year lease held by Respondent's spouse. The rental payments by the APA have been deposited into a bank account in the name of Three Irish Sons and Yuellig is the alleged owner of all of the stock of Three Irish Sons.

55. Three Irish Sons, Respondent, and his wife failed to make the requisite balloon payment of $261,789.91 due on October 21, 2005 pursuant to the note executed on April 22, 2005. In January 2006, Respondent met with NCB officials to resolve the outstanding overdue amount. When the closing finally occurred, Respondent, his spouse and Three Irish Sons were the only parties obligated on the note. The collateral for the note was the same collateral that was pledged prior to the alleged change in ownership of the shares in Three Irish Sons. The note was secured by a first mortgage on the Fifth Third building and on property owned by Respondent and his wife contiguous to Respondent's residence. Yuellig, the alleged 100%

owner of all of the shares of Three Irish Sons, has no personal liability on the obligation owed to NCB Bank. However, Yuellig did testify that he is obligated by his contract with Maureen Hoskins to pay his share of the note.

56. Using an income approach to determine the fair-market value of the building, the appraiser rendered an opinion that as of December 31, 2005, the building had a fair-market value of between $275,000 and $290,000.

57. Relator contends that Respondent is the true owner of the Fifth Third building and the stock transfer from Respondent's wife to Gordon Yuellig is a sham. Relator argues that R.C. 1701.24 (B) states that no certificate for shares shall be executed or delivered until such shares are fully paid. Respondent argues that R.C. 1701.18 explicitly provides that consideration for the purchase of shares may include a promissory note, or any other binding obligation to contribute cash or property or to perform services; the provision of any other benefit to the corporation; or any combination of these. Thus, Respondent's position is that Yuellig gave legal consideration when he agreed to assume approximately $200,000 of the obligation owed by Respondent, his spouse and Three Irish Sons to NCB Bank. Moreover, Respondent asserts that if there is a default, NCB Bank could foreclose on the mortgage and sell the property which is owned in the sole name of the corporation, Three Irish Sons which is allegedly owned exclusively by Yuellig.

58. Relator contends that because Respondent is the *defacto* owner of the Fifth Third building, he is in a conflict situation because he is leasing the building to the APA. Respondent argues that Count IV is baseless and the factual allegations have been the subject of a criminal trial in December 2006 wherein the jury found Respondent not guilty of having an unlawful interest in a public contract under R.C. 2921.42, a misdemeanor. Also, these same allegations have been the subject of an affidavit of disqualification, which Chief Justice Moyer rejected with

an "extensive, well reasoned opinion." A copy of Chief Justice Moyer's opinion was admitted into evidence as Exhibit 42. The Panel has reviewed Chief Justice Moyer's opinion and notes Chief Justice Moyer was not completely comfortable with Respondent's relationship with the Fifth Third building. Chief Justice Moyer concluded that "[The] Judge – by retaining an ongoing obligation to make mortgage payments on a building now occupied in part by the APA – is admittedly in a less-than-ideal situation. That obligation to make mortgage payments gives the judge an interest in seeing that the building's current owner continues to pay his share of the debt that the judge and the building's owner owe to a local bank. As soon as he can do so without serious financial detriment, Judge Hoskins would be well advised to remove himself from this and any other continuing business relationship with lawyers or persons likely to come before the court on which he serves."

59. Notwithstanding the verdict in the criminal trial, and with full knowledge of Chief Justice Moyer's opinion denying disqualification, Relator contends that Respondent's conduct violates Canon 1 [A judge shall uphold the integrity and independence of the judiciary]; Canon 2 [A judge shall act in a manner that promotes the public confidence in the integrity and impartiality of the judiciary]; Canon 3(E)(1) [A judge shall disqualify himself in a proceeding in which the judge's impartiality might reasonably be questioned]; Canon 4 [A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities] and, DR 1-102(A)(4) [A lawyer shall not engage in conduct involving dishonesty, fraud deceit or misrepresentation].

60. In order to decide this issue, the Panel must first determine who owns the Fifth Third building. The answer to this question depends on more than determining whose name appears on the stock certificate of the corporation. In reaching a resolution to this issue, the

Panel has given consideration to *Mahoning Cty. Bar Assn. v. Sinclair,* 105 Ohio St.3d 65, 2004 – Ohio 7014. In that case, the attorney, Mr. Sinclair was interested in purchasing a building from his former law partner, Henry DiBlasio. It was contemplated that after the purchase, Congressman Traficant would lease a portion of the building. Mr. Sinclair was informed that because he would be employed as a congressional staff member the ethics rules precluded him from leasing the property to a congressman. In an attempt to avoid the ethical rules, Mr. Sinclair purchased the property using a trade name registered to his wife. Mr. Sinclair argued that the trade name arrangement satisfied the congressional ethics rules. However, the Court rejected Mr. Sinclair's argument and found that the lease arrangement did not shield him from violating DR 1-102(A)(4) and (6).

61. Even though the Respondent asserts that he has no ownership interest in the property, his conduct and words confirm otherwise. We note that much of the information relied upon to conclude that Respondent continues to maintain an ownership interest in the building was not available to Chief Justice Moyer when he denied the request to disqualify. First, throughout his deposition, Respondent consistently referred to himself as the owner of the building. Second, the key to determining who really owns the building is to look at who was attempting to sell the building and who would get the equity in the building once the NCB Bank loan was paid. In other words, follow the money! As discussed in more details in Count VII, Respondent (not Mr. Yuellig) negotiated with David Bliss (a presumed buyer) for the purchase and sale of the building. Respondent's negotiations with Mr. Bliss occurred without the knowledge or consent of Yuellig, the purported owner. Third, Respondent attempted to obtain a purchase price of $890,000, even though the building at most had a fair-market value of $290,000. Finally, Respondent contemplated giving Mr. Yuellig perhaps $25,000 from the sale

proceeds as compensation for his time and effort. Respondent's comments to Bliss did not discuss compensating Mr. Yuellig based on the value of his ownership interest in the building, but merely for his time and effort. If Mr. Yuellig were the true owner of the Fifth Third building, he would be the absolute owner of the equity in the building. Thus, after paying the $265,000 note owed to NCB Bank, the balance should belong to Mr. Yuellig because he allegedly owed all of the shares in Three Irish Sons. The Panel believes Respondent's actions confirmed his secret ownership interest in the building and that Mr. Yuellig was merely a straw man.

62. The Panel finds that Respondent's conduct violated the following:

a. Canon 1 – A judge shall uphold the integrity and independence of the judiciary;

b. Canon 2 – A judge shall act in a manner that promotes public confidence in the integrity and impartiality of the judiciary;

c. Canon 3(E)(1) - A judge shall disqualify himself in a proceeding in which the judge's impartiality might reasonably be questioned;

d. Canon 4 – A judge shall avoid the appearance of impropriety in all of the judge's activities; and,

e. DR 1-102(A)(4) - A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW AS TO COUNT V.

63. Count V relates to the Harold Pavey estate. Respondent is alleged to have committed several acts that constitute misconduct. On June 1, 1999, Harold Pavey passed away. Harold was Respondent's uncle. On or about September 3, 1999, Respondent's application to be named the executor of Harold's estate was approved by the Highland County Probate Court. Respondent was also the attorney for Harold's Estate. At the time of his death, Harold owned a farm consisting of approximately 155 acres.

64. On or about March 1, 2000, Respondent filed the Ohio Estate Tax Return for Harold's estate. This return was executed pursuant to a declaration, under the penalties of perjury, that Respondent's information on the return and the accompanying schedules and statements were true, correct, and complete, to the best of his knowledge and belief. Schedule J filed with the Ohio Estate Tax Return required Respondent to list deductions, including "executor fees and attorney fees that have been or actually will be paid." Respondent listed executor fees in the amount of $15,631.87 on the Schedule J filed with the Ohio Estate Tax Return. Respondent did not list attorney fees on Schedule J.

65. On June 5, 2001, Respondent filed an "Inventory and Appraisal" in Harold's estate. The appraisal listed the total value of Harold's real estate at $441,000.00; his tangible personal property at $28,500.00 and his intangible personal property at $18,229.65. The Ohio Estate Tax Return listed the same valuations for these categories of assets.

CRP Payments

66. With respect to the CRP payment, the Relator contends that Respondent commingled payments belonging to the Elmer Pavey estate with the assets in the Harold Pavey estate. Some time in 1992, Harold entered into a contract with the U.S. Department of Agriculture's Community Credit Corporation. Under this contract, Harold agreed that he would not farm a specified number of acres and in exchange he would receive an annual payment based on a pre-determined schedule.

67. This agreement is commonly referred to as a Conservation Reserve Program (CRP) Contract. At the time he entered into the CRP contract in the early 1990's, Harold Pavey placed 218.5 acres in the program. This acreage was a combination of the tillable land located on Harold's own farm (155 acres total) and tillable land located on Elmer's farm (210

acres total), in which Harold held a life estate. Thus, there is no question that so long as Harold was alive, he was entitled to all of the CRP payments. Of the 218.5 acres in the program, approximately 48% was from Elmer's farm, in which Harold had a life estate, and the remaining 52% was from Harold's own farm.

68. Under the CRP contract, in October of each year, Harold received one annual payment of $19,665.00 for the preceding 12-month period. After Harold passed away, Respondent deposited all the CRP checks into the Harold Pavey, Jr. estate checking account when they were received in October of 1999, 2000, and 2001.

69. In 1998, Harold entered into another CRP contract for a separate five-acre tract. The five-acre tract was originally part of Elmer's farm. Beginning in 2000, Harold began receiving $440.00 annually. Once Harold passed away, the annual payments of $440.00 for 2000 and 2001 were received by Harold's estate.

70. In 2003, Respondent deposited a CRP check for $2,763.00 into the Harold Pavey, Jr. estate account. This amount was attributable to tillable land located on Elmer Pavey's farm. Respondent deposited a total of $62,638.00 of CRP checks into the Harold Pavey, Jr. estate checking account in 1999, 2000, 2001, and 2003.

71. Of that $62,638.00, Relator contends that $13,110.00 was properly part of the Harold Pavey estate, as it was earned before Harold Pavey died (representing the amount attributable to the period from October 1, 1998 through June 1, 1999 – Harold's date of death). Respondent believes the entire $19,665.00 payment attributable to the period October 1, 1998 to September 30, 1999, was properly part of the Harold Pavey estate. For purposes of the following calculations, the parties have adopted Relator's position.

72. The remaining $49,528.00 ($62,638.00 - $13,110.00) accrued after Harold Pavey passed away. The two checks for $440.00 and the last check for $2,763.00 were payments that related solely to the tillable land on Elmer's farm.

73. The remaining CRP payments of $45,885.00 ($49,528.00 - $880.00 - $2,763.00) came from the combined tillable land from Harold's farm and tillable land from Elmer's farm, in which Harold had a life estate. Approximately 48% of the remaining CRP payments ($45,885.00) belonged to the heirs of the Elmer Pavey farm, in which Harold had held a life estate. This amounted to $22,024.80. Adding the two checks for $440.00 and the last check for $2,763.00 to the $22,024.80 results in a total amount of $25,667.80 in CRP payments, which accrued after Harold's death and which were based entirely on acres originally from Elmer's farm. It is this $25,667.80 that is the subject of the claim of commingling.

74. Since Elmer's Will provided that upon Harold's death his farm was to be given to the State of Ohio or in the alternative to the Boy Scouts of America, on February 24, 2000 Respondent reopened the Elmer Pavey estate to resolve ownership of the Elmer Pavey farm. The Elmer Pavey estate was also reopened to determine whether a portion of the Harold Pavey farm would also be devised to either the State of Ohio or Boy Scouts of America, as set forth in the Harold Pavey Will.

75. When both the State of Ohio and the Boy Scouts of America declined the bequest of Elmer Pavey's farm, it was distributed pursuant to the residuary clause in Elmer's will. Under the residuary clause and codicil of Elmer's Will, there were four beneficiaries who received an undivided one-fourth interest in Elmer's farm: Elmer's great niece Debbie Conklin (nka Debbie Hicks), his great nephew Jeffery Hoskins (Respondent), his great niece Susan Price, and his great niece Diane Roberts. On December 8, 2000, a certificate of transfer to the

four heirs was approved by the Highland County Probate Court. These four individuals were the rightful recipients of the CRP payments (in the amount of $25,667.80) from the Elmer Pavey farm, which accrued after Harold Pavey's death. Even though the $25,667.80 of CRP payments were deposited into the Harold Pavey estate's checking account, these funds were not part of Harold Pavey's estate. The final account filed in the Harold Pavey, Jr., estate omitted the existence of those $25,667.80.

76. The parties have stipulated that Respondent failed to properly identify the source of all funds listed as assets in the Harold Pavey, Jr., estate. Moreover, the Ohio Estate Tax Return in the Elmer Pavey estate was not amended to reflect the fact that the land went from a charitable donation to a bequest. Also, while probating Harold's estate, a decision was made to sell a small parcel of Harold's farm to generate cash to pay estate obligations. This parcel was sold to Rodney Knisley in June 2001 for $22,000.00. Three point seven (3.7) acres of the parcel sold to Knisley was enrolled in the CRP program as of the date of the sale. Mr. Knisley's use of the land made it ineligible for participation in the CRP program.

77. Pursuant to the CRP contract, the ineligibility of Knisley's 3.7 acres required a reimbursement of all payments for that acreage paid under the contract. The USCA's position as of October 2001 was that the Harold Pavey estate was required to repay the USCA Farm Service Agency a principal amount of $2,997.00, along with a liquidated damage penalty of $83.25, interest in the amount of $618.33 and a cost share payment of approximately $50.00. Respondent was advised in writing and in person that the Harold Pavey estate was required to refund the payment received for the acreage sold to the Knisley's. Respondent was advised in writing that the total due was $3901.01, plus interest. Further, he was informed that since the debt was past due, late payment interest would accrue from the date at the rate of 5.5% per

annum. Respondent has made no payment on this estate obligation and has failed to list this estate debt in any accounting filed with the Highland County Probate Court. Moreover, Respondent failed to advise the successor counsel, Attorney Carroll McKinney, of this alleged unpaid estate obligation.

78. Respondent acknowledged that the CRP payments were deposited into Harold's estate, but claims they were made with the consent of the beneficiaries of Elmer Pavey. Respondent contends that the CRP payments were, in essence, a loan by the beneficiaries of Elmer Pavey to the Harold Pavey estate. Respondent acknowledged that the proper method would have been to distribute the monies to the beneficiaries of Elmer Pavey and then have the beneficiaries lend the money to the Harold Pavey estate. In this case, the beneficiaries are not claiming that Respondent commingled or converted the CRP payments. Further, the Panel finds the evidence is not clear and convincing to establish that the CRP payments were commingled without the beneficiaries' consent.

Harold Pavey, Jr. Estate Assets

79. This part of the claim against Respondent relates to the alleged conversion of estate assets to Respondent's personal use having a value of approximately $847.50. Under Elmer's Will, Harold received Elmer's farm machinery, grain, feed, livestock, growing crops, and tangible personal property, as well as one-third of household goods and cash.

80. In the fall of 2003, Respondent and others cleaned out a barn that he and three relatives owned as heirs of Elmer Pavey's estate. Some of the items found in the barn were moved into a building on Respondent's property. Seven of the items were stored outside that building. Those seven items included two hay wagons, a cub cadet lawn tractor, a John Deere planter, and a wheat drill. In November 2003, those seven items were sold in an auction. The

net proceeds from the sale of those items were $847.50. The auctioneer made the proceeds check for the $847.50 payable to the Estate of Harold Pavey, Jr. Respondent endorsed the back of the check "payable to the Estate of Harold Pavey, Jeffrey Hoskins" and deposited the entire amount into his personal checking account. Respondent failed to list the $847.50 as an asset of the Harold Pavey estate in the final account filed with Highland County Probate Court and he failed to advise successor counsel, attorney McKinney, of the existence of these funds.

81. It is Respondent's position that the property sold at the auction and which resulted in the $847.50 was not part of the Harold Pavey, Jr. estate. Respondent testified that he believed that Harold Pavey abandoned the property. When the equipment was sold at the auction, Respondent contends that the incorrect payee was listed on the check. On this issue, it is the Panel's position that Relator has not established by clear and convincing evidence that the assets were owned by Harold Pavey at the time of his death and thus, the evidence fails to establish that Respondent converted the $847.50.

Respondent's Handling of the Harold Pavey, Jr. Estate

82. The Harold Pavey, Jr. estate was opened on September 3, 1999, in the Highland County Probate Court. Respondent filed no accounts in the Harold Pavey, Jr. estate while he served as counsel and executor of the estate from September 1999 until July 2005.

83. Respondent has acknowledged under oath that he thought the Harold Pavey, Jr. estate could have been closed as early as June 2001. Ohio Revised Code § 2109.301(A) states, in part: "Except as otherwise provided in division (B)(2) of this section, an administrator or executor shall render a final account within thirty days after completing the administration of the estate or within any other period of time that the court may order." Ohio Revised Code

§2109.301(B)(4) requires every executor to render an account within thirteen months after appointment and after the initial account is filed to file further accounts at least once a year.

84. Respondent remained as the attorney for the estate until July 11, 2005, when Attorney McKinney filed his appearance. Thereafter, Respondent remained as executor. The records and documents Respondent gave to Attorney McKinney for the preparation of the final accounting were incomplete. Respondent provided McKinney with less than all the relevant bank records.

85. Respondent failed to provide McKinney with an itemized account of the disbursements and receipts in the estate. Bank records establish that Respondent took the following funds from the estate account:

1/11/00 check for $1,500.00 made payable to Jeffrey Hoskins labeled "Atty fees"
1/18/00 check for $500.00 payable to Merchant's Nat'l Bank with no notation
2/2/00 check for $1,000.00 payable to Merchant's Nat'l Bank with no notation
2/14/00 check for $954.83 payable to Merchant's Nat'l Bank with no notation
2/29/00 check for $2,500.00 payable to Jeffrey Hoskins with no notation
5/16/00 check for $600.00 payable to Jeffrey Hoskins labeled "partial executor fees"
10/18/00 check for $1,205.80 payable to Merchant's Bank with the following on the note line "#38020, #80531"
10/19/00 check for $500.00 payable to Jeffrey Hoskins labeled "executor fees"
12/6/00 check for $2,267.18 payable to Merchant's Nat'l Bank with the notation "mo pays"
12/20/00 debit withdrawal for $2,500.00 with no notation
7/10/01 check for $2,000.00 payable to Jeffrey Hoskins with the notation "Atty fees"
10/12/01 check for $500.00 payable to Jeffrey Hoskins with the notation "Atty fees"
10/13/01 check for $947.72 payable to Highland Auto Service with no notation
10/15/01 check for $1,500.00 payable to Jeffrey Hoskins with the notation "Atty fees"
11/7/01 check for $1,500.00 payable to Jeffrey Hoskins with the notation "Atty fees"
1/15/02 check for $3,000.00 payable to Jeff Hoskins with no notation
1/15/02 check for $1,800.00 payable to Jeff Hoskins with no notation
3/6/02 check for $1,311.66 payable to Merchant's Bank with no notation
4/3/02 debit withdrawal for $2,015.21 for loans #38020/81501.
8/13/02 check for $200.00 payable to Jeff Hoskins with no notation
1/21/04 debit withdrawal for $1,500.00 with no notation
2/12/04 debit withdrawal for $2,000.00 with no notation
3/17/04 debit withdrawal for $1,072.59 with no notation
3/17/04 debit withdrawal for $1,500.00 with no notation.

86. Respondent failed to make a notation on fourteen of these withdrawals and does not have any written record in his possession for the purpose of these withdrawals. The "no notation" withdrawals totaled $20,786.80. Respondent withdrew $14,399.46 from the estate, between 2002 and 2005.

87. Rule 71(B) of the Rules of Superintendence of the Courts of Ohio states: "Attorney fees for the administration of estates shall not be paid until the final account is prepared for filing unless otherwise approved by the court upon application and for good cause shown. Rule 72(D) of the Rules of Superintendence of the Courts of Ohio states: "Where counsel fees have been awarded for services to the estate that normally would have been performed by the executor or administrator, the executor or administrator commission, except for good cause shown, shall be reduced by the amount awarded to counsel for those services."

88. Highland County Local Rule 71.3 states that attorney fees for the administration of estates shall not be paid or advanced from any source until the final account is prepared for filing. The only exception under Highland County Local Rule 71.3 is if the Court grants an attorney's written application to the Probate Court setting forth the reason for the early payment of fees and which is accompanied by a consent to the amount and the timing of the payment by all beneficiaries who have yet to receive their complete distribution.

89. Respondent violated Highland County Local Rule 71.3 by taking attorney fees before the preparation of the final account and without making any application pursuant to Highland County Local Rule 71.3. Respondent has admitted under oath that he violated Highland County Local Rule 71.3.

90. Highland County Local Rule 71.2 requires that where the attorney is also the fiduciary, detailed records shall be maintained describing the time and services performed as

both the fiduciary and as the attorney. Respondent failed to maintain the records required in Highland County Local Rule 71.2.

91. On January 30, 2006, the Highland County Probate Court issued an Entry in the Harold Pavey, Jr. estate, Case No. 991195. This Entry ordered Respondent to submit his detailed records describing his time and service as fiduciary and his separate detailed records describing his time and service as attorney for the estate maintained pursuant to Highland County Local Rule 71.2. The Entry required Respondent to comply by February 10, 2006. In response to the Court's January 30, 2006 Entry, Respondent filed an affidavit on February 10, 2006.

92. On February 21, 2006, the Highland County Probate Court issued an Entry in the Harold Pavey, Jr. estate, ordering Respondent to file a detailed record with specific dates, time billed, and services performed, with a breakdown as legal counsel and fiduciary in the Harold Pavey, Jr. estate, as well as all worked performed in the Elmer Pavey estate. Respondent was unable to comply with the Court's February 21, 2006 Entry. The parties have stipulated that Respondent does not possess the detailed records required by Highland County Local Rule 71.2.

93. In the fall of 2005, attorney McKinney was attempting to prepare the final account in the Harold Pavey estate. Attorney McKinney advised Respondent to return $8,088.80 to the estate, voicing the opinion these funds were not proper executor fees.

94. Respondent disagreed with McKinney's analysis and, as a result, did not deposit $8,088.80 into the estate prior to the December 2005 final accounting. Respondent did sign the final account that listed five checks each for $1,607.29 made payable to the following beneficiaries: Jeff Hoskins, Susan Price, Deborah Hicks, Diane Roberts, and Ann Pavey. These amounts were not the result of specific bequests in Harold's Will. Harold's Will contains no residuary clause. Harold had three siblings: John Pavey, Ruth Pavey, and Betty Pavey. Under

R.C. 2105.06(G), each of these siblings was entitled to one-third of any residual property in the estate. Under R.C. 2105.06(G), if any of the siblings did not survive Harold, then their lineal descendents would take per stirpes.

95. Betty Pavey predeceased Harold and had one daughter: Deborah Hicks was entitled to receive her mother's one-third share of any residual property remaining in the Harold Pavey estate. John Pavey passed away during the administration of Harold's estate. He had one daughter: Ann Pavey, who was entitled to one-third of any residual property remaining in the Harold Pavey estate. Ruth Pavey predeceased Harold and had three children: Jeff Hoskins, Diane Roberts and Susan Price. Each of Ruth's children was entitled to one-ninth of any residual property remaining in the Harold Pavey estate.

96. As executor of the Harold Pavey, Jr. estate, Respondent signed and caused to be filed a final accounting on December 8, 2005. The final accounting states: "The fiduciary states that the account is correct," and also states "This is a final and distributive account, and the fiduciary asks to be discharged upon its approval and settlement." Respondent listed his attorney's fees in the final accounting at $18,588.04. Respondent listed his executor fees in the final accounting at $6,939.18.

97. The final account erroneously included under "Receipts" the value of a parcel of land twice, once in the amount for "Real property not sold" and again in the "Proceeds from sale of real property." The actual amount of total receipts for the Harold Pavey, Jr. estate is $22,000.00 less than the amount of total disbursements.

98. In addition, the final accounting failed to include the disbursement of the $8,088.80 that Respondent received from the estate. Respondent took the $8,088.88 from the estate on the following dates and in the following amounts:

4/03/02	Debit Slip	$2,016.21
1/21/04	Debit Slip	$1,500.00
2/12/04	Debit Slip	$2,000.00
03/17/04	Debit Slip	$1,072.59
3/17/04	Debit Slip	$1,500.00
		$8,088.80

99. Respondent took these amounts by using debit slips and not by using checks from the estate checking account. Several of these debit withdrawals were used to pay Respondent's personal debts, including his mortgage. On at least nine separate occasions, Respondent used the estate account to directly pay his creditors. These nine payments, which included payments for Respondent's mortgage and automobile repair debts, totaled $11,274.99. Ohio Revised Code §2109.43 prohibits fiduciaries from making personal use of the funds belonging to a trust.

100. Several years after he took these funds, Respondent labeled these payments as either attorney fees or executor fees. Respondent explained in his deposition at page 132:

> "Merchants Bank would call me on the day that a loan was due or something of that nature and say, "We need a payment." And I would say, "Well, then, take it out of my personal check or out of my attorney's checking account." If they said, "There's not enough in there," then I would authorize them to take it out of that account on the basis that that was either executor's fees or attorney's fees. And I'm assuming-and often, lots of times it would happen I would get a call from my secretary. "The bank called. They say they need a payment by noon," and I would advise her to call back and to make that debit slip."

101. Respondent took $6,072.59 of the $8,088.88 in 2004 after he was sworn in as a Highland County Common Pleas Judge. Respondent did not report any of the $6,072.59 as income on his 2004 federal or state income tax returns. While the final accounting did not list the various amounts totaling $8,088.80 as disbursements to Respondent from the estate assets, it did list the five checks of $1,607.29 to each of the five beneficiaries.

102. The five checks for $1,607.29 had not been distributed to beneficiaries at the time of the hearing because the final accounting had not been approved. At the time the final accounting was filed (12/8/05), there were insufficient funds in the estate account to pay the five checks of $1,607.29 each. After Respondent signed and filed the final accounting on December 8, 2005, Highland County Probate Judge Greer requested Respondent and his counsel to provide additional information, including the bank records for the estate account. Judge Greer also scheduled a hearing on the final accounting for January 6, 2006. One day prior to the hearing on the final accounting, Respondent paid $8,088.80 back into the estate account. On January 13, 2006, an amended final accounting was filed with the Highland County Probate Court.

103. Two differences between the final accounting and the amended final accounting are: Adding the notation of a $1,000 reimbursement to Respondent in connection with a survey deposit, and converting an expense to the estate—Highland Auto Service—into fees. The amended final accounting did not list the disbursements to Respondent of the various amounts totaling $8,088.80, nor did the amended final accounting included Respondent's reimbursement to the estate of $8,088.80.

104. Respondent has provided three affidavits and has testified three times under oath about the Harold Pavey, Jr. estate. In an entry filed January 9, 2006, the Highland County Probate Court required Respondent to provide a written explanation for amounts paid to the Merchant's National Bank from the Harold Pavey, Jr. estate account as well as a written explanation for withdrawals from the estate account totaling $18,287.50. The $18,287.50 included the $8,088.80 Respondent took by debit withdrawals in 2002 and 2004. Respondent filed an affidavit on January 13, 2006, in response to the Court's Entry. In his January 13, 2006, affidavit, Respondent stated that the amounts withdrawn from the estate included expenses of the

estate for which there was no documentation. Further, Respondent stated that he instructed successor counsel to list all expenses of the estate for which Respondent could find no documentation as either part of the executor fees or part of the attorney fees.

105. Under Respondent's instructions, memorialized in his January 13, 2006 affidavit, all amounts, including the $8,088.80 taken by debit withdrawals, were shown as either executor fees or attorney fees. In a January 20, 2006 affidavit responding to a probate court entry requesting further information, Respondent stated that he took the $8,088.80 from the estate upon the belief that the transfer of real estate constituted a sale to the various heirs. According to Respondent, he concluded he was entitled to the $8,088.80 as executor fees. Respondent further claimed that once successor counsel concluded that the transfer was not a sale, the executor fees were adjusted and the funds were repaid to the estate.

106. At no time in any of his three affidavits did Respondent advise the Court that he had placed CRP funds due the Elmer Pavey remaindermen into the Harold Pavey, Jr. estate account. At no time in any of his three affidavits did Respondent advise the Court that when he placed the Elmer Pavey remaindermen's CRP money into the Harold Pavey, Jr. estate account that those funds were a loan to the Harold Pavey, Jr. estate. At no time in any of his three affidavits did Respondent advise the Court that his withdrawal of the $8,088.80 was out of money owed to the Elmer Pavey remaindermen.

107. Respondent is charged with violating the following:

> Canon 1 – A judge shall uphold the integrity and independence of the judiciary;
>
> Canon 2 – A judge shall act in a manner that promotes the public confidence in the integrity and impartiality of the judiciary;
>
> Canon 4 – A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities;

DR 1-102(A)(4) – A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

DR 7-101(A)(3) - A lawyer shall not intentionally prejudice or damage his client during the course of the professional relationship;

DR 9-102(A) - No funds of clients shall be commingled with funds belonging to the lawyer;

DR 9-102(B)(3) – A lawyer shall maintain complete records of all funds and other property of a client coming into the possession of the lawyer and render appropriate accounts of them to his client;

DR 5-101(A)(1) - A lawyer shall not accept employment if the exercise of the professional judgment on behalf of the client reasonably may be affected by the lawyer's financial, business, property or personal interest;

DR 1-102(A)(5) - A lawyer shall not engage in conduct that is prejudicial to the administration of justice; and,

DR 1-102(A)(6) – A lawyer shall not engage in any other conduct that adversely reflects on the lawyer's fitness to practice law.

108. The Panel finds that the Relator has established by clear and convincing evidence that Respondent's conduct violated all of the above rules and Canons except the proof was not sufficient as to DR 9-102(A), forbidding commingling funds, and DR 5-101(A)(1), concerning conflicts of interest. The panel also found no violation of DR 7-101(A)(3).

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW AS TO COUNT VI – TAYLOR PAVEY ESTATE

109. Count VI relates to the Estate of Taylor Pavey who passed away on February 27, 1995. Taylor Pavey was Respondent's cousin. On April 28, 1995, in the Clark County Probate Court, Respondent filed an application to be appointed the administrator of the estate of Taylor Pavey, because there was no will. The matter was docketed under number 19950375. On April

28, 1995, Respondent was appointed administrator/fiduciary for the estate. Respondent was also the attorney for the estate.

110. On May 2, 1995, Respondent opened a bank account for the Taylor Pavey estate at the Merchants National Bank in Hillsboro, Ohio. This account was assigned the following number: 007-045-9. On May 2, 1995, Respondent deposited an initial $80,600.68 into the estate account. Starting on May 2, 1995, Respondent withdrew the following amounts from the Taylor Pavey estate:

5/2/1995	Merchant's National Bank	$	1,031.21
5/4/1995	Highland Enterprise	$	5,000.00
6/5/1995	Debit Slip To Jeff Hoskins #0033367	$	3,000.00
6/30/1995	Debit Slip To: 4267191	$	5,000.00
9/15/1995	Jeffrey Hoskins	$	2,000.00
12/29/1995	Debit Slip To 0033367 per Jeff Hoskins phone 05/14	$	2,500.00
1/3/1996	Highland Enterprise	$	6,046.71
1/17/1996	Debit	$	3,000.00
2/6/1996	Merchant's National Bank	$	2,924.72
5/14/1996	Debit Slip To 0033367 per Jeff Hoskins phone 05/14	$	2,000.00
6/5/1996	Debit Slip Pymts - 2805.65; Cking 194.35	$	3,000.00
7/17/1996	Debit Slip #36927	$	600.00
9/4/1996	Debit Slip R/E Payment 38020 37357	$	2,000.00
10/15/1996	Debit Slip Cash	$	1,000.00
		$	39,102.64

111. Respondent took $16,600.00 by using debit slips and not by using checks from the estate checking account. Respondent failed to make a notation on twelve of these withdrawals and has no written record in his possession noting the purpose of these withdrawals. The "no notation" withdrawals totaled $33,602.55. Several of these withdrawals were used to pay Respondent's personal debts, including his mortgage. On at least seven separate occasions,

Respondent used the estate account to directly pay his creditors. These seven payments totaled $20,408.28.

112. On June 16, 1997, over two years after Respondent was appointed as administrator, he attempted to file the Fiduciary's Account covering the period April 28, 1995 through June 16, 1997. The Fiduciary's Account was admitted into evidence as Exhibit 84.

113. Respondent stated on the second page of the Fiduciary's Account delivered to the Court on June 16, 1997, that $13,929.00 had been disbursed for fiduciary fees and $25,173.64 had been disbursed for attorney fees.

114. The June 16, 1997 Fiduciary's Account delivered by Respondent was not accepted for filing by the Probate Court. Rather, it appeared from review of Exhibit 84 and the testimony at the hearing that the Probate Court had serious concerns regarding the attorney's fees. In the envelope returning the rejected filing a note was directed to Respondent. The note stated:

> "Atty. Hoskins, 1/12/98
> Judge Mathis needed you to submit add'l info re: your time re: fees.
> Janice
> Clark Co. Probate Court."

115. As part of the June 16, 1997 Fiduciary's Account, Respondent submitted an "Application for Extraordinary Attorney Fees." The Application sought attorney's fees of $25,000. The Application did not contain any supporting documentation and gave the Court no information to permit it to determine the specific tasks performed, the amount of time needed to perform the specific tasks or the hourly rate charged. Respondent simply offered no time records to support his request.

116. In a note contained in the Probate Court's file, there is the statement that Respondent had informed the Clerk that he would submit additional information to support his

fee request. Moreover, the Clerk's analysis erroneously concluded that Respondent had already taken $10,171 as attorney's fees as determined from an analysis of the receipts and disbursements. Actually, Respondent at the time of the submission of the June 16, 1997 Fiduciary's Account had paid himself or paid to his creditors $25,173.64 which he claimed as payment to himself for legal services performed.

117. Although the Probate Court in January 1998 requested time information justifying the legal fees requested, Respondent, without adequate justification, ignored the Probate Court's request until August 11, 2005. Thus, almost nine years after the Court requested documentation supporting the fee request, Respondent submitted an "Application for Authority to Pay Compensation to Fiduciary's Counsel". When questioned at the hearing about the Application, Respondent stated that he most likely did not read the Application and he also doubted if he read Exhibit "A" which are recreated time summaries of alleged activities allegedly performed by Respondent and the approximate time expended to perform the activities. Some of the summaries (filed on August 11, 2005) relate to activities that occurred when the estate was opened in April 1995.

118. The parties stipulated that Respondent provided the information about his hours listed on Exhibit "A" in 2005. Also, Respondent admitted that he did not have contemporaneous time records detailing the purported work he performed between 1995 and 2003. (Stipulation 271). To attempt to justify the Application for Extraordinary Fees, Respondent supplied various files to Attorney McKinney, which were utilized to prepare the Application for extraordinary fees. On January 14, 2003, the Clark County Probate Court granted Respondent's motion to substitute Carroll McKinney as attorney for the estate.

119. Regarding Count VI, the Respondent by way of Stipulation and his inconsistent testimony has admitted to several acts of unethical conduct. Specifically, Respondents admitted that from the time the first two checks were issued from the estate's account, he used the money to pay his creditors. In Exhibit 84, Respondent revealed that he issued an estate check to Merchant's National Bank in the amount of $1,031.21 and a second check to Highland Enterprise for $5,000. There is absolute nothing in the Receipt and Disbursement schedule to alert the Probate Court that Respondent was paying his personal creditors. Also, if the Court would have actually reviewed the two checks, the Court would not have discovered Respondent's deception.

120. When questioned about the two checks issued on May 2, 1995, shortly after his April 28, 1995 appointment, Respondent attempted to characterize the disbursements as fiduciary fees which by statute can be paid without Court approval. However, upon further examination by the Panel, Respondent admitted that the two checks were in reality payments to him as attorney fees. Respondent explained that the payments from the estate's checking account to his creditors were shortcuts but contends that there was no misrepresentation, theft or deceit.

121. Contrary to Respondent's assertion that there was no misrepresentation or deceit, the Panel finds otherwise. Respondent deceived the Probate Court by failing to reveal that he was paying his creditors with estate assets. If Respondent believed that it was a proper "short-cut" to pay his creditors, such as Merchant's National Bank and Highland Enterprise, with estate assets and then set-off these payments against legal fees, he should have disclosed this payment procedure to the Court. Respondent gives too much weight to the general disclosures made in the Fiduciary's Account wherein he revealed that he had paid himself $13,929 in fiduciary's fees

and $25,173.64 in attorney's fees. These general disclosures did not give proper notice to the Court and could not cure Respondent's deception.

122. Respondent's deceit and misrepresentation did not end with his "short cut" payment scheme. The Panel finds that Respondent took excessive legal fees without proper documentation or justification. As noted above, when Respondent submitted the Fiduciary's Account on June 16, 1997, he had already paid himself $25,173.64 without Court approval. In Stipulation 275, Respondent admitted that he violated Clark County Local Rule 71 (B) which states that attorney fees shall not be paid until the final account is prepared for filing. Relator's expert witness, Michael Murman testified, that you ordinarily don't pay attorney's fees before preparing the final account or pursuant to an order approving interim fees (Transcript Vol. II-251-252).

123. In addition to violating the local rule, Respondent ignored the Court's request made in January 1998 to justify the request for extraordinary legal fees. Respondent, having already paid himself over $25,000 in fees, delayed until August 11, 2005 before attempting to justify his fees. Such a delay showed no respect for the Court and an absolute disregard of his fiduciary duties to the estate.

124. The Panel also finds that the August 11, 2005 Application for Authority to Pay Compensation to Fiduciary's Counsel was misleading, inaccurate and deceptive. The Relator called Ohio attorney Michael Murman as an expert witness to offer testimony on this subject. Regarding the Application the Panel finds:

1. It is misleading because it incorporates 45 hours of Mr. McKinney's time without proper and adequate disclosure to the Court;

2. The amount of time expended and to some degree the activities performed were based on speculation, guesses and faded memory because Respondent did not keep contemporaneous time records;

3. In the application, the statement is made that Respondent "will spend another 10 ... hours in aiding applicant to complete the administration of the estate. If Respondent spent 10 hours aiding in the completion of the estate, he violated the prohibition that a judge shall not practice law. If it was not contemplated that the Respondent would perform these additional 10 hours, then Respondent made a misrepresentation to the Probate Court;

4. The application contains numerous duplicative entries;

5. Respondent billed the estate for 27 hours for remaining at the residence overnight. Mr. Murman testified that the appropriate rate should have been based on a paralegal rate; and,

6. Respondent contends that he spent six hours to inventory a safe-deposit box in addition to the six hours to inventory the real and personal property. Mr. Murman testified that there was no written list of the contents of the safe-deposit in the Probate Court's file. Moreover, Mr. Murman testified that if the safe-deposit inventory revealed assets, Respondent should have amended the schedules. In this case, the schedules were not amended.

125. In defense of the excessive fees, Respondent argues that Judge Carey, the Probate Judge, approved the application. The Panel give little weight to this approval because Judge Carey was misled. Judge Carey testified that he relied on Respondent's standing as an officer of the Court. Thus, the Panel does not consider Judge Carey's approval binding on the issue of whether Respondent charged and was paid an excessive fee. Also, Respondent contends that Relator has not produced a single heir who expressed dissatisfaction with the way the estate was handled or the fees charged. In this case, it was far from clear that the heirs were fully informed or even appreciated the activities of the Respondent. Thus, the Panel finds that the lack of a complaint by an heir is no evidence of satisfaction by the heirs with Respondent's performance.

126. Relator contends that Respondent's conduct in Count VI violates Canon 1 [A judge shall uphold the integrity and independence of the judiciary]; Canon 2 [A judge shall act in a manner that promotes the public confidence in the integrity and impartiality of the judiciary]; Canon 4 [A judge shall avoid impropriety and the appearance of impropriety in all of the judge's

activities]; DR 1-102(A)(4) [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation]; DR 2-106(A) [A lawyer shall not charge an illegal or clearly excessive fee]; DR 9-102(B)(3) [Maintain complete record of all funds and other property of a client coming into the possession of the lawyer and render appropriate accounts of them to his client]; DR 1-102(A)(5) [A lawyer shall not engage in conduct that is prejudicial to the administration of justice] DR 1-102(A)(6) [A lawyer shall not engage in any other conduct that adversely reflects on the lawyer's fitness to practice law]; and DR 6-101(A)(3) [A lawyer shall not neglect a legal matter entrusted to him].

127. Based upon the evidence, the Panel finds by clear and convincing evidence that Respondent violated the following:

(a) Canon 1 - A judge shall uphold the integrity and independence of the judiciary;

(b) Canon 2 - A judge shall act in a manner that promotes the public confidence in the integrity and impartiality of the judiciary;

(c) Canon 4 – A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities;

(d) DR 1-102(A)(4) - A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(e) DR 2-106 (A) - A lawyer shall not charge an illegal or clearly excessive fee;

(f) DR 9-102(B)(3) - Maintain complete record of all funds and other property of a client coming into the possession of the lawyer and render appropriate accounts of them to his client;

(g) DR 1-102(A)(5) – A lawyer shall not engage in conduct that is prejudicial to the administration of justice;

(h) DR 1-102(A)(6) - A lawyer shall not engage in any other conduct that adversely reflects on the lawyer's fitness to practice law;

(i) DR 6-101 (A)(3) - A lawyer shall not neglect a legal matter entrusted to him.

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW AS TO COUNT VII

128. Count VII relates to Respondent's relationship with David Bliss, a convicted felon. This relationship commenced sometime in 1999 when Respondent was a practicing attorney. Sometime in or around 1999, Respondent was retained by the parents of David Bliss to secure Bliss' release from federal custody. Bliss' parents resided in Highland County and Bliss was incarcerated in an Arizona federal prison on felony credit card fraud convictions.

129. Respondent was able to secure early release for Bliss. After his release, Bliss moved to Highland County and met Respondent for the first time. After Bliss returned to Ohio, he told Respondent he still had some money from the credit card fraud. Testimony at the hearing revealed that Bliss purported to have millions of dollars left from the fraud. Respondent believed Bliss had an account in England.

130. During the time Bliss was in Highland County, he and his wife, Eve Bliss, had several conversations with Respondent about purchasing real estate and other possible investments. Respondent sometime in or around 1999 lent $25,000 to Eve Bliss. From the testimony, it is not clear if the loan was a single $25,000 loan or several small loans which in the aggregate amounted to $25,000. However, there is not a dispute that Respondent was owed $25,000.

131. In an effort to repay the $25,000 loan, David Bliss sent Respondent a check for $25,000.00. The $25,000 check that Bliss gave to Respondent was drawn on a closed account. Thus, the check was not valid.

132. Respondent testified and stipulated that within the first six months of meeting David Bliss, he became aware that Bliss was emotionally unstable, possibly even psychotic and capable of physical violence. Respondent thought David Bliss was capable of most anything.

133. On or about May 2004, and after Respondent took the bench, David Bliss was arrested in Las Vegas, Nevada and charged with additional theft crimes for attempting to sell one or more flags allegedly taken from the World Trade Center attack on 9/11/01. Bliss called Respondent from jail in Las Vegas and told Respondent he had cashier's checks made out to Respondent. After receiving one or more calls from Bliss, Respondent called Highland County Sheriff Ron Ward. Although Respondent disputes Sheriff Ward's version of that conversation, the Panel finds that Sheriff Ward's version of the discussion is the more credible. The Panel found no evidence suggesting that Sheriff Ward had a political agenda or was prejudiced against Respondent. The testimony was that Respondent and Sheriff Ward share the same political party affiliation. Sheriff Ward testified that in May 2004 he received a call from Respondent. The conversation related to David Bliss. Respondent informed Sheriff Ward that Bliss was a former client and was incarcerated in Las Vegas, Nevada on fraud-related charges. According to Sheriff Ward, Respondent said Bliss requested Respondent to come to Las Vegas and Respondent informed Sheriff Ward that Bliss stated he had a large sum of money payable to Respondent. According to Sheriff Ward, Respondent asked about jail visitations and revealed that Bliss owed him about $25,000 to $30,000 for legal work. One of the most significant events in the conversation relates to the advice Sheriff Ward gave to Respondent. Sheriff Ward states:

> "I told Mr. Hoskins to cut his losses and move on, because he was a Judge now, and he wasn't working private practice.
>
> Transcript Vol. II, page 354.

134. Although Respondent did not travel to Las Vegas to meet with Bliss, he did not completely give up on collecting the monies owed to him. Respondent's interactions with Bliss in 2005 are the most troubling. Prior to the events that occurred in 2005, Respondent knew:

1. Bliss was a "con artist" with a lengthy criminal record;
2. Bliss could be physically dangerous;
3. Bliss was emotionally unstable;
4. Bliss had failed to repay the $25,000;
5. Bliss had reported Respondent to the FBI;
6. Bliss claimed to be involved in smuggling purported terrorists across the border;
7. Sheriff Ward and FBI Agent Bean had warned Respondent to stay away from Bliss;
8. Bliss had repeatedly lied to Respondent; and
9. Bliss had perpetrated additional felonies by selling a flag that was falsely represented as being from Ground Zero.

135. Despite this knowledge and in apparent disregard for his position as the Highland County Common Pleas Judge, Respondent decided to pursue an apparent business relationship with Bliss which goal was to aid Bliss in cleaning up the monies from the credit card scam, allegedly located in England and solving Respondent's severe financial problems.

136. To accomplish this mutual goal, Respondent had a meeting with Bliss on December 12, 2005. The meeting took place in Bliss' truck and at the time of the meeting, Bliss was wearing a wire. As a result, the entire conversation was recorded. A copy of the transcript of the meeting was admitted into evidence as Exhibit 102.

137. In the December 12, 2005 conversation, Respondent advised Bliss that actions against him based on the credit card fraud transaction were barred because there is a seven-year statute of limitations and thus, Bliss was "home free." Respondent tells Bliss that he will explain to Bliss how the money comes into the U.S. "step-by-step." Respondent advises Bliss that even if the statute of limitations has expired, Bliss has to be very careful about the money laundering aspects. Respondent tells Bliss that the money laundering aspects can be triggered each time there is a transfer. Also, Respondent advises that the money laundering statute applies not just to Bliss, but to whomever Bliss might transfer the money, unless the transfer is made in a certain format.

138. Respondent tells Bliss that the key to avoiding the money laundering statute is to make sure that you are not running this money out to somebody and then you're getting it back cleaned up. Respondent informs Bliss that if the money is exchanged for something reasonably close to the fair-market value, then it's not considered money laundering.

139. Respondent tells Bliss that he is aware that Bliss does not wish to buy real estate and have his name on the deed. Respondent suggests to Bliss that Bliss could purchase the Fifth Third Bank building, a building bought by Respondent. Respondent states that the property generates approximately $5,000 each month and that he has huge loans on the building. Respondent states that he thinks he could get a million dollars from the sale of the building. (As noted before, the most recent fair-market value appraisal was $295,000) Also, Respondent states to Bliss that he owes $890,000 on the building. The records indicates that at this time, the loan on the building was based on a $265,000 note, and $200,000 of that note was the alleged responsibility of Mr. Yuellig.

140. Respondent reveals that the building is owned by a corporation and when the shares of the corporation are transferred, they are not registered or recorded. Respondent states to Bliss that if the building were purchased, such would help him (Respondent) dramatically. Respondent told Bliss that the purchase would "[get] me out from under some guns that I have to my head." [Ex. 103, 12]. Respondent explains how Bliss would also benefit. Respondent states that the purchaser of the shares of the corporation would not only get the building but would get the corporation's bank account. Moreover, checks could be deposited into the bank account without any questions. Also, Respondent assures Bliss that no one will know who owns the building. [Id., 25]

141. Respondent also reveals to Bliss that because of a conflict involving the Adult Probation Department, Gordon Yuellig owned the shares of the corporation. However, Respondent assured Bliss that Yuellig would go along with the sale of the shares of stock and Respondent would give Yuellig something for his time and effort.

142. Respondent assures Bliss that the transfer of the funds into the corporation's account will remain secret because "once they're wired ... we don't go to attorneys, we don't record anything" [Id., 27]. Respondent further assures Bliss that there will only be three people who will know who owns the shares to the corporation and who really owns the building. Respondent tells Bliss that he would not propose the sale if he felt it was unlawful. [Id., 38].

143. Relator asserts that Respondent's conduct in Count VII violates Canon 1 [A judge shall uphold the integrity and independence of the judiciary]; Canon 2 [A judge shall act in a manner that promotes the public confidence in the integrity and impartiality of the judiciary]; Canon 4 [A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities]; DR 1-102(A)(4) [A lawyer shall not engage in conduct involving dishonesty, fraud,

deceit or misrepresentation]; DR 1-102(A)(5) [A lawyer shall not engage in conduct that is prejudicial to the administration of justice] and, DR 1-102(A)(6) [a lawyer shall not engage in any other conduct that adversely reflects on the lawyer's fitness to practice law].

144. At the hearing, Respondent admitted that his relationship with Bliss showed poor judgment. When asked by the Panel regarding the appropriateness of a sitting judge giving legal advice applicable to the statute of limitations and how to avoid the money laundering laws, Respondent acknowledged that it is inappropriate for a sitting judge to give legal advice, but contends that he was not giving legal advice to Bliss. At the hearing, Respondent was not able to offer a good explanation of why he as a sitting judge was pursuing such a questionable venture.

145. In defense of the alleged violations, Respondent argues that he terminated the negotiations with Bliss once it became clear that his understanding of the law applicable to money laundering was incorrect. Moreover, when Bliss appeared at Respondent's office with a cash payment believed to be $30,000, Respondent refused to accept the payment.

146. The Panel finds that there is clear and convincing evidence supporting the following violations:

a. Canon 1 - A judge shall uphold the integrity and independence of the judiciary;

b. Canon 2 - A judge shall act in a manner that promotes the public confidence in the integrity and impartiality of the judiciary;

c. Canon 4 - A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities;

d. DR 1-102(A)(4) - A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

e. DR 1-102(A)(5) - A lawyer shall not engage in conduct that is prejudicial to the administration of justice; and

f. DR 1-102(A)(6) - A lawyer shall not engage in any other conduct that adversely reflects on the lawyer's fitness to practice law.

147. In finding the Respondent guilty of the charged violations, the Panel notes Magistrate Williams' conversation with Respondent on February 9, 2006. In that conversation, Respondent brought up David Bliss and his attempts to sell the Fifth Third building to Bliss. Respondent told Magistrate Williams that he had consulted with two different attorneys regarding Bliss. Respondent revealed to Magistrate Williams that Respondent knew Bliss had dirty money from a credit card scam. Nonetheless, Respondent believed he could sell the building to Bliss based on alleged advice from the two attorneys so long as they had three Affidavits. One Affidavit was to be from David Bliss, one from Eve Bliss and one from the bank. The Affidavits were supposed to state that the funds to purchase the building were Eve Bliss' money and the bank had to confirm that there were funds on deposit.

148. In response to Respondent, Magistrate Williams stated:

> ...I indicated I didn't think he could do that still. It sounded to me like it was still using dirty money.
>
> Transcript Vol. I, page 81.

149. Not willing to give up on the possible purchase by Bliss, Respondent stated to Magistrate Williams another way the sale could be made legal. Magistrate Williams said that Respondent stated to her that:

> ...another step removed would be that (since) his wife and Gordon Yuellig own the building now, [and] they didn't know anything about the dirty money, and so it [the sale] would be okay.
>
> Id., page 81.

150. Respondent's failure to appreciate and avoid impropriety and the appearance of impropriety is alarming. Respondent knew that any monies from Bliss were the proceeds of the

credit card scam. Thus, regardless of this knowledge, he continued to look for ways for Bliss to purchase the Fifth Third building without anyone knowing that the proceeds came from the credit card fraud. In Respondent's counsel's brief, the Panel was informed that a jury has already determined that these conversations (between Respondent and Bliss) did not constitute criminal conduct. Respondent's counsel asks "can a judge's discrete, private conversations and behaviors – which do not violate any laws – form the basis of a disciplinary violation?" (Respondent's brief, p. 16)

151. In this case, considering the nature of the conduct and the office held by Respondent at the time he was engaging in the activities, the answer in this case is "Yes." The verdict of the criminal jury, based on beyond a reasonable doubt standard, is not a bar to a finding that, based on clear and convincing evidence, Respondent violated the judicial Canons and the disciplinary rules, which are the subject of Count VII.

VIII. FINDINGS OF FACT AND CONCLUSIONS OF LAW AS TO COUNT VIII – SCOTT SHAFFER

152. On October 10, 2002, Donald Scott Shaffer was indicted for one count of sexual conduct with a minor. In February 2003, Respondent was sworn in as the Highland County Common Pleas Judge, general division. Respondent was assigned the Shaffer case.

153. On January 14, 2004, Respondent accepted Shaffer's guilty plea, under an amended count of the indictment, to sexual imposition in violation of R.C. 2907.06 (misdemeanor). Respondent sentenced Shaffer to 60 days incarceration, 50 days suspended with the remaining 10 days to be served on weekends. Shaffer was ordered to report to the Highland County Jail on February 13, 2004.

154. Shaffer's cousin is Roger Dillard. Dillard is a good friend of Respondent and is a visitor to Respondent's chambers. Respondent regularly had lunch with Dillard on Wednesdays.

On one such occasion around February 19, 2004, Dillard mentioned that Shaffer had found religion in jail. Respondent testified that he remembered the sentence he had issued to Shaffer. Respondent testified that he became concerned that his sentence, imposed two weeks after the new sentencing law went into effect, was improper.

155. Respondent contends that he went back to his office and told a member of his staff to prepare an entry suspending the remaining sentence and to reset the matter for hearing. Respondent admits in his brief that he made three mistakes: (1) he signed the entry without noticing (or reading) that his staff had allegedly inaccurately prepared it to read "Upon Motion of the Defendant;" (2) he was incorrect regarding his understanding of the sentencing law and Shaffer was in fact properly sentenced; and (3) Respondent failed to ensure the hearing was reset.

156. At the hearing, Respondent and Dillard testified that Dillard did not ask Respondent to release Shaffer early. In a case of this nature, direct evidence regarding what was said between Respondent and Dillard is most often not available except for the testimony of those who allegedly engaged in the misconduct. However, in this case, the circumstantial evidence supports the allegation that Respondent and Dillard had *ex parte* communications regarding the release of Shaffer.

157. First, the analysis provided by Relator (Exhibits 119, 120) show that Respondent did not apply his alleged mistaken analysis to any other similar case and he did not impose similar sentences in other post-January 1, 2004 misdemeanor cases.

158. Second, when Respondent had the order prepared granting the early release, it falsely indicated that it was being granted pursuant to the motion of Shaffer's counsel. However, no such motion was filed. At the hearing, it was confirmed that upon filing the early release

order, Respondent failed to cause a hearing to be set and failed to serve the prosecutor or defense counsel with a copy of the order.

159. Third, Respondent's explanation for the early release was supposedly his concern that his incorrect sentence could expose the county to a suit. However, this alleged explanation is inconsistent with the explanation he gave his magistrate when she confronted him. Magistrate Williams testified that Respondent told her that the early release was issued because Shaffer was sick and Sheriff Ward had requested the release so the county would not have to pay medical bills. (Transcript Vol. I-89). Sherriff Ward testified that he did not make such a request and the normal procedures would be for his office to make the request to the prosecutor. (Transcript Vol. III-34,35).

160. Relator contends that Respondent's conduct in Count VIII violates Canon 1 [A judge shall uphold the integrity and independence of the judiciary]; Canon 2 [A judge shall act in a manner that promotes the public confidence in the integrity and impartiality of the judiciary]; Canon 4 [A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities]; Canon 4 (A) [A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interest of others and shall not permit others to convey the impression that they are in a special position to influence the judge]; DR 1-102(A)(4) [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation]; DR 1-102(A)(5) [A lawyer shall not engage in conduct that is prejudicial to the administration of justice] and, DR 1-102(A)(6) [A lawyer shall not engage in any other conduct that adversely reflects on the lawyer's fitness to practice law].

161. The Panel finds by clear and convincing evidence the following violations:

(a) Canon 1 - A judge shall uphold the integrity and independence of the judiciary;

(b) Canon 2 - A judge shall act in a manner that promotes the public confidence in the integrity and impartiality of the judiciary;

(c) Canon 4 - A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities;

(d) Canon 4(A) - A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interest of others and shall not permit others to convey the impression that they are in a special position to influence the judge;

162. The Panel also finds that Relator established by clear and convincing evidence violations of the following:

(a) DR 1-102(A)(4) - A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(b) DR 1-102(A)(5) - A lawyer shall not engage in conduct that is prejudicial to the administration of justice; and

(c) DR 1-102(A)(6) – A lawyer shall not engage in any other conduct that adversely reflects on the lawyer's fitness to practice law.

IX. FINDINGS OF FACT AND CONCLUSIONS OF LAW AS TO COUNT IX – APPLICATION FOR FEDERAL BENCH

163. In Count IX, Relator charges Respondent with submitting a false application for an appointment to the federal bench. In response to the question regarding owed and unpaid taxes, Respondent stated what he and his spouse owed taxes for 1998, 1999 and 2000. The correct years were 1999, 2000 and 2001.

164. Another alleged false statement related to Respondent's sworn statement that he had maintained $20,000.00 in a dedicated tax account at NCB Bank, Hillsboro, Ohio since October of 2004. In actuality, the monies were not in a restricted escrow account but rather in Respondent's checking account.

165. Relator charged that Respondent's conduct in Count IX violates Canon 1 [A judge shall upon the integrity and independence of the judiciary]; Canon 2 [A judge shall act in a manner that promotes the public confidence in the integrity and impartiality of the judiciary]; Canon 4 [A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities]; DR 1-102(A)(4) [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation]; DR 1-102(A)(5) [A lawyer shall not engage in conduct that is prejudicial to the administration of justice] and, DR 1-102(A)(6) [a lawyer shall not engage in any other conduct that adversely reflects on the lawyer's fitness to practice law].

166. Regarding the alleged violations which are the subject of Count IX, the Panel finds that the responses were inadvertent mistakes. The Panel does not find that they were made with any intent to deceive. While the $20,000 was not deposited into a restrictive escrow account, the loan application shows that the funds were to be held in escrow to pay delinquent taxes. Finally, Respondent admitted at the hearing that he should have read the application more carefully. The Panel notes that Respondent's carelessness caused him to list alleged unpaid taxes in 1998 when those taxes had been satisfied. Thus, the Panel does not find that Relator established by clear and convincing evidence the violations charged in Count IX.

AGGRAVATION AND MITIGATION

Mitigating Factors:

167. The parties have stipulated Respondent has no prior disciplinary record. Also, as evidenced by the numerous character letters submitted as Exhibit 139, a large number of people in the Highland County community have attested to Respondent's character for honesty, good judicial temperament, diligent handling of his docket and good reputation. In Respondent's brief, it was pointed out that Respondent acknowledged that he improperly paid himself attorney fees

in the Taylor Pavey estate and in the Harold Pavey estate. Also, he acknowledged his lack of diligence in failing to properly and timely complete the administration of those estates. Regarding Count 1, Respondent admitted that his public comment regarding Tammy Sandlin was a violation of the Canons. Also, with respect to the payment of the $8,088 in the Harold Pavey Estate, Respondent states that he repaid the estate. However, the length of time the payment remained outstanding minimized the impact of the voluntary payment.

Aggravating Factors:

168. The misconduct at issue in this case spans ten years and includes judicial misconduct and attorney misconduct. In Count I, Respondent admits he publicly commented on a pending case. However, his comment was more serious because his statement that Tammy Sandlin passed the polygraph was misleading and he knew or should have known that it was misleading.

169. In Count II, Respondent presided over a case involving Tammy Sandlin's son. Although the attorneys consented, Canons 1, 2, and 3(E)(1) provide for the appropriate procedures to be followed. Respondent ignored these procedures.

170. In Count III, Respondent presided over Tammy Sandlin's foreclosure case without any disclosure to Plaintiff's counsel and had *ex parte* communications with Ms. Sandlin about the case and whether the foreclosure complaint would be opposed.

171. In Count IV, Respondent has attempted to conceal his true role in the ownership of the Fifth Third building. Respondent's negotiations with David Bliss for the sale of the building confirm that he continues to have an ownership interest in the building. Moreover, in Respondent's negotiations with David Bliss, he confirmed that the majority share of the

$860,000 purchase price would be used to satisfy Respondent's creditors and that Gordon Yuellig, the purported owner would only get something for his time and effort.

172. In Counts V and VI, Respondent engaged in numerous serious violations regarding two estates: Taylor Pavey and Harold Pavey. The Supreme Court of Ohio has indefinitely suspended lawyers for similar conduct (failure to maintain records of client funds and property; taking attorney fees without court approval; use of estate assets to pay personal obligations; converting estate assets; neglecting client matters; violating local court rules) See *Butler County Bar Assn. v. Green*, 1 Ohio St.3d 48 (1982); *Cuyahoga Cty. Bar Assn. v. Curry*, 85 Ohio St.3d 380, 1999-Ohio-275; *Disciplinary Counsel v. Saumer*, 86 Ohio St.3d 312, 1999-Ohio-107; *Butler Cty. Bar Assn. v. Bradley*, 87 Ohio St.3d 213, 1999-Ohio 28; *Cuyahoga Cty. Bar Assn. v. Kelley*, 105 Ohio St.3d 55, 2004-Ohio-7009; *Cuyahoga Cty. Bar Assn. v. Keeler*, 76 Ohio Std.3d 471, 1996-Ohio-377; and *Akron Bar Assn. v. Mudrick*, 93 Ohio St.3d 621, 2001-Ohio-1885.

173. In *Disciplinary Counsel v. Bowman*, 99 Ohio St.3d 244, 247, 2003-Ohio-3374, the Court states: "withdrawal of funds for fees from an estate checking account without approval of a court or the client represented 'conversion of a client's funds to the personal use of the attorney'" and violated the disciplinary rules. Bowman was suspended for one year with six months stayed because he took attorney fees without court approval.

174. Respondent's misconduct is much more extensive and involved two different estates. Respondent charged a clearly excessive fee in the Taylor Pavey estate. Mr. Murman, Relator's expert witness, testified that a reasonable fee would be between $10,929 to $12,000. Thus, in the Taylor estate, Respondent received $13,000 more than he was entitled. As an aggravating factor to the clearly excessive fee, Respondent never informed the heirs of his fee or

his application for Court approval of an extraordinary fee and has not offered to repay the excessive fee.

175. In Count VII, Respondent's dealings with Bliss go well beyond impropriety. Here there is a sitting judge negotiating with a known felon for the sale of a building the judge claims not to own, for a price that is three times the building's appraised value. Add to that the fact that Respondent knew Bliss was going to buy the building with stolen money, and you have a scenario that would play well on television's " Law & Order."

176. In Count VIII, Respondent misrepresented the reason for his change of Scott Shaffer's sentence. Respondent's testimony at the hearing on his reason for granting early release was not credible. In this disciplinary case, there is clear and convincing evidence of (1) a dishonest motive, (2) a selfish motive, (3) a pattern of misconduct, (4) multiple offenses, (5) submission of false evidence, false statements and other deceptive practices, (6) failure to acknowledge some wrongful conduct, and (7) failure to make restitution.

Recommended Sanction by Respondent

177. Respondent argues that the appropriate sanction is a one-year stayed suspension from the practice of law.

Recommended Sanction by Relator

178. Relator submits that disbarment is the appropriate sanction.

RECOMMENDED SANCTION

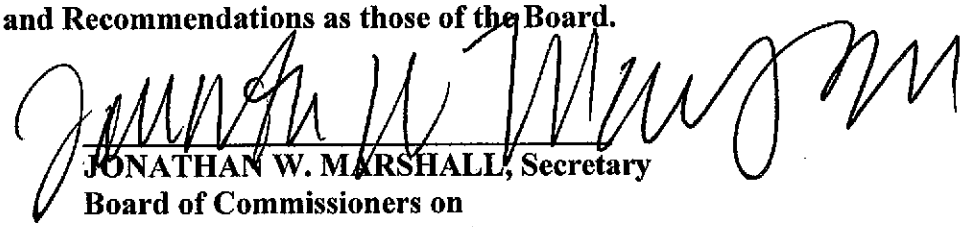
179. It is the Panel's conclusion that disbarment is warranted. In reaching this recommendation, the Panel acknowledges that we have not found an Ohio case similar in the size and scope to the charges against Respondent. We have given consideration to the preamble to the Code of Judicial Conduct which provides that the degree of discipline imposed should

depend on the seriousness of the transgressions, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system and for the protection of the public. The Panel does find multiple serious transgressions, a pattern of improper activity as a judge and lawyer that has had a significant deleterious effect on the public's perception of the integrity of the judicial system. Also, we have reviewed those cases which generally hold that disbarment is an appropriate sanction for conduct that results in a felony conviction. In this case, the Panel is aware that Respondent faced two criminal trials in December 2006 and August 2007 and each time the jury returned not guilty verdicts. The Panel found, however, there was clear and convincing evidence of serious misconduct. Therefore, the Panel believes that permanent disbarment is advisable here because Respondent held judicial office at the time of the commencement of all of the violations except for those relating to the two estates. In these estate matters, even after Respondent took judicial office, his misconduct continued to permeate and adversely affect the estates.

BOARD RECOMMENDATION

Pursuant to Gov. Bar Rule V(6)(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on February 8, 2008. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Panel and recommends, based on Respondent's grievous misconduct, that the Respondent, Judge Jeffrey Jay Hoskins, be permanently disbarred. The Board further recommends that the cost of these proceedings be taxed to the Respondent in any disciplinary order entered, so that execution may issue.

Pursuant to the order of the Board of Commissioners on Grievances and Discipline of The Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendations as those of the Board.



JONATHAN W. MARSHALL, Secretary
Board of Commissioners on
Grievances and Discipline of
The Supreme Court of Ohio

BEFORE THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE OF THE SUPREME COURT OF OHIO

In re:

Complaint against

Hon. Jeffrey Jay Hoskins,

Respondent,

By

Disciplinary Counsel,

Relator.

FILED
NOV 8 - 2007
BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

No. 06-034
STIPULATIONS

1. Respondent Jeffrey J. Hoskins was admitted to the practice of law in the state of Ohio on January 7, 1975. Respondent is subject to the Code of Professional Responsibility, the code of Judicial Conduct, the Rules for the Government of the Judiciary and the Rules for the Government of the Bar of Ohio.

2. Respondent was elected to the Highland County Court of Common Pleas and took the bench in February 2003.

3. Except for a 5 year period in the 1980s, respondent engaged in the private practice of law from the date of his admission until his elevation to the bench.

COUNT ONE

4. While he was in private practice immediately prior to taking the bench, respondent employed a secretary by the name of Tammy Sandlin.

5. Respondent hired Tammy Sandlin to work as a member of his staff once he became the Highland County Common Pleas Judge.

6. Sandlin's duties included being an office administrator, chief assignment commissioner, respondent's part-time bailiff, and respondent's part-time secretary.

7. In the spring of 2005 Sandlin was the subject of a criminal investigation concerning the alteration of an entry in her 1994 Highland County divorce case.

8. In connection with that investigation Sandlin took a privately administered polygraph exam.

9. The polygraph exam was administered to Sandlin on May 13, 2005.

10. During the exam Sandlin was asked whether she altered the magistrate's decision in her divorce case. The polygraph examiner referred to the magistrate's decision of August of 1999.

11. The magistrate's decision was filed with the court on November 15, 1999.

12. The polygraph examiner found that Sandlin was not deceptive in her answers.

13. Magistrate Cindy Williams approached respondent about the polygraph exam.

14. During that conversation, Williams asserted the polygraph exam was flawed because she believed the polygraph examiner used the wrong date in his questioning of Sandlin.

15. On June 7, 2005, Sandlin was indicted by a Highland County Grand Jury for tampering with evidence and forgery (3rd and 5th degree felonies).

16. Respondent issued a press release concerning Sandlin's indictment and employment status.

17. A true, accurate, and complete copy of that press release is attached as Stipulation Exhibit 6.

18. The respondent's press release was printed in its entirety in *The Times Gazette,* a local Highland County newspaper.

19. After reading the press release Williams confronted Respondent regarding the date used in the polygraph and accused Respondent of being misleading in the press release.

20. Respondent again stated to Williams that Sandlin had the opportunity and motive to change the entry, and that she appeared to be the only person who stood to benefit from the alteration.

21. Sandlin was convicted on all counts in the indictment on September 23, 2005.

COUNT TWO

22. James Lykins is Tammy Sandlin's son.

23. On January 18, 2001, while Respondent was engaged in the private practice of law, the Highland County Grand Jury indicted James Lykins for Vandalism, in violation of R.C. 2909.05 (B)(1)(a), a fourth degree felony and the matter was assigned case number 01CR008.

24. Respondent was counsel of record for Lykins and represented him throughout the proceeding, including appearing at his sentencing on April 27, 2001.

25. When Lykins was cited for a probation violation on July 5, 2001, respondent again represented Lykins and appeared on his behalf through to the conclusion of the probation violation proceeding on December 28, 2001.

26. In 2004, while Sandlin was still working as one of respondent's court employees, Lykins was arrested for possession of controlled substances (Oxycontin) and OVI.

27. On July 8, 2004, Lykins waived presentment to the Grand Jury.

28. The felony possession of a controlled substance was charged by way of information; the matter was given case number 04CR172 and assigned to respondent's docket on or about July 19, 2004.

29. On or about July 19, 2004, Lykins appeared before respondent entered a guilty plea to the bill of information charging him with violating R.C. 2925.11 (possession of controlled substance, a fifth degree felony).

30. As part of the plea bargain the State of Ohio agreed to withhold prosecution of a pending secret indictment charging Lykins with Aggravated Trafficking and Possession of Drugs.

31. Respondent accepted Lykins' plea in open court. Prior to accepting the plea Respondent advised counsel that he had previously represented the defendant and presently employed the defendant's mother. Respondent then asked each counsel whether they had any objection to Respondent presiding over the case.

32. Neither counsel voiced an objection.

33. A true, accurate and complete transcript of that hearing is attached as Stipulated Exhibit 10.

34. On August 5, 2004, Respondent sentenced Lykins to community control for three years and up to 6 months at a treatment program entitled "MonDay" program. Lykins was to be incarcerated for no less than 72 hours prior to admission into the "MonDay" program.

35. On August 17, 2004, Lykins filed a motion for extension of the August 5, 2004, furlough.

36. Respondent granted Lykins' motion.

37. On or about September 17, 2004, Lykins—through counsel—filed a motion requesting a stay of his August 5, 2004, sentence until January 15, 2005. As part of this motion, Lykins' motion stated he needed medical and dental care and that he intended to attend the Family Recovery Out Patient Program during the stay.

38. On September 17, 2004, Respondent granted Lykins' motion to stay the execution of his sentence.

39. Respondent granted Lykins' request for occupational driving privileges on or about September 17, 2004.

40. On or before November 8, 2004, Respondent was notified that Lykins had violated conditions of his probation by, among other violations, testing positive for controlled substances.

41. On November 8, 2004, respondent terminated Lykins' stay of execution of sentence and ordered he begin serving his sentence forthwith.

42. Lykins completed the "MonDay" program on February 16, 2005.

43. On June 10, 2005, respondent signed a document from the Adult Parole Authority stating additional violations by Lykins. Respondent issued a capias and suspended Lykins' supervision until such time as he was brought before the Court for its further action.

44. Sandlin as an employee of the court throughout this time period.

COUNT THREE

45. On March 22, 2005, Mortgage Electronic Registration Systems, Inc. filed a complaint for money judgment, foreclosure and relief against Gregory and Tammy Sandlin in the Highland county Court of Common Pleas.

46. This matter was given case number 05CV088 and assigned to Respondent's docket.

47. On April 18, 2005, the Sandlins filed a pro se answer in the case.

48. On June 9, 2005, respondent ruled on plaintiff's unopposed motion for summary judgment. Respondent's written entry acknowledged that Tammy Sandlin was one of the defendants in the action and granted the relief sought by plaintiff.

49. Tammy Sandlin was an employee of the court during the course of this lawsuit.

COUNT FOUR

50. Carroll McKinney, attorney for Respondent and Maureen Hoskins, filed the Articles of Incorporation for an Ohio corporation entitled "Three Irish Sons" on or about April 13, 2005.

51. At the time of the filing, Respondent was listed as the statutory agent for Three Irish Sons, Inc.

52. On April 22, 2005, Three Irish Sons purchased a building located at 100 S. High St., Hillsboro, Ohio, commonly known as the Fifth/Third Building, for $253,200.00.

53. At the time Three Irish Sons purchased the Fifth-Third building, Respondent believed that the Adult Parole Authority (APA) would be interested in renting part of the Fifth/Third building.

54. The APA regularly appears before Respondent.

55. On or about April 22, 2005, Three Irish Sons, and Respondent and his wife individually borrowed approximately $253,200.00 from NCB Bank, 139 S. High St., Hillsboro, Ohio. Pursuant to the appraisal NCB Bank obtained for this loan, as of the date of appraisal the Fifth/Third building was valued at $295,000.00.

56. The note required payment on demand or if no demand then 1 payment of $261,789.91 on October 21, 2005.

57. The note was secured by a first mortgage on the Fifth/Third building and on property owned by Respondent and his wife.

58. Respondent worked with the then President of NCB Bank, Tom Schoettle, to finance this transaction.

59. In 2005 Tom Schoettle, while still president of NCB bank, was a party to a divorce action. Schoettle's divorce case was assigned to Respondent's docket; however, the proceedings were conducted before Magistrate Cynthia Williams.

60. On August 30, 2005, Maureen Hoskins, as president of Three Irish Sons, issued herself 500 shares of stock with no par value.

61. On September 6, 2005, Maureen Hoskins, as president of Three Irish Sons, executed a "Close Corporation Agreement" wherein she named herself as the only director as well as the President, Secretary and Treasurer of the Three Irish Sons. On that same day, Respondent resigned as statutory agent for Three Irish Sons.

62. On September 9, 2005, Maureen Hoskins, as president of Three Irish Sons, leased to herself in her individual capacity all of the Fifth/Third building, with the exception of that portion of the building the APA was

interested in leasing. Those portions in which the APA was interested included the first floor (except the bank vault and elevator), and the lunch room in the basement. The terms of this lease were for 20 years at $1.00 per year, payable on or before September 1 of each year.

63. Also on September 9, 2005, Maureen Hoskins sold all 500 shares of Three Irish Sons to Gordon Yuellig, Respondent's close personal friend and local businessman.

64. The written agreement for the sale of Three Irish Sons' stock called for 500 shares to be sold to Yuellig for $200,000.00, the payment being made by Yuellig taking over $200,000.00 of the April 22, 2005, note.

65. The stock certificate for 500 shares of Three Irish Sons issued to Yuellig states that the transfer of the shares is subject to the following restrictions:

    a. The provisions of the Close Corporation Agreement;

    b. The lease agreement to Maureen Hoskins;

    c. A mortgage with NCB Bank, Hillsboro, Ohio;

    d. A right of first refusal of Maureen Hoskins prior to transferring ownership of the stock.

66. Sometime in the fall of 2005, Respondent discussed with Tom Schoettle, then NCB Bank President, the possibility of having the note executed on April 22, 2005, refinanced so that $200,000.00 of the obligation was assumed by Yuellig and the remaining $65,000.00 was due from Respondent and his wife.

67. In a deposition given to relator on February 24, 2006, Respondent stated Schoettle agreed to this proposal ; however when Schoettle was fired from

his position, the new President, Tim Priest, stated that it could not be done.

68. The APA did lease those portions of the building set out in paragraph 67 of the Stipulations. The rental payments by the APA have been deposited into a bank account in the name of Three Irish Sons.

69. Three Irish Sons, Respondent, and his wife failed to make the requisite payment of $261,789.91 due on October 21, 2005 pursuant to the note executed on April 22, 2005.

70. In January 2006, Respondent met with NCB officials to resolve the outstanding overdue amount on the April 22, 2005, note.

71. NCB approved a refinancing of the outstanding note and scheduled the closing for the end of January 2006.

72. A few days prior to the closing set for the end of January 2006, Respondent talked to the new NCB president, Tim Priest, and stated that the former president, Tom Schoettle, had agreed to split the amount due on the note so that Yuellig would be liable for $200,000.00 and Respondent and his wife for be liable for $65,000.00.

73. Respondent met with an NCB loan officer, Ryan Corzatt, to sign a new note in January 2006.

74. Corzatt postponed the closing.

75. There was a note originally prepared by NCB Bank for the closing in January, 2006 on the refinance of the loan for the 5th/3rd Bank Building.

76. That note listed the following as liable on the loan: Jeffrey J. Hoskins, Maureen Hoskins, and Three Irish Sons, Inc.

77. When that closing did not take place, the note was shredded.

78. When the closing reconvened, Corzatt told Respondent that Three Irish Sons would be on the mortgage only and that Yuellig will be signing in his capacity as an officer of Three Irish Sons. Corzatt told Respondent that Yuellig, individually, was not on the note and that Yuellig would be coming in later to sign the mortgage as president of Three Irish Sons.

79. The note was secured by a first mortgage on the Fifth/Third building and on property owned by Respondent and his wife contiguous to Respondent's residence.

80. On or about January 31, 2006, Yuellig signed a mortgage as President and Secretary of Three Irish Sons. Yuellig has no personal liability as a result of the note and mortgage executed on January 31, 2006; however Yuellig is obligated by his contract with Maureen Hoskins to pay his share of the note.

81. In his deposition, respondent told relator that he was told by NCB officials that Yuellig was going to be an obligor on the note secured by the Fifth/Third Bank Building.

82. As the only Highland County Common Pleas Judge Respondent presides over criminal cases in which representatives of the APA appear as witnesses.

83. In his deposition, Respondent stated that he had paid for improvements to the Fifth/Third building including "about $6,000 for the elevator".

84. Anthony Mollica conducted on appraisal of the 5th/3rd Bank building, 100 S. High St., Hillsboro.

85. Using an "income approach to valve," Mr. Mollica appraised the building at between $275,000 and $290,000 as of December 31, 2005.

COUNT FIVE

86. Elmer Pavey (Elmer) passed away on July 10, 1974. Harold Pavey Jr. (Harold) was Elmer's nephew.

87. In his will, Elmer gave Harold a life estate in Elmer's farm. Elmer's farm consisted of approximately 210 acres in Highland County, Ohio.

88. Elmer's will further provided that upon Harold's death Elmer's farm was to be given to the State of Ohio or if refused by the State of Ohio then to the Boy Scouts of America. This bequest was subject to the limitation that the land be used as a recreational park and a haven for wildlife.

89. Under Elmer's will—Items III and V—Harold received all of Elmer's farm machinery, crops, livestock, and other tangible personal property. In addition, Harold received 1/3 of Elmer's household goods and cash.

90. Item VII of Elmer's will and his subsequent codicil provided "All the rest, residue and remainder of my property, of every kind and description and wheresoever located, including legacies and devises which may fail and lapse for any reason," were to be divided in equal shares among four people: his great niece Debbie Conklin (nka Debbie Hicks), his great nephew Jeffrey Hoskins (Respondent), his great niece Susan Price, and his great niece Diane Roberts.

91. On October 20, 1976, after accepting the final account, the Highland County Probate Court held Elmer's estate was administered and discharged the executor.

92. On June 1, 1999, Harold Pavey passed away. Harold was Respondent's uncle.

93. On or about September 3, 1999, Respondent's application to be named the executor of Harold's estate was approved by the Highland County Probate Court.

94. Respondent was also the attorney for Harold's Estate.

95. At the time of his death, Harold owned a farm consisting of approximately 155 acres.

96. On or about March 1, 2000, Respondent filed the Ohio Estate Tax Return for Harold's estate. This return was executed pursuant to a declaration, under the penalties of perjury, that respondent's information on the return and the accompanying schedules and statements were true, correct, and complete, to the best of his knowledge and belief.

97. A true, accurate and complete copy of that Ohio Estate Tax Return appears as Stipulated Exhibit 52.

98. Schedule J filed with the Ohio Estate Tax Return required Respondent to list deductions, including "executor fees and attorney fees that have been or actually will be paid."

99. Respondent listed executor fees in the amount of $15,631.87 on the schedule J filed with the Ohio Estate Tax Return. Respondent did not list attorney fees on schedule J.

100. On June 5, 2001, Respondent filed an "Inventory and Appraisal" in Harold's estate. The appraisal listed the total value of Harold's real estate at $441,000.00; his tangible personal property at $28,500.00 and his intangible personal property at $18,229.65. The Ohio Estate Tax Return listed the same valuations for these categories of assets.

CRP Payments

101. Some time in 1992, Harold entered into a contract with the U.S. Department of Agriculture's Community Credit Corporation. Under this contract, Harold agreed that he would not farm a specified number of acres and in exchange he would receive an annual payment based on a pre-determined schedule.

102. This agreement is commonly referred to as a Conservation Reserve Program (CRP) Contract.

103. At the time he entered into the CRP contract in the early 1990's, Harold placed 218.5 acres in the program.

104. This acreage was a combination of the tillable land located on Harold's own farm (155 acres total) and tillable land located on Elmer's farm (210 acres total), in which Harold held a life estate.

105. Of the 218.5 acres in the program, approximately 48% was from Elmer's farm, in which Harold had a life estate, and the remaining 52% was from Harold's own farm.

106. Under the CRP contract, in October of each year, Harold received one annual payment of $19,665.00 for the preceding 12 month period.

107. After Harold passed away, Respondent deposited all the CRP checks into the Harold Pavey, Jr. estate checking account when they were received in October of 1999, 2000, and 2001.

108. In 1999, 2000, and 2001, the CRP check for the 218.5 acres was $19,665.00.

109. In 1998, Harold entered into another CRP contract for a separate 5 acre tract. Beginning in 2000 he began to receive $440.00 annually. Annual

payments of $440.00 were received by the Estate of Harold Pavey, Jr. in 2000 and 2001.

110. The 5 acre tract was originally part of Elmer's farm.

111. In 2003, Respondent deposited one additional CRP check for $2,763.00 into the Harold Pavey, Jr. estate account. This amount was attributable to tillable land located on Elmer Pavey's farm.

112. Respondent deposited a total of $62,638.00 of CRP checks into the Harold Pavey, Jr. estate checking account in 1999, 2000, 2001, and 2003.

113. Of that $62,638.00, Relator contends that $13,110.00 was properly part of the Harold Pavey estate, as it was earned before Harold Pavey died (representing the amount attributable to the period from October 1, 1998, through June 1, 1999 – Harold's date of death). Respondent believes the entire $19,665.00 payment attributable to the period October 1, 1998, to September 30, 1999, was properly part of the Harold Pavey estate. For purposes of the following calculations, the parties have adopted Relator's position.

114. The remaining $49,528.00 ($62,638.00 - $13,110.00) accrued after Harold Pavey passed away.

115. The 2 checks for $440.00 and the last check for $2,763.00 were payments that related solely to the tillable land on Elmer's farm.

116. The remaining CRP payments of $45,885.00 ($49,528.00 - $880.00 - $2,763.00) came from the combined tillable land from Harold's farm and tillable land from Elmer's farm, in which Harold had a life estate.

117. Approximately 48% of the remaining CRP payments ($45,885.00) belonged to the heirs of the Elmer Pavey farm, in which Harold had held a life estate. This amounted to $22,024.80.

118. Adding the 2 checks for $440.00 and the last check for $2,763.00 to the $22,024.80 results in a total amount of $25,667.80 in CRP payments, which accrued after Harold's death and which were based entirely on acres originally from Elmer's farm.

119. Since Elmer's will provided that upon Harold's death his farm was to be given to the State of Ohio or in the alternative to the Boy Scouts of America, on February 24, 2000 Respondent reopened the Elmer Pavey estate to resolve ownership of the Elmer Pavey farm. The Elmer Pavey estate was also reopened to determine whether a portion of the Harold Pavey farm would also be devised to either the State of Ohio or Boy Scouts of America, as set forth in the Harold Pavey will.

120. When both the State of Ohio and the Boy Scouts of America declined the bequest of Elmer Pavey's farm, it was devised pursuant to the residuary clause in Elmer's will.

121. Under the residuary clause and codicil of Elmer's will, there were four beneficiaries who received an undivided ¼ interest in Elmer's farm: Elmer's great niece Debbie Conklin (nka Debbie Hicks), his great nephew Jeffery Hoskins (respondent), his great niece Susan Price, and his great niece Diane Roberts.

122. On December 8, 2000, a certificate of transfer to the four heirs was approved by the Highland County Probate Court.

123. These four individuals were also the rightful recipients of the CRP payments from the Elmer Pavey farm, which accrued after Harold Pavey's death (in the amount of $25,667.80).

124. At no time were the CRP funds described in paragraph 137 of Stipulations a part of Harold Pavey's estate.

125. Respondent deposited the CRP funds owned by the residual beneficiaries under Elmer's will into the Harold Pavey, Jr., estate account. The final account filed in the Harold Pavey, Jr., estate omitted the existence of those funds.

126. Respondent failed to properly identify the source of all funds listed as assets in the Harold Pavey, Jr., estate.

127. The Ohio Estate Tax return in the Elmer Pavey estate was not amended to reflect the fact that the land went from a charitable donation to a bequest.

128. While probating Harold's estate, a decision was made to sell a small parcel of Harold's farm to generate cash to pay estate obligations.

129. This parcel was sold to Rodney Knisley in June 2001 for $22,000.00.

130. Three point seven (3.7) acres of the parcel sold to Knisley was enrolled in the CRP program as of the date of the sale.

131. Knisley's use of the land made it ineligible for participation in the CRP program.

132. Pursuant to the CRP contract, the ineligibility of Knisley's 3.7 acres required a reimbursement of all payments for that acreage paid under the contract.

133. USCA's position as of October 2001 was that the Harold Pavey estate was required to repay the USCA Farm Service Agency a principal amount of

$2,997.00, along with a liquidated damage penalty of $83.25, interest in the amount of $618.33 and a cost share payment of approximately $50.

134. Respondent was advised in writing and in person that the Harold Pavey estate was required to refund the payment received for the acreage sold to the Knisley's.

135. Respondent was advised in writing that the total due was $3901.01, plus interest. Further, he was informed that since the debt was past due, late payment interest would accrue from the date at the rate of 5.5% per annum.

136. Respondent has made no payment on this estate obligation.

137. Respondent has failed to list this estate debt in any accounting filed with the Highland County Probate Court.

138. Respondent failed to advise successor counsel, Attorney McKinney, that the USCA alleged this obligation.

Harold Pavey, Jr. Estate Assets

139. Under Elmer's will, Harold received Elmer's farm machinery, grain, feed, livestock, growing crops, and tangible personal property, as well as 1/3 of household goods and cash.

140. In the fall of 2003, Respondent and others cleaned out a barn that he and three relatives owned as heirs of Elmer Pavey's estate.

141. Some of the items found in the barn were moved into a building on Respondent's property. Seven of the items were stored outside that building.

142. Those seven items included two hay wagons, a cub cadet lawn tractor, a John Deere planter, and a wheat drill.

143. In November 2003, those seven items were sold in an auction.

144. The net proceeds from the sale of those items were $847.50.

145. The auctioneer made the proceeds check for the $847.50 payable to the Estate of Harold Pavey, Jr.

146. Respondent endorsed the back of the check "payable to the Estate of Harold Pavey, Jeffrey Hoskins" and deposited the entire amount into his personal checking account.

147. Respondent failed to list the $847.50 as an asset of the Harold Pavey estate in the final account filed with Highland County Probate Court and he failed to advise successor counsel, attorney McKinney, of the existence of these funds.

148. In August 2007, Respondent testified that the property sold at the auction and which resulted in the $847.50 was not part of the Harold Pavey, Jr. estate.

149. Respondent failed to inventory or account for any of the other items found in Elmer's barn along with the seven that were sold at auction.

Respondent's Handling of the Harold Pavey, Jr. Estate

150. The Harold Pavey, Jr. estate was opened on September 3, 1999, in the Highland County Probate Court.

151. Respondent filed no accounts in the Harold Pavey, Jr. estate while he served as counsel and executor of the estate from September 1999 until July 2005.

152. Respondent has acknowledged under oath that he thought the Harold Pavey, Jr. estate could have been closed as early as June 2001.

153. Ohio Revised Code § 2109.301(A) states, in part: "Except as otherwise provided in division (B)(2) of this section, an administrator or executor shall render a final account within 30 days after completing the administration of the estate or within any other period of time that the court may order."

154. Ohio Revised Code §2109.301(B)(4) requires every executor to render an account within 13 months after appointment and after the initial account is filed to file further accounts at least once a year.

155. Respondent remained as the attorney for the estate until July 11, 2005, when Attorney McKinney filed his appearance. Thereafter, Respondent remained as executor.

156. The records and documents Respondent gave to Attorney McKinney for the preparation of the final accounting were incomplete.

157. Respondent provided McKinney with less than all the relevant bank records.

158. Respondent failed to provide McKinney with an itemized account of the disbursements and receipts in the estate. Bank records establish that respondent took the following funds from the estate account:

1/11/00 check for $1,500.00 made payable to Jeffrey Hoskins labeled "Atty fees"
1/18/00 check for $500.00 payable to Merchant's Nat'l Bank with no notation
2/2/00 check for $1,000.00 payable to Merchant's Nat'l Bank with no notation
2/14/00 check for $954.83 payable to Merchant's Nat'l Bank with no notation
2/29/00 check for $2,500.00 payable to Jeffrey Hoskins with no notation
5/16/00 check for $600.00 payable to Jeffrey Hoskins labeled "partial executor fees"
10/18/00 check for $1,205.80 payable to Merchant's Bank with the following on the note line "#38020, #80531"

10/19/00 check for $500.00 payable to Jeffrey Hoskins labeled "executor fees"
12/6/00 check for $2,267.18 payable to Merchant's Nat'l Bank with the notation "mo pays"
12/20/00 debit withdrawal for $2,500.00 with no notation
7/10/01 check for $2,000.00 payable to Jeffrey Hoskins with the notation "Atty fees"
10/12/01 check for $500.00 payable to Jeffrey Hoskins with the notation "Atty fees"
10/13/01 check for $947.72 payable to Highland Auto Service with no notation
10/15/01 check for $1,500.00 payable to Jeffrey Hoskins with the notation "Atty fees"
11/7/01 check for $1,500.00 payable to Jeffrey Hoskins with the notation "Atty fees"
1/15/02 check for $3,000.00 payable to Jeff Hoskins with no notation
1/15/02 check for $1,800.00 payable to Jeff Hoskins with no notation
3/6/02 check for $1,311.66 payable to Merchant's Bank with no notation
4/3/02 debit withdrawal for $2,015.21 for loans #38020/81501.
8/13/02 check for $200.00 payable to Jeff Hoskins with no notation
1/21/04 debit withdrawal for $1,500.00 with no notation
2/12/04 debit withdrawal for $2,000.00 with no notation
3/17/04 debit withdrawal for $1,072.59 with no notation
3/17/04 debit withdrawal for $1,500.00 with no notation.

159. Respondent failed to make a notation on 14 of these withdrawals and does not have any written record in his possession for the purpose of these withdrawals.

160. The "no notation" withdrawals totaled $20,786.80.

161. Respondent withdrew$14,399.46 from the estate, between 2002 and 2005.

162. Rule 71(B) of the Rules of Superintendence of the courts of Ohio states: "Attorney fees for the administration of estates shall not be paid until the final account is prepared for filing unless otherwise approved by the court upon application and for good cause shown.

163. Rule 72(D) of the rules of Superintendence of the Courts of Ohio states: "Where counsel fees have been awarded for services to the estate that normally would have been performed by the executor or administrator, the executor or administrator commission, except for good cause shown, shall be reduced by the amount awarded to counsel for those services."

164. Highland County Local Rule 71.3 states that attorney fees for the administration of estates shall not be paid or advanced from any source until the final account is prepared for filing.

165. The only exception under Highland County Local Rule 71.3 is if the court grants an attorney's written application to the probate court setting forth the reason for the early payment of fees and which is accompanied by a consent to the amount and the timing of the payment by all beneficiaries who have yet to receive their complete distribution.

166. Respondent violated Highland County Local Rule 71.3 by taking attorney fees before the preparation of the final account and without making any application pursuant to Highland County Local Rule 71.3.

167. Respondent has admitted under oath that he violated Highland County Local Rule 71.3.

168. Highland County Local Rule 71.2 requires that where the attorney is also the fiduciary, detailed records shall be maintained describing the time and services performed as both the fiduciary and as the attorney.

169. Respondent failed to maintain the records required in Highland County Local Rule 71.2.

170. On January 30, 2006, the Highland County Probate Court issued an Entry in the Harold Pavey, Jr. estate, Case No. 991195. This Entry ordered

Respondent to submit his detailed records describing his time and service as fiduciary and his separate detailed records describing his time and service as attorney for the estate maintained pursuant to Highland County Local Rule 71.2. The Entry required Respondent to comply by February 10, 2006.

171. A true, accurate, and complete copy of the court's January 30, 2006, Entry is identified as Stipulated Exhibit 49, page 146.

172. In response to the court's January 30, 2006, Entry, Respondent filed an affidavit on February 10, 2006.

173. A true, accurate, and complete copy of the Affidavit of Respondent is identified as Stipulated Exhibit 49, page 150-151.

174. On February 21, 2006, the Highland County Probate Court issued an Entry in the Harold Pavey, Jr. estate, ordering Respondent to file a detailed record with specific dates, time billed, and services performed, with a breakdown as legal counsel and fiduciary in the Harold Pavey, Jr. estate, as well as all worked performed in the Elmer Pavey estate.

175. A true, accurate, and complete copy of that February 21, 2006, Entry is identified as Stipulated Exhibit 49, page 152.

176. Respondent was unable to comply with the court's February 21, 2006, Entry.

177. Respondent does not possess the detailed records required by Highland County Local Rule 71.2.

178. In the fall of 2005, attorney McKinney was attempting to prepare the final account in the Harold Pavey estate.

179. Attorney McKinney advised Respondent to return $8,088.80 to the estate, voicing the opinion these funds were not proper executor fees.

180. Respondent disagreed with McKinney's analysis and, as a result, did not deposit $8,088.80 into the estate prior to the December 2005 final accounting.

181. Respondent did sign the final account which listed 5 checks each for $1,607.29 and made payable to the following beneficiaries: Jeff Hoskins, Susan Price, Deborah Hicks, Diane Roberts, and Ann Pavey.

182. These amounts were not the result of specific bequests in Harold' will.

183. Harold's will contains no residuary clause.

184. Harold had three siblings: John Pavey, Ruth Pavey, and Betty Pavey.

185. Under ORC 2105.06(G), each of these siblings was entitled to 1/3 of any residual property in the estate. Under R.C. 2105.06(G), if any of the siblings did not survive Harold, then their lineal descendents would take per stirpes.

186. Betty Pavey predeceased Harold and had one daughter: Deborah Hicks, who was entitled to receive her mother's 1/3 share of any residual property remaining in the Harold Pavey estate.

187. John Pavey passed away during the administration of Harold's estate. He had one daughter: Ann Pavey, who was entitled to 1/3 of any residual property remaining in the Harold Pavey estate.

188. Ruth Pavey predeceased Harold and had 3 children: Jeff Hoskins, Diane Roberts and Susan Price. Each of Ruth's children was entitled to 1/9 of any residual property remaining in the Harold Pavey estate.

189. As executor of the Harold Pavey, Jr. estate, Respondent signed and caused to be filed a final accounting on December 8, 2005.

190. The final accounting states: "The fiduciary states that the account is correct," and also states "This is a final and distributive account, and the fiduciary asks to be discharged upon its approval and settlement."

191. Respondent listed his attorney's fees in the final accounting at $18,588.04.

192. Respondent listed his executor fees in the final accounting at $6,939.18.

193. The final account erroneously included under "Receipts" the value of a parcel of land twice, once in the amount for "Real property not sold" and again in the "Proceeds from sale of real property."

194. The actual amount of total receipts for the Harold Pavey, Jr. estate is $22,000.00 less than the amount of total disbursements.

195. In addition, the final accounting failed to include the disbursement of the $8,088.80 that Respondent received from the estate.

196. Respondent took the $8,088.88 from the estate on the following dates and in the following amounts:

4/03/02	Debit Slip	$2,016.21
1/21/04	Debit Slip	$1,500.00
2/12/04	Debit Slip	$2,000.00
03/17/04	Debit Slip	$1,072.59
3/17/04	Debit Slip	$1,500.00
		$8,088.80

197. Respondent took these amounts by using debit slips and not by using checks from the estate checking account.

198. Several of these debit withdrawals were used to pay Respondent's personal debts, including his mortgage.

199. On at least nine separate occasions Respondent used the estate account to directly pay his creditors. These nine payments, which included payments for Respondent's mortgage and automobile repair debts, totaled $11,274.99.

200. Ohio Revised Code §2109.43 prohibits fiduciaries from making personal use of the funds belonging to a trust.

201. Several years after he took these funds, Respondent labeled these payments as either attorney fees or executor fees.

202. Respondent explained in his deposition:

> "Merchants Bank would call me on the day that a loan was due or something of that nature and say "We need a payment." And I would say "Well, then, take it out of my personal check or out of my attorney's checking account." If they said, "There's not enough in there," then I would authorize them to take it out of that account on the basis that that was either executor's fees or attorney's fees. And I'm assuming-And often, lots of times it would happen I would get a call from my secretary. "The bank called. They say they need a payment by noon," and I would advise her to call back and to make that debit slip."

203. Respondent took $6,072.59 of the $8,088.88 in 2004 after he was sworn in as a Highland County Common Please Judge.

204. Respondent did not report any of the $6,072.59 as income on his 2004 federal or state income tax returns.

205. While the final accounting did not list the various amounts totaling $8,088.80 as disbursements to respondent from the estate assets, it did list the five checks of $1,607.29 to each of the five beneficiaries.

206. The five checks for $1,607.29 have not been distributed to beneficiaries at this time because the final accounting has not been approved.

207. At the time the final accounting was filed (12/8/05) there were insufficient funds in the estate account to pay the 5 checks of $1,607.29 each.

208. After Respondent signed and filed the final accounting on December 8, 2005, Highland County Probate Judge Greer requested respondent and his counsel to provide additional information, including the bank records for the estate account. Judge Greer also scheduled a hearing on the final accounting for January 6, 2006.

209. One day prior to the hearing on the final accounting, Respondent paid $8,088.80 back into the estate account.

210. On January 13, 2006, an amended final accounting was filed with the Highland County Probate Court.

211. Two differences between the final accounting and the amended final accounting are: Adding the notation of a $1,000 reimbursement to Respondent in connection with a survey deposit, and converting an expense to the estate—Highland Auto Service—into fees.

212. The amended final accounting did not list the disbursements to Respondent of the various amounts totaling $8,088.80, nor did the amended final accounting included Respondent's reimbursement to the estate of $8,088.80.

213. Respondent has provided three affidavits and has testified three times under oath about the Harold Pavey, Jr. estate.

214. In an entry filed January 9, 2006, the Highland County Probate Court required Respondent to provide a written explanation for amounts paid to the Merchant's National bank from the Harold Pavey, Jr. estate account as well as a written explanation for withdrawals from the estate account totaling $18,287.50.

215. The $18,287.50 included the $8,088.80 Respondent took by debit withdrawals in 2002 and 2004.

216. Respondent filed an affidavit on January 13, 2006, in response to the court's entry.

217. In his January 13, 2006, affidavit, Respondent stated that the amounts withdrawn from the estate included expenses of the estate for which there was no documentation. Further, Respondent stated that he instructed successor counsel to list all expenses of the estate for which Respondent could find no documentation as either part of the executor fees or part of the attorney fees.

218. Under Respondent's instructions, memorialized in his January 13, 2006, affidavit, all amounts, including the $8,088.80 taken by debit withdrawals, were shown as either executor fees or attorney fees.

219. In a January 20, 2006 affidavit responding to a probate court entry requesting further information, Respondent stated that he took the $8,088.80 from the estate upon the belief that the transfer of real estate constituted a sale to the various heirs. According to Respondent, he concluded he was entitled to the $8,088.80 as executor fees. Respondent further claimed that once successor counsel concluded that the transfer was not a sale, the executor fees were adjusted and the funds were repaid to the estate.

220. At no time in any of his three affidavits did Respondent advise the court that he had placed CRP funds due the Elmer Pavey remaindermen into the Harold Pavey, Jr. estate account.

221. At no time in any of his three affidavits did Respondent advise the court that when he placed the Elmer Pavey remaindermen's CRP money into the Harold Pavey, Jr. estate account that those funds were a loan to the Harold Pavey, Jr. estate.

222. At no time in any of his three affidavits did Respondent advise the court that his withdrawal of the $8,088.80 was out of money owed to the Elmer Pavey remaindermen.

223. On February 24, 2006, Respondent testified that the $8,088.80 he took from the estate by using the debit slips was properly payable to him as executor fees:

> "Q. It's an executor fee?
> A. Yes.
> Q. So it was all executor fees?
> A. Yes..."

224. On February 24, 2006, Respondent testified that he was due the $8,088.80 in executor fees because when he calculated the executor fees he considered the real estate transfers a sale.

225. Respondent also testified on February 24, 2006, that successor counsel convinced him he could not treat the real estate transfers as a sale and therefore the $8,088.80 had to be repaid into the estate.

226. Respondent was not questioned and did not testify on February 24, 2006 regarding the CRP funds.

227. On February 24, 2006, Respondent did not testify that his withdrawal of any of the $8,088.80 from the Harold Pavey, Jr. estate was reimbursement for his expenditures on behalf of the remaindermen of the Elmer Pavey estate.

228. On February 24, 2006, Respondent did not catalog the expenses he personally paid for on behalf of the remaindermen of the Elmer Pavey estate.

229. The only reference Respondent made to estate expenses on February 24, 2006, was to Harold Pavey, Jr. estate expenses. In that deposition, Respondent agreed that the reimbursement of Harold Pavey, Jr. estate expenses was separate from the $8,088.00.

230. In December 2006, Respondent testified that the only source of income for the Harold Pavey, Jr. estate was the CRP money that belonged in that estate.

231. In December 2006, Respondent did not testify that he had placed CRP money due the remaindermen of the Elmer Pavey estate into the Harold Pavey, Jr. estate account.

232. In December 2006, Respondent was not questioned and did not testify that when he placed the Elmer Pavey remaindermen's CRP money into the Harold Pavey, Jr. estate account that those funds were a "loan" to the Harold Pavey, Jr. estate.

233. In December 2006, Respondent did not testify that his withdrawal of the $8,088.80 out of the Harold Pavey, Jr. estate was reimbursement for his expenditures on behalf of the remaindermen of the Elmer Pavey estate.

234. In December 2006, Respondent did not catalog the expenses his expenditures on behalf of the remaindermen of the Elmer Pavey estate.

235. In August 2007, Respondent testified regarding the CRP payments and subsequent loans to the Harold Pavey estate.

236. In August 2007, Respondent also testified that he expended some of his own funds for survey work done on the farm land originally owned by Elmer Pavey.

237. Additionally, Respondent testified that he had some excavation done on the Elmer Pavey land by Jim Grove. Grove owed Respondent approximately $7,500.00 for legal work and Grove performed the excavation work to extinguish that debt.

238. Respondent also agreed that all work done on the Elmer Pavey property inherited by the four remaindermen should have been done at the expense of those four heirs.

239. On August 27, 2007, Respondent testified that some of the funds he took from the Harold Pavey, Jr. estate constituted a reimbursement of expenditures he made on behalf of the four remaindermen: himself, his two sisters (Susan Price and Diane Roberts), and his cousin (Debbie Hicks).

COUNT SIX

240. On February 27, 1995, Taylor Pavey passed away.

241. On April 28, 1995, Respondent filed an application to be appointed the administrator of the estate of Taylor Pavey, for which there was no will, in the Clark County Probate Court. The matter was docketed under number 19950375.

242. Respondent filed the application listing himself as the attorney for the applicant.

243. On April 28, 1995, Respondent was appointed administrator/fiduciary for the estate of Taylor Pavey.

244. On May 2, 1995, Respondent opened a bank account for the Taylor Pavey estate at the Merchants National Bank in Hillsboro, Ohio. This account was assigned the following number: 007-045-9.

245. On May 2, 1995, Respondent deposited an initial $80,600.68 into the estate account.

246. Starting on May 2, 1995, Respondent withdrew the following amounts from the Taylor Pavey estate:

5/2/1995	Merchant's National Bank	$	1,031.21
5/4/1995	Highland Enterprise	$	5,000.00
6/5/1995	Debit Slip To Jeff Hoskins #0033367	$	3,000.00
6/30/1995	Debit Slip To:4267191	$	5,000.00
9/15/1995	Jeffrey Hoskins	$	2,000.00
12/29/1995	Debit Slip To 0033367 per Jeff Hoskins phone 05/14	$	2,500.00
1/3/1996	Highland Enterprise	$	6,046.71
1/17/1996	Debit	$	3,000.00
2/6/1996	Merchant's National Bank	$	2,924.72
5/14/1996	Debit Slip To 0033367 per Jeff Hoskins phone 05/14	$	2,000.00
6/5/1996	Debit Slip Pymts -2805.65; Cking 194.35	$	3,000.00
7/17/1996	Debit Slip #36927	$	600.00
9/4/1996	Debit Slip R/E Payment 38020 37357	$	2,000.00
10/15/1996	Debit Slip Cash	$	1,000.00
		$	39,102.64

247. Respondent took $16,600.00 by using debit slips and not by using checks from the estate checking account.

248. Respondent failed to make a notation on 12 of these withdrawals and has no written record in his possession noting the purpose of these withdrawals.

249. The "no notation" withdrawals totaled $33,602.55.

250. Several of these withdrawals were used to pay Respondent's personal debts, including his mortgage.

251. On at least seven separate occasions Respondent used the estate account to directly pay his creditors. These seven payments totaled $20,408.28.

252. Ohio Revised Code §2109.43 prohibits fiduciaries from making personal use of the funds belonging to a trust.

253. On December 29, 1995, Respondent submitted a copy of the Ohio Estate Tax return for the Taylor Pavey Estate to the Clark County Probate Court. The return listed the gross estate assets at 4446,488.01, with a net taxable estate of $393,341.75.

254. In the Ohio Estate Tax Return Respondent listed the anticipated estate expense for attorney and fiduciary fees at $20,000.00.

255. During this time period, Respondent received $417,685.67 on behalf of the Taylor Pavey Estate and disbursed $335,942.40 of those assets. This included the $39,102.64 Respondent paid to himself or directly to his creditors as payment of fiduciary fees.

256. On June 16, 1997, Respondent dropped off to the Probate Court for filing the Fiduciary's Account covering the period 04/28/95 to 06/16/97.

257. Respondent stated on the second page of the Fiduciary's Account delivered to the Court on June 16, 1997, that $13,929.00 had been disbursed for fiduciary fees and $25,173.64 had been disbursed for attorney fees.

258. The document delivered by Respondent on June 16, 1997, was not accepted for filing.

259. On January 19, 1999, Respondent filed an account entitled "Fiduciary's Account," covering the period June 16, 1997, to March 31, 1998. The title

of the document was modified by the court to read "First Current Fiduciary's Account."

260. The first page of that "First Current Fiduciary's Account" stated that Respondent previously filed an account for the time period April 28, 1995, to June 16, 1997 but failed to list the "Fiduciary Fees Paid" and "Attorney Fees Paid" during that previous period.

261. Respondent did not list attorney or fiduciary fees taken during the accounting period on the first page of the Fiduciary's Account filed on January 19, 1999.

262. On January 14, 2003, Clark County Probate Court granted Respondent's motion to substitute Carroll McKinney as attorney for the estate.

263. Attorney McKinney filed a 1st Current Account with the Court for the time period of 04/28/95 to 06/16/97.

264. The Fiduciary's Account filed on May 24, 2005 listed the total assets in the estate at $417,685.67 as well as the distribution of fiduciary fees of $13,929.00 and attorney fees of $25,685.67.

265. Attorney McKinney concurrently made a motion to rename the "1st Current Fiduciary's Account" (originally filed 01/19/99) as the "2nd Current Fiduciary's Account." This motion was granted.

266. Under the Clark County Probate Court's schedule for determination of attorney fees Respondent was entitled to $10,929.78 for his legal work on the Taylor Pavey Estate.

267. On August 11, 2005, McKinney filed an Application for Authority to Pay Compensation to Fiduciary's Counsel.

268. Respondent supplied various files to attorney McKinney, which were utilized to prepare the application for extraordinary fees and the accompanying affidavit. Respondent signed the application as the fiduciary.

269. Respondent's application for extraordinary attorney fees requests the court to determine Respondent's compensation as the fiduciary's counsel and to authorize Respondent's payment of his legal fees from the estate assets.

270. Respondent's Application for Extraordinary Attorney Fees is identified as Stipulated Exhibit 77, pages 49-56.

271. Respondent provided the information about his hours on "Exhibit A" in 2005. Respondent did so without having any time records in his possession detailing the work he performed between 1995 and 2003.

272. On August 26, 2005, he executed an Affidavit & Receipt which was filed with the court on August 30, 2005.

273. This affidavit supplied the court with bank statements and respondent's handwritten notations indicating the recipient of each distribution from the estate bank account.

274. Respondent failed to obtain the prior approval of the probate court before he took the attorney's fees and the executor's fees in the Taylor Pavey Estate.

275. Respondent violated Clark County Local Rule 71(B) which states that attorney fees shall not be paid until the final account is prepared for filing.

COUNT SEVEN

276. Sometime in or around 1999, Respondent was retained by the parents of David Bliss to secure Bliss' release from federal custody. Bliss' parents resided in Highland County and Bliss was incarcerated in an Arizona federal prison on felony credit card fraud convictions.

277. Respondent was able to secure early release for Bliss. After his release, Bliss moved to Highland County and met Respondent for the first time.

278. After Bliss returned to Ohio, he told Respondent he still had some money from the credit card fraud. Respondent believed Bliss had an account in England.

279. During the time Bliss was in Highland County, he and his wife, Eve Bliss, had several conversations with Respondent about purchasing real estate and other possible investments.

280. In his deposition with relator, Respondent stated that sometime in or around 1999 he loaned $25,000 to Eve Bliss.

281. Respondent created no written contract or promissory note memorializing this loan.

282. Respondent took possession of no collateral to secure this loan.

283. In his deposition, Respondent indicated he has no clear recollection of how he secured the $25,000 that he loaned to Eve Bliss.

284. Respondent thought he obtained some of the $25,000 from his personal account, some from his attorney operating account and some from a loan he obtained from Merchants National Bank. Respondent could not recall whether he used one or multiple checks to make this loan.

285. David Bliss sent Respondent a check for $25,000.00 as repayment of the loan.

286. The $25,000.00 check that Bliss gave to Respondent was drawn on a closed account.

287. In his deposition, Respondent claims that within the first six months of meeting David Bliss, he became aware that Bliss was emotionally unstable, possibly even psychotic and capable of physical violence.

288. In his deposition, Respondent further claimed he "handled David Bliss in a certain fashion because I though David Bliss was capable of most anything" and that "I have tried not to be confrontational with him. I've tried to ease myself out of situations...".

289. On or about May 2004, and after Respondent took the bench, David Bliss was arrested in Las Vegas, Nevada and charged with additional theft crimes for attempting to sell one or more flags allegedly from the World Trade Center on 9/11.

290. Bliss called Respondent from jail in Las Vegas and told Respondent he had cashier's checks made out to Respondent.

291. After receiving one or more calls from Bliss, Respondent called Highland County Sheriff Ron Ward.

292. In his deposition, Respondent stated that he was attempting to report to Sheriff Ward and the FBI that Bliss was involved in smuggling a terrorist into the United States.

293. Sheriff Ward did provide Respondent with the name and phone number of an FBI agent in Portsmouth, Ohio.

294. In his deposition, Respondent stated that he called the FBI because of his concern that Bliss was involved with smuggling a terrorist into the United States.

295. Respondent called FBI agent, Don Bean, in Portsmouth, Ohio.

296. Since Bliss' new charges stemmed out of his alleged fraud of an individual in North Carolina, he was transported to North Carolina shortly after his arrest and remained in pre-trial custody for approximately 18 months.

297. While Bliss was incarcerated in Las Vegas, Nevada, Respondent accepted several collect calls from Bliss. Bliss also called Respondent while incarcerated in North Carolina. Respondent had instructed the court staff not to accept any collect calls. Respondent has never personally accepted a collect call at the Court.

298. On or about November 16, 2005, Bliss was released to the custody of law enforcement officials and brought to Chillicothe, Ohio. While in Chillicothe, Bliss agreed to cooperate with law enforcement officials.

299. Bliss placed a recorded call to Respondent at the Highland County Courthouse and Respondent agreed to meet with Bliss at the Comfort Inn in Chillicothe.

300. Law enforcement officials recorded Respondent's conversation during his meeting with Bliss.

301. A true, accurate, and complete transcript of this recorded conversation is identified as Stipulated Exhibits 100 & 101.

302. In his deposition, Respondent stated he met with Bliss in Chillicothe to see if he could get his $25,000 back and acknowledged that the only possible source was from money that Bliss had accumulated through credit cards.

303. Bliss next called to arrange another in-person meeting.

304. Respondent met with Bliss on December 13, 2005, in Bliss' parked vehicle in downtown Hillsboro. This meeting was also recorded by law enforcement officials.

305. A true, accurate, and complete transcript of that conversation is identified as Stipulated Exhibit 102.

306. "I've got a whole bunch of money that I've put in it after I bought it. I bought it only because I'm in such terrible financial shape with the banks that they gave me 110% financing on it." ..."I owe $890,000 on that bank building."..." If that were an asset were to be purchased—for $890,000 that does a number of things for me. It—helps me ---dramatically. All right, it gets me out from under some guns that I have to my head."

307. Respondent stated that the building was owned as a corporation and included with the corporation was a bank account that would be available to whoever owned the shares of the corporation.

308. Respondent repeated that so long as he was selling Bliss the building for reasonable fair market value it would not be money laundering.

309. Respondent then claimed that because of a conflict of interest he had to transfer the shares in the corporation to his friend, Gordon Yuellig.

310. Respondent explained: "I'll have to give him something for his time and effort, and that'll come out of the 890. Now-and then he will transfer the shares directly to you."

311. "He (Yuellig) had a bank account at Merchant's Bank, and funds could be wired into that bank account. And once they're wired, then we don't-we don't go to attorneys, we don't record anything..." Bliss said, "So no one – no one'll ever know that this is my money from credit card fraud, nobody?"

and Respondent replied, "There will be three people who will know who owns that building." Respondent stated later in the conversation, "I'm, I'm—this is not a shady trick. This is, this is, I honestly feel that that's fair market value for the building. It helps me out—gets these monkeys off my back, it gives you a bank account, it give you an investment that pays for itself, and ..."

312. Just before getting out of the truck, Bliss tried to hand Respondent $100.00, which Respondent refused to accept.

313. As they part, Bliss says "Love you, Jeff." Respondent answered: "Like a brother."

314. Bliss called him on December 14, 2005 at the courthouse approximately two days after their last meeting. This call was recorded by law enforcement officials.

315. Respondent then called Bliss back. This call is also recorded by law enforcement officials.

316. Respondent called Bliss back and gave Bliss his wife's bank account number, the routing number and the swift number.

317. In Respondent's sworn statement Respondent did not mention that he had to call the bank to obtain the swift number or that he then called Bliss back and provided Bliss with the swift number.

318. Respondent confirmed that he and Bliss can sign the papers anywhere.

319. Respondent told Bliss: "Tell me when and where...That's all it takes—the two—two documents—and I'll have those."

320. Respondent gave Eve Bliss' phone number in England to attorney Carroll McKinney so McKinney could call Eve Bliss about arranging the wire

transfer of the funds for the proposed purchase of the Fifth/Third Building.

COUNT EIGHT

321. On October 10, 2002, Donald Scott Shaffer was indicted for one count of sexual conduct with a minor.

322. The matter was docketed under case number 02CR188.

323. In February 2003, Respondent was sworn in as the Highland County Common Pleas Judge, general division. Respondent was assigned the Shaffer case.

324. On January 14, 2004, Respondent accepted Shaffer's guilty plea, under an amended count of the indictment, to sexual imposition in violation of RC2907.06 (misdemeanor).

325. Respondent sentenced Shaffer to 60 days incarceration, 50 days suspended with the remaining 10 days to be served on weekends. Shaffer was ordered to report to the Highland County Jail on February 13, 2004.

326. Shaffer's cousin is Roger Dillard.

327. Dillard is a good friend of Respondent and is a visitor in Respondent's chambers.

328. Dillard discussed Shaffer with Respondent.

329. On February 19, 2004, Respondent signed an entry in the *State v. Shaffer* case stating: "Upon Motion of the Defendant and for good cause shown the Court hereby at this time suspends any and all remaining jail time of the Defendant. Otherwise, the sentencing entry dated January 14, 2004, shall remain in full force and effect."

330. Shaffer was represented by attorney Conrad Curran in the *State v. Shaffer* case.

331. At no time before or after February 19, 2004, did Attorney Curran make a motion to suspend Schaffer's sentence.

COUNT NINE

332. On January 27, 2005, Respondent submitted an application seeking consideration for appointment to the federal bench.

333. Respondent's application was submitted in the form of a sworn affidavit.

334. Question two in section IV of the application, asked Respondent: "Have you and your spouse filed and paid all taxes (federal, state and local) as of the date of your application? Please indicate if you filed 'married filing separately.' Did you make any back tax payments prior to your nomination? If so, provide details."

335. In response to this inquiry Respondent stated:

> My wife and I file joint returns and we are current for tax years 2001, 2002 and 2003. We expect a tax refund for 2004 of approximately $10,000.00. However, the IRS has taken the position that I owe approximately a total of $20,000.00 for the combine tax years of 1998, 1999 and 2000. I have disputed the IRS position for some time and my attorney Carroll V. McKinney, phone number 937-393-1181 has offered to settle this matter on several occasions. I have maintained $20,000.00 in a dedicated tax account at NCB Bank, Hillsboro, Ohio since October of 2004. The main issue remaining between the IRS and myself is that I have been provided with at least $10,000.00 in payments that were made and their refusal to waive certain penalties. If this is an issue with the Committee or the Senator, I will immediately pay the IRS in full.

336. Respondent's assertion that the tax shares at issue with the IRS for 1998, 1999, and 2000 was incorrect.

337. Question three in section IV asked Respondent: "Has a tax lien or other collection procedure ever been instituted against you by federal, state or local authorities?"

338. Respondent's reply was: "Yes, the IRS. Please see answer to Question 2 above."

338. Respondent's reply was: "Yes, the IRS. Please see answer to Question 2 above." Exh 125

339. Respondent had previously been the subject of federal tax liens for the years 1993, 1994, 1995, and 1997. All of these liens had been satisfied and extinguished at the time of his application.

340. In section II of the application Respondent was asked to provide "a complete, current, financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household." Exh 125

341. Respondent's reply stated that his assets included $20,000.00 being held in "Escrow for IRS Taxes." Exh 125

Mitigation

342. Respondent has not been the subject of previous discipline.

JUDGE JEFFREY HOSKINS
Respondent

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