

IN THE
SUPREME COURT OF OHIO

| | | |
|--|---|----------------------------------|
| In re: | : | |
| Henry Freeman | : | |
| Attorney Registration No. (0022713) | : | |
| 786 Premiera Drive | : | |
| Tallmadge, OH 44278 | : | |
| | : | |
| Respondent | : | CASE NO. 2008-0395 |
| | : | |
| Disciplinary Counsel | : | RELATOR'S OBJECTIONS |
| 250 Civic Center Drive, Suite 325 | : | TO THE BOARD OF |
| Columbus, OH 43215-7411 | : | COMMISSIONERS' REPORT AND |
| | : | RECOMMENDATIONS |
| | : | |
| Relator | : | |

RELATOR'S OBJECTIONS

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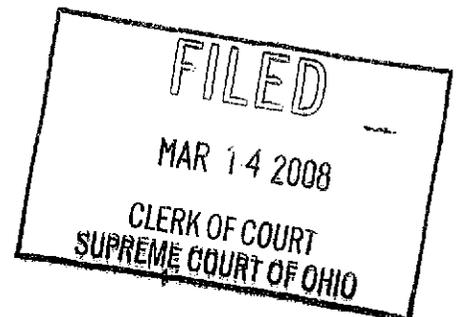


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IN THE SUPREME COURT OF OHIO

Henry Freeman :

Attorney Reg. No. 0022713 :

786 Premiera Drive :

Tallmadge, OH 44278 :

Respondent :

CASE NO. 2008-0395

**RELATOR'S OBJECTIONS TO
THE BOARD OF COMMISSIONERS
REPORT AND RECOMMENDATION
AND BRIEF IN SUPPORT**

Disciplinary Counsel :

250 Civic Center Drive, Suite 325 :

Columbus, Ohio 43215-7411 :

Relator :

Now comes relator, Disciplinary Counsel, and hereby submits objections to the Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline (Board) filed with the court on February 20, 2008.

INTRODUCTION

A disciplinary complaint was filed against Respondent, Henry Freeman, on April 16, 2007. Respondent filed his answer to the complaint on June 13, 2007. After a panel hearing on January 18, 2008, the Board found that respondent used his IOLTA as a personal account and as a result commingled funds and caused 14 overdrafts. The Board also found that respondent failed to cooperate with relator in the investigation of his IOLTA account and one other unrelated matter.

At the close of the hearing, relator recommended that respondent be suspended for one-year, with six months stayed. Respondent recommended a six month stayed suspension. After considering this matter, the Board recommended that the respondent receive a one-year stayed suspension subject to several conditions, including a monitor. For the reasons set forth herein, relator objects to the board's recommended sanction and requests that respondent be suspended from the practice of law for one-year with six months stayed.

FACTS

Respondent, Henry Roosevelt Freeman, was admitted to the practice of law in the State of Ohio on November 6, 1981. [Report at 1, Stip 1] Respondent is a solo practitioner and primarily practices in the areas of bankruptcy, probate and family law. [Report at 1, Stip 2]

COUNT I

From at least January 1, 2004 through March 24, 2006, respondent maintained an IOLTA bank account at Fifth Third Bank. [Stip. 3] This account was closed on or about March 24, 2006. [Stip 3] Beginning in June or July of 2006 respondent maintained an IOLTA bank account at First Merit Bank. [Stip. 4]

From 2004 until the present, respondent deposited client funds and unearned retainers into his IOLTA accounts at Fifth Third Bank and First Merit Bank. [Tr. at 20:21, 20:25, 21:6; Report at 4; Stip. 5, Stip. Ex. 1] Between January 1, 2004 and March 24, 2006, respondent used his Fifth Third IOLTA as if it were his personal bank account and/or his law office operating account. [Report at 6, Stip 6, Stip. Ex. 1]

In doing so, respondent violated the ethical rules in this use of his Fifth Third IOLTA on numerous occasions, by paying various personal and/or law office bills by automatic withdrawal or electronic check with funds from his IOLTA including bills from AOL, Ameritech, Time Warner Cable, Safe Auto Insurance, Sprint, Burlington Store, and Ohio Edison; writing and negotiating approximately 14 checks payable to cash totaling \$1,245; and writing dozens of checks to pay personal and/or law firm bills owed to East Ohio Gas Company, CVS Pharmacy, Firestone, Staples, Goodyear, Sprint PCS, Key Bank Mastercard, Nationwide Tire and Battery, Davis Supermarket, Modern Builders Supply and Ohio Legal Blank. [Report at 6, Stip. 7, Stip. Ex. 1] During this same time period respondent's Fifth Third IOLTA experienced at least 11 overdrafts. [Report at 6, Stip. 8, Tr. at 22:9, Stip. Ex. 2]

As a result of the conduct detailed above, respondent commingled funds in his Fifth Third IOLTA, withdrew funds in excess of the balance, and failed to maintain an appropriate accounting of client funds deposited into the account. [Tr. at 22:12, 22:15, 22:18; Stip. 9] Further, respondent testified that he had always used his IOLTA account as a personal account. [Tr. at 32:12, Report at 10]

Beginning in June or July of 2006 respondent used his First Merit IOLTA as if it were his personal bank account and/or his law office operating account. [Report at 6, Stip. 10] In doing so, respondent violated the ethical rules in this use of his First Merit IOLTA on numerous occasions, by paying various personal and/or law office bills by automatic withdrawal or electronic check with funds from his IOLTA including bills from Time Warner Cable. [Stip. 11,

Stip. Ex. 3] During this same time period respondent's First Merit IOLTA experienced at least 3 overdrafts. [Stip. 12, Stip. Ex. 3]

As a result of the conduct detailed above, respondent commingled funds in his First Merit IOLTA, withdrew funds in excess of the balance, and failed to maintain an appropriate accounting of client funds deposited into the account. [Tr. at 22:12, 22:15, 22:18; Stip. 13] Further, respondent testified that he had always used his IOLTA account as a personal account. [Tr. at 32:12, Report at 10]

COUNT II

On March 21, 2006, relator sent a Letter of Inquiry to respondent regarding the allegations in Count I via certified mail. [Stip 14] Respondent received the letter of inquiry and signed the certified mail return receipt but failed to respond to this letter. [Report at 8, Stip. 15, 16, Stip. Ex. 4] On April 24, 2006, relator sent a second Letter of Inquiry to respondent regarding the allegations in Count I via certified mail. [Stip. 17] Respondent received the letter of inquiry and signed the certified mail return receipt, yet again failed to respond to this letter. [Report at 8, Stip. 18, 19, Stip. Ex. 5]

On October 18, 2006, relator sent respondent a third letter requesting additional information and respondent again failed to respond to this letter. [Report at 8, Stip. 21, 22, Stip Ex. 7] On February 1, 2007, relator contacted respondent about his lack of response to the October 18, 2006 letter. [Stip. 23] Pursuant to this discussion, relator re-sent the October 18,

2006 letter to respondent by e-mail and ordinary mail. [Stip. 24, Stip. Ex. 8, 9] Respondent again failed to respond to this letter. [Report at 8, Stip. 25]

COUNT III

On or about December 28, 2005, Delores Ellis filed a grievance against respondent with the Cleveland Bar Association. [Stip. 26, Stip. Ex. 10] On January 10, 2006 the Cleveland Bar Association forwarded the grievance to respondent and requested a written response. [Report at 8, Stip. 27, 28, Stip Ex. 11] Respondent failed to respond to this letter. [Report at 8, Stip. 27, 28]

On April 18, 2006, the Ellis grievance was forwarded to relator for investigation and on April 25, 2006, relator sent a Letter of Inquiry to respondent regarding the Ellis grievance allegations via certified mail. [Stip. 29, 30, Stip Ex. 14] The post office returned this letter as undeliverable and indicated that respondent had moved. [Stip. 31]

On May 2, 2006, relator sent a Letter of Inquiry to respondent regarding the Ellis grievance via certified mail. [Stip. 32] Respondent received the letter of inquiry and signed the certified mail return receipt, but again failed to respond. [Report at 8, Stip. 33, 34, Stip. Ex. 15]

On May 30, 2006, relator sent a second Letter of Inquiry to respondent regarding the Ellis grievance via certified mail. [Stip. 35] This letter was returned by the post office as unclaimed. [Stip. 36, Stip. Ex. 16] On June 15, 2006, relator re-sent the second Letter of Inquiry to respondent regarding the Ellis grievance via certified mail. [Stip. 37] Respondent received the

letter of inquiry and signed the certified mail return receipt and again failed to respond to this letter. [Report at 8, Stip. 38, 39, Stip. Ex. 17]

On or about July 6, 2006, relator hand-delivered the second Letter of Inquiry to respondent regarding the Ellis grievance to respondent at his home address. [Stip. 40, Stip. Ex. 18] On July 14, 2006, respondent requested and was granted an extension until August 13, 2006 to respond to the letter inquiry. [Stip. 41, Stip. Ex. 19] On August 14, 2006, respondent requested and was granted an extension until August 28, 2006 to respond to the letter inquiry. [Stip. 42, Stip. Ex. 20] Respondent failed to respond to the letter of inquiry. [Report at 8, Stip. 43]

OBJECTIONS

Respondent's Misconduct Merits An Actual Suspension

A.

Respondent's Misconduct and the Resulting Disciplinary Rule Violations Merit an Actual Suspension

This Court has previously spoken clearly about the seriousness of IOLTA mismanagement. “[M]ishandling of clients’ funds either by way of conversion, commingling or just poor management, encompasses an area of the gravest concern of this court in reviewing claimed attorney misconduct.” *Columbus Bar Assn. v. Thompson* (1982), 69 Ohio St.2d 667, 669, 23 O.O.3d 541, 433 N.E.2d 602. “[A]ttorneys [must] maintain their personal and office accounts separate from their clients accounts . . .” *Erie-Huron Counties Joint Certified*

Grievance Committees v. Miles (1996), 76 Ohio St.3d 574, 577, 669 N.E.2d 833. “Any violation of this rule “warrants a substantial sanction whether or not the client has been harmed.” Id.

Respondent’s conduct raises these same concerns. Respondent was admitted to the practice of law in 1981 and testified that he has always used his IOLTA account as a personal and operating account. [Report at 10, Tr. at 32:12] Additionally, the bank records in evidence in this matter show that from at least January 2004 through March 2007, respondent regularly used his Fifth Third and later his First Merit IOLTA accounts as a personal bank account and law office operating account. As a result of this, respondent commingled client and personal funds, withdrew funds in excess of the account balance, and failed to maintain an appropriate accounting of client funds, which caused at least 14 overdrafts.

Respondent offered several explanations for his IOLTA misconduct at the hearing. Respondent testified that he “wasn’t aware of the need to have” an IOLTA account and a separate operating account until 2000. [Tr. at 32:25] Respondent offered no explanation for why his misconduct continued after 2000 other than his assertion that he “didn’t feel like [he] needed” to have these two separate accounts. [Tr. at 33:22] Further, respondent acknowledged that there was no causal relationship between his IOLTA misconduct and his depression. [Tr. at 36:20]

Respondent also engaged in a pattern of non-cooperation that spanned 14 months from January 2006 through February 2007. During this period, respondent failed to respond to four

letters from relator regarding the investigation of his IOLTA, failed to accept delivery of one letter and failed to respond to five letters regarding the Ellis matter.

It was based upon this IOLTA misconduct that the Board found respondent violated DR 1-102(A)(5) and Rule 8.4(d) [a lawyer shall not engage in conduct that is prejudicial to the administration of justice]; DR 1-102(A)(6) and Rule 8.4(h) [a lawyer shall not engage in conduct that adversely reflects upon his fitness to practice law]; DR 9-102(A) and Rule 1.15(a) [all funds of clients paid to a lawyer shall be deposited in one or more identifiable bank accounts and no funds belonging to the lawyer or law firm shall be deposited therein]; and, DR 9-102(B)(3) and Rule 1.15(a)(2) and (a)(3) [a lawyer shall maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them] in Count I.

The Board further found that respondent's non-cooperation in Counts II and III, violates 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 conduct that adversely reflects on the lawyer's fitness to practice law]; and Gov. Bar R. V(4)(G) [failure to cooperate with relator's investigation].

There are two disciplinary cases from this Court that provide guidance on the appropriate sanction for a respondent who engaged in this type of misconduct. In *Disciplinary Counsel v. Morgan*, Morgan commingled personal and client funds in IOLTA during a one-year period and failed to cooperate in the resulting investigation. *Disciplinary Counsel v. Morgan* 114 Ohio

St.3d 179, 2007-Ohio-3604, 870 N.E.2d 1171. In *Morgan*, the court found that because Morgan made both improper deposits into and withdrawals from his IOLTA and failed to cooperate, “this misconduct warrants a more stringent sanction than a stayed suspension.” *Morgan* at ¶ 11. It was on this basis, the Court ordered a two-year suspension with one year stayed.

The hearing panel in the present matter found that respondent deserved a lesser sanction than Morgan because *Morgan* was a default proceeding without the benefit of mitigation evidence. The hearing panel noted that respondent participated in the hearing and provided some mitigation evidence. Relator agrees that the sanction for respondent should be less than the two year suspension with one year stayed in *Morgan*. However, based upon this Court’s prior case law and respondents admission that he mismanaged and misused his IOLTA for many years, relator is unable to agree that a fully stayed suspension is appropriate.

In *Disciplinary Counsel v. Grdina*, Grdina received a two-year suspension with one year stayed for neglect of two clients, making one misrepresentation about a filing, paying personal bills from an IOLTA account over a three year period and failing to cooperate in two investigations. *Disciplinary Counsel v. Grdina* 101 Ohio St.3d 150, 2004-Ohio-299, 803 N.E.2d 392.

The Court arrived at the appropriate sanction for Grdina after considering his mitigation of no disciplinary history, the connection between his misconduct and his alcoholism and his demonstrated commitment to recovery for several years. In the present matter, there is no dispute that respondent’s misconduct does not involve neglect or misrepresentation, and

therefore merits a similar but lesser sanction. However, in light of the fact that respondent's recovery from adjustment disorder, anxiety and depression is far from complete and in consideration of the breadth of respondent's IOLTA violations, relator asserts that a fully stayed suspension is not appropriate.

B.

A Stayed Suspension Does not Adequately Protect the Public

Respondent is currently being treated by Dr. John Lowenfeld, Ph.D. who has diagnosed respondent with adjustment disorder with mixed anxiety and depressed mood [DSM IV 309.28]. [Report at 12, Stip. 52, 53] This treatment began on August 15, 2006 and ended in December 2006. [Stip. 52] On June 13, 2007, respondent resumed treatment and is now being seen by Dr. Lowenfeld every other month. [Stip. 52]

Respondent did not call Dr. Lowenfeld to testify at the disciplinary hearing, but stipulations entered into by the parties indicate that respondent's recovery is incomplete and unsustained. Dr. Lowenfeld holds the opinion that respondent's recovery is about 70-75 percent complete and, as such, respondent is not capable of providing legal services to clients beyond routine legal matters. [Report at 12, Stip. 56]

Respondent's own testimony on the status of his recovery also raises concerns. Respondent himself acknowledged at the hearing that his treatment and recovery are "not complete at this time." [Tr. at 25:7] Further, though respondent suggested that he did not fully agree with the assessment of Dr. Lowenfeld, when asked to offer his personal assessment he

stated “I can’t necessarily say that I know where I’m at necessarily in terms of – I just can’t answer that question right now, I just can’t. I can’t answer that question in terms of where I’m at. I can’t – I cannot answer that question.” [Tr. at 26:21] Respondent also testified that his support network was limited to OLAP, that his wife and family were unaware of the extent of his ethical problems and that he needed to broaden his support network. [Tr. at 38:2, 38:19, 41:19] In response to a question about how much time was left on respondent’s OLAP contract he responded “I have no idea.” [Tr. at 48:9]

It is based upon respondent’s short amount of time in treatment, his incomplete recovery and his apparent inability to fully practice law, relator asserts that respondent requires additional time to complete his treatment and recovery prior to being allowed to practice law.

The hearing panel concluded that because respondent had a “small practice,” the appointment of a monitor would offer adequate protection for the public. However, the public is entitled to the same level of protection regardless of whether an attorney has a small or large practice. Additionally, there are no assurances that respondent will continue to maintain a “small practice.” Further, Dr. Lowenfeld holds the opinion that respondent is only capable of performing “routine legal matters.” Relator has serious concerns that there is no reliable way to ensure respondent only undertakes routine legal matters until his recovery is complete. Finally, client confidentiality requirements will further complicate the ability of any monitor to oversee the services that respondent provides to any clients while respondent continues his recovery.

It is for these reasons that relator requests that respondent be suspended for one-year with six months stayed. Relator further requests that respondent's stayed suspension be subject to the following conditions:

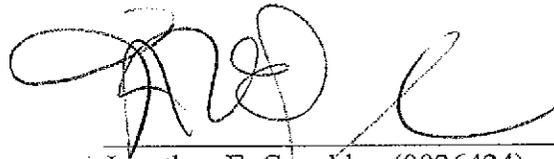
- Respondent must extend his OLAP contract for two years beyond date of final order in this matter by Supreme Court of Ohio,
- Respondent must abide by the terms of his OLAP contract,
- Respondent must comply with the treatment recommendations of his treating psychologist, and
- Respondent's clients must sign a waiver that allows the monitor full access to client files.

Finally, to ensure that respondent's recovery is complete prior to reinstatement, relator requests that respondent's reinstatement to the practice of law be conditioned on respondent providing a certification from a health-care professional that he has undergone a substantial period of successful treatment and is currently able to fully practice law in a competent, ethical, and professional manner.

CONCLUSION

The evidence shows that respondent used his IOLTA as a personal account for many years and as a result commingled funds and caused numerous overdrafts. Further, respondent failed to cooperate with relator in the investigation of his IOLTA violations and the Ellis matter. Based upon this evidence, and in consideration of respondent's current mental health status, relator requests respondent receive a one-year suspension with six months stayed.

Respectfully submitted,



Jonathan E. Coughlan (0026424)
Disciplinary Counsel



Robert R. Berger (0064922)
Assistant Disciplinary Counsel
Counsel of Record
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411
614.461.0256

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Relator's Objections to the Report of the Board of Commissioners on Grievances and Discipline has been served upon the Board of Commissioners on Grievances and Discipline, c/o Jonathan W. Marshall, Secretary, 65 South Front Street, 5th Floor, Columbus, Ohio 43215-3431, and respondent Henry Roosevelt Freeman, Esq., 786 Premiera Drive, Tallmadge, OH 44278 via regular U.S. mail, postage prepaid, this 14th day of March, 2008.



Robert R. Berger (0064922)

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

08-0395

| | | |
|----------------------------------|---|-------------------------------------|
| In Re: | : | |
| Complaint against | : | Case No. 07-023 |
| Henry R. Freeman | : | Findings of Fact, |
| Attorney Reg. No. 0022713 | : | Conclusions of Law and |
| Respondent | : | Recommendation of the |
| | : | Board of Commissioners on |
| Disciplinary Counsel | : | Grievances and Discipline of |
| | : | the Supreme Court of Ohio |
| Relator | : | |
| | : | |

INTRODUCTION

This matter came on for hearing on the 18th day of January, 2008. The hearing panel representing the Board of Commissioners on Grievances and Discipline (Board) consisted of Attorney Walter Reynolds of Dayton, the Honorable John B. Street of Chillicothe, and the Honorable Joseph J. Vukovich of Youngstown, the Panel Chair. None of the panel members resides in the appellate district from which this matter arose or served on the probable cause panel that reviewed this case. Respondent appeared, pro se.

Relator was represented by Attorney Robert R. Berger, Assistant Disciplinary Counsel. Prior to the hearing, the parties jointly submitted and filed with the Board certain stipulations of fact, violations, mitigation, and exhibits. Based upon the aforementioned stipulations, exhibits and the evidence adduced at the hearing, the panel makes the findings of fact, conclusions of law, and recommendations as hereinafter set forth.

FILED
FEB 20 2008
CLERK OF COURT
SUPREME COURT OF OHIO

APPENDIX
A

FINDINGS OF FACT

1. Respondent has been practicing law as a solo practitioner since his admission to the Bar on November 6, 1981, and has not previously been the subject of any prior disciplinary proceedings. Respondent's current practice consists of 10 to 20 clients.

2. The complaint against Respondent consists of three counts which may be summarized as follows:

(a) Count I – IOLTA Trust accounts violations from Jan. 1, 2004 continuing into 2007;

(b) Count II – Failure of Respondent to respond or cooperate relative to inquiry and/or investigation by Relator concerning Count I; and

(c) Count III – Failure of Respondent to respond or cooperate with Relator's inquiry and/or investigation relative to a grievance filed by one Delores Ellis with the Cleveland Bar Association.

3. The "Agreed Stipulations" jointly filed with the Board of Commissioners on December 28, 2007 and admitted into evidence without objection are attached hereto as Exhibit A and incorporated herein as if fully rewritten.¹

4. At the hearing, Respondent testified that he was not in agreement with the stipulations of fact designated as paragraph 5 which stated "From 2004 until the present Respondent deposited client funds and unearned retainers into his IOLTA account * * *." Respondent admitted that on rare occasions unearned retainers were deposited into his IOLTA account along with earned fees and retainers.

¹The exhibits are not attached as part of the panel report to the Board, but, remain part of the record as approved by the Panel

5. Respondent also testified that during the time relevant to the complaint he did not have any other checking account other than his IOLTA account, but he now has separate accounts to isolate client funds.

6. The panel finds that regardless of the matter of unearned retainers versus earned retainers, it is uncontroverted that Respondent used his IOLTA account as a personal checking account which he used to pay his personal bills (including some by automatic withdrawal by the creditor) and which resulted in his IOLTA account being overdrawn on at least eleven occasions.

7. During all times germane to the complaint, it was not proven or even alleged that any client was economically harmed in any way.

8. As to Counts II and III of the complaint, the panel finds that Respondent failed to respond to letters of inquiry from Relator and otherwise initially failed to cooperate with the disciplinary process, as evidenced by paragraphs 14 through 43 of the stipulations of the parties.

9. The parties stipulated that Respondent has been diagnosed with "adjustment disorder with mixed anxiety and depressed mood." (See paragraph 53 of stipulations.)

10. As Respondent testified that he always had used his IOLTA account in the manner complained of and set forth in Count I, the panel does not find the diagnosis set forth above to be a contributing factor to his IOLTA account violations.

CONCLUSIONS OF LAW

11. The panel finds that the evidence, admissions, and stipulations are clear and convincing evidence that Respondent violated the following disciplinary rules (with the caveat set forth in paragraph 46 of the stipulations, i.e. that since Respondent's conduct in Count One occurred prior to and after adoption of the Rules of Professional Conduct on February 1, 2007,

the applicable rule for both the former code and current rule are cited, but constitutes only one rule violation):

COUNT I (IOLTA)

(a) DR 1-102(A)(5) and Rule 8.4(d). A lawyer shall not engage in conduct prejudicial to the administration of justice;

(b) DR 1-102(A)(6) and Rule 8.4(h). A lawyer shall not engage in conduct that adversely reflects upon his fitness to practice law;

(c) DR 9-102(A) and Rule 1.15(a). All funds of clients paid to a lawyer shall be deposited in one or more identifiable bank accounts and no funds belonging to the lawyer or law firm shall be deposited therein; and

(d) DR 9-102(B)(3) and Rule 1.15(a)(2) and (a)(3). A lawyer shall maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them.

COUNTS II AND III (FAILURE TO COOPERATE)

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

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

(c) Gov. Bar Rule V(4)(G). Failure to cooperate with investigation.

12. The panel finds the following factors of aggravation and mitigation are applicable in this matter:

AGGRAVATION

(a) BCGD Proc. Reg. 10(B)(1)(c), (d) and (e). Pattern of misconduct; multiple offenses; and lack of cooperation in the disciplinary process.

MITIGATION

(a) BCGD Proc. Reg. 10(B)(2)(a) and (b). Absence of a prior disciplinary record; absence of a dishonest or selfish motive

(b) BCGD Proc. Reg. 10(B)(2)(h). Other interim rehabilitation. Respondent entered into a three year contract with the Ohio Lawyers Assistance Program (OLAP) on August 30, 2006, and is in compliance with same as of the date of the stipulations of the parties (Dec. 20, 2007). Respondent is also being treated by Dr. John Lowenfeld, Ph.D., who tendered the diagnosis that Respondent suffers from "adjustment disorder with mixed anxiety and depressed mood," and that Respondent's misconduct can be "attributed, in part" to his diagnosis. Dr. Lowenfeld, as stipulated by the parties, opined that Respondent is about 70-75 percent recovered and that "Respondent is not capable of providing legal services to clients beyond routine legal matters." (See Stipulations 51 through 56.)

PANEL RECOMMENDATION

13. Relator recommended a sanction of a 12 month suspension with 6 months stayed upon conditions. Respondent recommended a 6 month suspension with all of it stayed upon conditions.

14. In support of its recommendation, Relator cited two prior cases. In *Disciplinary Counsel v. Morgan*, 114 Ohio St.3d 179, 2007-Ohio-3604, the Supreme Court held that a two-year suspension from the practice of law, with one year conditionally stayed, was an appropriate sanction for an attorney's use of funds in his IOLTA account for purposes other than safekeeping client entrusted funds. In so ruling, the Supreme Court noted that such

misconduct warranted a substantial sanction whether or not the client has been harmed.

However, in *Morgan*, the Respondent did not participate in the disciplinary process and the Supreme Court noted that as a result, they had no mitigating evidence before it.

The second case cited by Relator was *Office of Disciplinary Counsel v. Grdina* (2004), 101 Ohio St.3d 150,2004-Ohio-299, which also imposed a two-year suspension, one year conditionally stayed with conditions in a case involving neglect of client matters, IOLTA violations, and failure to cooperate.

15. In the matter at hand, Respondent did eventually participate in the disciplinary process, was not accused of client neglect, and his depression likely was a contributing factor in his initial failure to cooperate – factors which somewhat distinguish the two aforementioned cases. Moreover, Respondent was articulate and offered well reasoned responses to questions during the hearing.

16. Respondent now maintains a very small practice and has taken corrective measures to separate client funds from his personal funds and obligations.

17. Since the panel did not have an opportunity to question Dr. Lowenfeld relative to his opinion concerning Respondent's current ability to practice law, and considering Respondent's small practice, his OLAP contract, his demeanor at the hearing and the nature of his violations, the panel unanimously concluded that the public would be adequately protected by probation conditions on Respondent's law practice as opposed to an actual suspension.

18. The panel accordingly recommends that Respondent receive a one year suspension from the practice of law, all of it stayed for probation, upon the following conditions:

(a) Respondent shall extend his OLAP contract for at least two years from the date of the Supreme Court order in this matter;

(b) Respondent shall abide by all of the obligations imposed upon him by his OLAP contract;

(c) Respondent shall continue to be treated for his anxiety and depression, and shall provide proof of his continued treatment, and any other medical information or material as may be requested by the person or persons handling his OLAP contract;

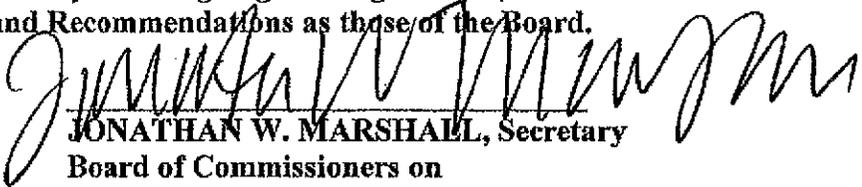
(d) Respondent shall cooperate with Relator who shall appoint a practice monitor for Respondent during the period of his stayed suspension. Respondent shall abide by all recommendations of said monitor or monitors, and shall fully cooperate with same; and

(e) Respondent shall refrain from any disciplinary violations during the period of his stayed suspension.

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 that the Respondent, Henry R. Freeman, be suspended from the practice of law for a period of one year with the entire year stayed upon the probation conditions contained in the panel report. 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

HENRY ROOSEVELT FREEMAN
Attorney Registration No. (0022713)
786 Premiera Drive
Tallmadge, OH 44278

FILED

DEC 28 2007

BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

**AGREED
STIPULATIONS
BOARD NO. 07-023**

DISCIPLINARY COUNSEL
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411

AGREED STIPULATIONS

Relator, Disciplinary Counsel, and respondent, Henry Freeman, do hereby stipulate to the admission of the following facts, violations, mitigation and exhibits.

STIPULATED FACTS

1. Respondent, Henry Roosevelt Freeman, was admitted to the practice of law in the State of Ohio on November 6, 1981. Respondent is subject to the Code of Professional Responsibility, the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.
2. Respondent is a solo practitioner and primarily practices in the areas of bankruptcy, probate and family law.

COUNT I

3. From at least January 1, 2004 through March 24, 2006, respondent maintained an IOLTA bank account [account number 0083731852] at Fifth Third Bank. This account was closed on or about March 24, 2006.
4. Beginning in June or July of 2006 respondent maintained an IOLTA bank account [account number 5320006155] at First Merit Bank.
5. From 2004 until the present, respondent deposited client funds and unearned retainers into his IOLTA accounts at Fifth Third Bank and First Merit Bank.
6. Between January 1, 2004 and March 24, 2006, respondent used his Fifth Third IOLTA as if it were his personal bank account and/or his law office operating account.
7. In doing so, respondent violated the ethical rules in this use of his Fifth Third IOLTA on numerous occasions, by:
 - In 2004 through 2006, respondent paid various personal and/or law office bills by automatic withdrawal or electronic check with funds from his IOLTA including bills from AOL, Ameritech, Time Warner Cable, Safe Auto Insurance, Sprint, Burlington Store, and Ohio Edison.

- In 2005 and 2006, respondent wrote and negotiated approximately 14 checks payable to cash totaling \$1,245.
 - In 2005 and 2006, respondent wrote dozens of checks to pay personal and/or law firm bills owed to East Ohio Gas Company, CVS Pharmacy, Firestone, Staples, Goodyear, Sprint PCS, Key Bank Mastercard, Nationwide Tire and Battery, Davis Supermarket, Modern Builders Supply and Ohio Legal Blank.
8. During this same time period respondent's Fifth Third IOLTA experienced at least 11 overdrafts.
 9. As a result of the conduct detailed above, respondent commingled funds in his Fifth Third IOLTA, withdrew funds in excess of the balance, and failed to maintain an appropriate accounting of client funds deposited into the account.
 10. Beginning in June or July of 2006 respondent used his First Merit IOLTA as if it were his personal bank account and/or his law office operating account.
 11. In doing so, respondent violated the ethical rules in this use of his First Merit IOLTA on numerous occasions, by paying various personal and/or law office bills by automatic withdrawal or electronic check with funds from his IOLTA including bills from Time Warner Cable.

12. During this same time period respondent's First Merit IOLTA experienced at least 3 overdrafts.
13. As a result of the conduct detailed above, respondent commingled funds in his First Merit IOLTA, withdrew funds in excess of the balance, and failed to maintain an appropriate accounting of client funds deposited into the account.

COUNT II

14. On March 21, 2006, relator sent a Letter of Inquiry to respondent regarding the allegations in Count I via certified mail, return receipt requested to respondent's law office address.
15. Respondent received the letter of inquiry and signed the certified mail return receipt.
16. Respondent failed to respond to this letter.
17. On April 24, 2006, relator sent a second Letter of Inquiry to respondent regarding the allegations in Count I via certified mail, return receipt requested to respondent's law office address.
18. Respondent received the letter of inquiry and signed the certified mail return receipt.
19. Respondent failed to respond to this letter.

20. On September 15, 2006, relator personally served respondent with a subpoena to appear at relator's offices for a deposition to answer questions regarding the allegations in Count I.
21. After the deposition, relator sent a follow up letter to respondent dated October 18, 2006. This letter requested additional information from respondent about the allegations in Count I.
22. Respondent failed to respond to this letter.
23. On February 1, 2007, relator contacted respondent about his lack of response to the October 18, 2006 letter.
24. Pursuant to this discussion, on February 1, 2007, relator re-sent the October 18, 2006 letter to respondent by e-mail and ordinary mail to respondent's home address.
25. Respondent failed to respond to this letter.

COUNT III

26. On or about December 28, 2005, Delores Ellis filed a grievance against respondent with the Cleveland Bar Association.

27. On January 10, 2006 the Cleveland Bar Association forwarded the grievance to respondent and requested a written response.
28. Respondent failed to respond to this letter.
29. On April 18, 2006, the Ellis grievance was forwarded to relator for investigation.
30. On April 25, 2006, relator sent a Letter of Inquiry to respondent regarding the Ellis grievance allegations via certified mail, return receipt requested to respondent's law office address.
31. The post office returned this letter as undeliverable and indicated that respondent had moved.
32. On May 2, 2006, relator sent a Letter of Inquiry to respondent regarding the Ellis grievance via certified mail, return receipt requested to respondent's home address.
33. Respondent received the letter of inquiry and signed the certified mail return receipt.
34. Respondent failed to respond to this letter.

35. On May 30, 2006, relator sent a second Letter of Inquiry to respondent regarding the Ellis grievance via certified mail, return receipt requested to respondent's home address.
36. This letter was returned by the post office as unclaimed.
37. On June 15, 2006, relator re-sent the second Letter of Inquiry to respondent regarding the Ellis grievance via certified mail, return receipt requested to respondent's home address.
38. Respondent received the letter of inquiry and signed the certified mail return receipt.
39. Respondent failed to respond to this letter.
40. On or about July 6, 2006, relator hand-delivered the second Letter of Inquiry to respondent regarding the Ellis grievance to respondent at his home address.
41. On July 14, 2006, respondent requested and was granted an extension until August 13, 2006 to respond to the letter inquiry.
42. On August 14, 2006, respondent requested and was granted an extension until August 28, 2006 to respond to the letter inquiry.

43. Respondent failed to respond to the letter of inquiry.
44. On September 15, 2006, relator personally served respondent with a subpoena to appear at relator's offices for a deposition to answer questions regarding the Ellis allegations.
45. On October 12, 2006, respondent attended and fully answered all questions proposed at a deposition conducted by relator.

STIPULATED VIOLATIONS

46. Respondent's conduct as set forth in Count I occurred both prior to and after the adoption of the Rules of Professional Conduct on February 1, 2007. As such, for each violation, the applicable ethical rule for both the former Code of Professional Responsibility and current Rules of Professional Conduct is listed. However, relator and respondent agree that the listing of both a former and current ethical rule constitutes only one rule violation.
47. Respondent's conduct, as set forth in Count I, constitutes violations of: DR 1-102(A)(5) and Rule 8.4(d) [a lawyer shall not engage in conduct that is prejudicial to the administration of justice]; DR 1-102(A)(6) and Rule 8.4(h) [a lawyer shall not engage in conduct that adversely reflects upon his fitness to practice law]; DR 9-102(A) and Rule 1.15(a) [all funds of clients paid to a lawyer shall be deposited in one or more identifiable bank accounts and no funds belonging to the lawyer or law firm shall be deposited therein]; and, DR 9-102(B)(3) and Rule 1.15(a)(2) and (a)(3)

[a lawyer shall maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them].

48. Respondent's conduct, as set forth in Count II, constitutes a violation of the Code of Professional Responsibility: 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 conduct that adversely reflects on the lawyer's fitness to practice law]; and Gov. Bar R. V(4)(G) [failure to cooperate with relator's investigation].
49. Respondent's conduct, as set forth in Count III, constitutes a violation of the Code of Professional Responsibility: 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 conduct that adversely reflects on the lawyer's fitness to practice law]; and Gov. Bar R. V(4)(G) [failure to cooperate with relator's investigation].

STIPULATED MITIGATION

50. Respondent has no prior disciplinary record.
51. On August 30, 2006 respondent entered into a three year contract with the Ohio Lawyers Assistance Program [OLAP]. According to OLAP Associate Director Paul Caimi, as of December 20, 2007, respondent is in compliance with his OLAP contract.

52. Respondent is currently being treated by Dr. John Lowenfeld, Ph.D. Treatment by Dr. Lowenfeld first began on August 15, 2006 and ended in December 2006. On June 13, 2007, respondent resumed treatment with Dr. Lowenfeld. Respondent is now being seen by Dr. Lowenfeld every other month.
53. Dr. Lowenfeld, upon first seeing respondent, conducted a clinical interview, history, and mental status examination. Based on his interview and observations, Dr. Lowenfeld diagnosed respondent with adjustment disorder with mixed anxiety and depressed mood [DSM IV 309.28].
54. As of December 20, 2007, Dr. Lowenfeld indicates that respondent is compliant in his treatment.
55. Dr. Lowenfeld holds the opinion that respondent's misconduct as detailed in Counts I, II and III can be attributed, in part, to respondent's diagnosis.
56. Dr. Lowenfeld also holds the opinion that respondent's recovery is about 70-75 percent complete and, as such, at this time respondent is not capable of providing legal services to clients beyond routine legal matters.

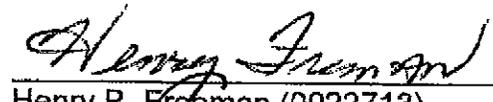
STIPULATED EXHIBITS

- Exhibit 1 Respondent's Fifth Third Bank IOLTA account statements for January 2004 through March 2006
- Exhibit 2 Eight IOLTA overdraft notices from respondent's Fifth Third Bank IOLTA account
- Exhibit 3 Five IOLTA overdraft notices from respondent's First Merit Bank IOLTA account
- Exhibit 4 March 21, 2006 letter of inquiry with signed certified mail return receipt
- Exhibit 5 April 24, 2006 letter of inquiry with signed certified mail return receipt
- Exhibit 6 Subpoena with proof of service
- Exhibit 7 October 18, 2006 letter from relator to respondent
- Exhibit 8 February 1, 2007 letter from relator to respondent
- Exhibit 9 February 1, 2007 e-mail from relator to respondent
- Exhibit 10 Grievance filed by Delores Ellis
- Exhibit 11 January 10, 2006 letter to respondent
- Exhibit 12 January 26, 2006 letter to respondent
- Exhibit 13 April 18, 2006 letter to relator from the Cleveland Bar Association
- Exhibit 14 April 25, 2006 letter of inquiry with return from post office indicating that respondent has moved
- Exhibit 15 May 2, 2006 letter of inquiry with signed certified mail return receipt
- Exhibit 16 May 30, 2006 letter of inquiry with notation from post office indicating that it was unclaimed
- Exhibit 17 June 15, 2006 letter of inquiry with signed certified mail return receipt
- Exhibit 18 July 6, 2006 letter to respondent
- Exhibit 19 July 14, 2006 letter from respondent to relator
- Exhibit 20 August 14, 2006 letter from respondent to relator

CONCLUSION

The above are stipulated to and entered into by agreement by the undersigned parties on this 28th day of December, 2007.


Jonathan E. Coughlan (0026424)
Disciplinary Counsel


Henry R. Freeman (0022713)
Respondent


Robert R. Berger (0064922)
Assistant Disciplinary Counsel