IN THE SUPREME COURT OF OHIO

In Re:	:	
Certified Grievance Committee of the	:	
Cuyahoga County Bar Assn.,	:	**CASE NO. 08-824**
	:	
Relator	:	
	:	
v.	:	
	:	
Anne Veneziano,	:	
	:	
Respondent	:	

OBJECTIONS BY RESPONDENT, ANNE VENEZIANO, TO THE RECOMMENDATION OF THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE, AND BRIEF IN SUPPORT

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STATEMENT OF THE FACTS

Respondent, Anne Veneziano, is a sole practitioner who was admitted to the Ohio Bar in May, 1995. In 1996, Respondent opened her own law practice and has been a member in good standing of the Ohio Bar for the past thirteen years. In 2006, Respondent's former employee wrote a lengthy letter to the Cuyahoga County Bar Association alleging numerous failings of Respondent.

The complaint was filed on February 12, 2007. Three counts were dismissed with prejudice and one count was dismissed without prejudice. There remained before the Panel only the following three counts: count one (failure to file employee payroll taxes in alleged violation of DR 1-102(A)(6); count five (depositing non-client funds into an IOLTA account in alleged violation of DR 9-201(A); and count seven (having tax liens and civil judgments against her in alleged violation of DR 1-102(A)(6)).

Respondent cooperated fully with the investigation. She admitted that, when she initially opened her law practice, she had been unaware that she was required to file payroll taxes. She relied on her husband of thirty-five years, a certified public accountant, to take care of her tax matters for her. Upon learning in 2002 that she was required to file employee taxes, Respondent did so. Thus, at the time the instant complaint was filed, respondent had already rectified the problem of the withholding taxes, and had been in compliance with these tax requirements for the past four years.

Respondent entered into Stipulations with Relator. Specifically, Respondent and Relator stipulated that although Respondent had initially failed to pay employer withholding taxes for her employees:

> Respondent's failure to pay required employer withholding taxes **was a result of her ignorance about employment taxes and was not the result of any conscious effort to disregard her obligations.**

(Stipulation ¶ 1, emphasis supplied).

Respondent also admitted that she and her husband had been late in filing their tax returns, but that they had filed them on a delayed basis, and that they had entered into a payment plan with the tax authorities. (Stipulations ¶10-12).

As mitigating factors, the parties stipulated that respondent has not been subject to any prior disciplinary sanctions; that she did not act out of selfish or dishonest motives; and that, upon learning of the tax problems, she took remedial steps to insure that her tax obligations would be met in the future (Stipulations ¶ 13-15).

A hearing before the panel was held on January 10, 2008. Relator read the parties' stipulations into the record: "We've also stipulated that respondent's failure to pay the required employer withholding taxes was the result of her ignorance about employment taxes and not the result of any conscious effort to disregard her obligations." (Hearing Transcript at 13-14). "Futher, we stipulated that she has filed her federal and state tax returns on a delayed basis, and that she has entered into a payment plan with the federal and state taxing authorities." (Hearing Transcript, at 17).

At the hearing, Respondent testified that "taxes and the other financial affairs of her law practice had always been handled by her husband of thirty-five years, who is a certified public accountant." (Board Recommendations, at 3).

> When I went into practice ... it was with the understanding that my husband was going to handle all of the business and tax matters. I had never owned a business before, was not familiar with matters pertaining to taxation, wasn't that familiar with matters pertaining to business.

(Hearing Transcript, at 34-35). Respondent explained that she had briefly attended an LLM program in tax law but quit, feeling overwhelmed:

> Mr. Hausman was aware that I had not taken tax as a law student, that I had no background in tax. And I asked him if this would affect my ability to function in the program, and he said, no, you'll pick it up. And as I explained to you in deposition, I took three or four classes and withdrew because it was over my head.

(Hearing Transcript, at 84-85).

Respondent clarified that, once she learned that she was required to withhold payroll taxes, it was she who brought the payroll taxes to the attention of the IRS. She went to the IRS; they didn't go to her (Hearing Transcript, at 187).

> MR. FREEMAN: When Doug Carlson became involved, had the IRS come to you or Doug to say, hey, wait a minute, we've got a problem here? Or did you and Doug go to the IRS and say, look, we need to come clean?
>
> THE WITNESS: Doug and I went to the IRS. They never came to me.

(Hearing Transcript at 186-87).

Respondent presented the testimony of five character witnesses. Attorney Mark Marein, a respected criminal defense attorney, a former assistant county prosecutor, and past editor of the law review, testified that Respondent was conscientious and honest.

> Perfect, no. I don't know anybody that is. But conscientious, honest absolutely… .She is both a responsible individual, an honest hardworking person.

(Hearing Transcript, at 201-02). Mr. Marein also testified that Respondent had tremendous care for her clients (Hearing Transcript, at 201). "[H]er compassion is superseded only by her commitment to the people I've seen her represent." (Transcript, at 202).

Attorney Cliff Thornton testified that Respondent was honest and that he trusted her completely (Hearing Transcript, at 218). Jean Plum testified that Respondent had

performed legal work for her son and that Respondent was honorable, trustworthy, and a hard-worker (Hearing Transcript, at 235-36). Mathematician Dr. Ellen Stenson testified that Respondent was a person of great integrity, a wonderful person, a good lawyer, and great for her clients (Hearing Transcript, at 244-46).

Attorney Roger Kleinman, a past chair of the Cuyahoga County Bar Association's Family Law Section, testified that Respondent was a "good advocate" and a "right-thinking person" (Hearing Transcript, at 250) who cared about her clients (Hearing Transcript, at 251). Attorney Kleinman stated that he had a "very high opinion of [Respondent's] honesty, integrity, and trustworthiness." (Hearing Transcript, at 251).

The panel found that disciplinary violations had occurred on counts one, five, and seven and recommended a twelve month stayed suspension. The Board considered this matter on April 11, 2008, adopted the Panel's Findings of Fact, but dismissed count five. The Board also recommended a twelve month stayed suspension.

ARGUMENT

OBJECTION: WHERE PARTIES STIPULATE THAT RESPONDENT WAS IGNORANT OF EMPLOYEMNT TAX LAW, THE PANEL ERRS IN FINDING THAT RESPONDENT'S TESTIMONY OF SAID IGNORANCE "COMPLETELY LACKS CREDIBILITY".

When Respondent opened her law practice, she entrusted the filing of tax documents to her husband, a certified public accountant (Board Recommendations, at 3; Hearing Trasncript, at 34-35). Respondent and Relator stipulated that, although Respondent had initially failed to pay employer withholding taxes for her employees:

> Respondent's failure to pay required employer withholding taxes **was a result of her ignorance about employment taxes and was not the result of any conscious effort to disregard her obligations.**

(Stipulation ¶ 1, emphasis supplied).

The Panel, however, entirely disregarded this express stipulation of the parties. Focusing instead on Respondent's educational background, the Panel found that the fact that Respondent had graduated *cum laude* from law school, and had attended three classes in an LLM program in taxation, meant that her claim of ignorance of employment tax law "completely lacks credibility." (Board Recommendations, at 3, 4).

The Panel erred in ignoring the parties' stipulation that the failure to pay employer withholding taxes stemmed from Respondent's ignorance. Moreover, the Panel erred in failing to acknowledge that, immediately upon being made aware of her tax obligations, Respondent acted to comply with these obligations by seeking advice from a tax lawyer and by herself going to the IRS and informing them that taxes were owed (Transcript at 187) and then by making payments on the taxes owed.

In light of the parties' stipulation that Respondent was unaware of her tax obligaions, respondent's compliance upon being made aware of these obligations, and the fact that these matters were corrected in 2002 – more than four years before the instant complaint was filed, a public reprimand is a more appropriate sanction.

<u>OBJECTION</u>: WHERE NO CLIENT HARM IS ALLEGED OR PROVEN, A PUBLIC REPRIMAND IS A MORE APPROPRIATE SANCTION.

This Court has recognized that the primary purpose of imposing disciplinary sanctions is not to punish the attorney, but to protect the public. *Disciplinary Counsel v. O'Neill,* 103 Ohio St.3d 204; *Ohio State Bar Assn. v. Weaver* (1975), 41 Ohio St.2d 97, 100. Where there is an abundance of mitigating evidence, lesser sanctions may be warranted. *See e.g. Dayton Bar Assn. v. Kinney* (2000), 89 Ohio St.3d 77, 78, *Disciplinary Counsel v. Markijohn* (2003), 99 Ohio St.3d 489; *Disciplinary Counsel v. Carroll* (2005), 106 Ohio St.3d 84.

One such mitigating factor is the fact that no harm to clients resulted from the attorney's actions. *See* Toledo *Bar Assn. v. Tolliver* (1992), 62 Ohio St.3d 462, 463, 584 (no prior record of disciplinary action and no harm to clients), *cited with approval in Ohio State Bar Assn. v. Wick* (2007), 116 Ohio St. 3d 193; *Markijohn,* supra (respondent's dishonesty did not compromise any client's interest); *Kinney, supra* (attorney's misrepresentation to government agencies did not harm client).

In *Kinney* the attorney made deliberate misrepresentations to government agencies yet received only a six month suspended sentence. In *Markijohn* the attorney lied to his fellow law partners, committed fraud, and filed false tax returns, yet received only a six month suspended sentence.

Like the attorneys in *Kinney* and *Markijohn*, Respondent did not harm her clients. Unlike the attorneys in *Kinney* and *Markijohn*, Respondent never made deliberate misrepresentations or committed fraud. Respondent's failings were neither deliberate nor selfish. See *Disciplinary Counsel v. Taft* (2006), 112 Ohio St. 3d 155. She did not act for her own interests. Her only fault was in relying too much on her husband, trusting that he would handle her tax and business matters for her. As both parties stipulated, Respondent's actions stemmed not from selfish or dishonest motives (*See Taft, supra*) but from her ignorance about business requirements (*See Stipulations 13-15*).

Respondent's character witnesses, including respected attorneys, testified overwhelmingly that Respondent was a compassionate and conscientious advocate for her clients, a hardworking attorney, and that she was a woman of honesty and integrity. (Hearing Transcript at 201-02, 218, 235-36, 244-46, 250-51).

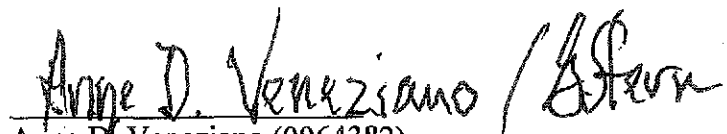
Taking into account the testimony of respondent's good character, the fact that respondent's errors were not the result of selfish or dishonest motives, and the fact that no harm to clients occurred, a public reprimand is a more appropriate sanction. *Taft, supra.*

Conclusion

For thirteen years, Respondent has been a member in good standing of the Ohio Bar, and a conscientious and caring advocate for her clients. It was respondent herself who brought her failure to pay payroll taxes to the attention of the IRS and who worked out a payment plan with them. This issue had already been resolved with the IRS well before Respondent's former employee filed the instant grievance.

Given that Respondent's failings occurred in the past, were rectified by Respondent as soon as she was made aware of them, and caused no harm to clients, a public reprimand would be a more appropriate sanction.

Respectfully Submitted



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Respondent

CERTIFICATE OF SERVICE

A copy of the foregoing Objections by Respondent, Anne Veneziano, to the Recommendation of the Board of Commissioners on Grievances and Discipline, has been served on Jonathan W. Marshall, Esq., Secretary, and Andrew A Zashin, Esq., Ellen S. Manedell, Esq., and Leif B. Christman, Esq. Counsel for Relator, this 16 th day of June, 2008.

Anne D. Veneziano

Anne D. Veneziano (0064382)

APPENDIX

Findings of Fact, Conclusions of Law and
Recommendation of the
Board of Commissioners on
Grievances and Discipline of
the Supreme Court of Ohio.....A-1

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

In Re:	:	
Complaint against	:	Case No. 07-003
Anne Veneziano Attorney Reg. No. 0064382	:	**Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio**
Respondent	:	
Cuyahoga County Bar Association	:	
Relator	:	

This matter was heard on January 10, 2008, in Cleveland, Ohio, before a panel consisting of Lisa M. Lancione Fabbro of Sheffield Village, Walter Reynolds of Dayton, and Jana E. Emerick, Chair, of Lima, Ohio. None of the panel members resides in the judicial district from which the complaint arose, or served as a member of the probable cause panel that certified this matter to the Board.

Relator was represented by Attorneys Ellen Mandell, Leif Christman and Andrew Zashin. Respondent was present and was represented by Attorneys Barry Freeman and Geoffrey Stern.

PROCEDURAL BACKGROUND

The complaint in this matter was filed on February 12, 2007. The complaint alleged seven counts of misconduct, that were set forth in the complaint as Counts 1, 2, 3, 5, 6, 7, and 8. There was no Count 4 in the complaint and the parties are aware of this omission, and so no reference shall be made to any Count 4, for that reason. Upon motion made by the relator a few

weeks before the hearing, and granted by the panel chair, Counts 2, 6, and 8 were dismissed with prejudice and Count 3 was dismissed without prejudice. Thus, at the time the hearing was held, only Counts 1, 5, and 7 of the complaint were left for the panel's determination.

Count 1 alleged that respondent failed to file federal tax forms W-2, W-4, and I-9 as required by law with respect to persons employed by respondent in her law practice, and that respondent failed to pay state and federal payroll taxes for her employees. Count 1 alleged that this conduct constituted a violation of DR 1-102(A)(6) [conduct adversely reflecting on fitness to practice law].

Count 5 alleged that respondent deposited into her IOLTA account $29,000.00 of funds belonging to one Clifford Thornton, a friend of respondent's and an attorney unconnected to respondent's practice of law, in order to "safeguard" the funds for Thornton, so he would not spend them. Count 5 further alleged that respondent also deposited her own personal funds into her IOLTA account for a period of time in order to assure that her IOLTA account was not overdrawn, but not simply to cover bank fees. Count 5 alleged that this conduct constituted a violation of DR 9-102(A) [requiring that client funds be deposited into an identifiable bank account and prohibiting depositing funds belonging to the lawyer into an IOLTA account].

Count 7 alleged that respondent has at least eighteen tax liens filed against her, as well as numerous civil judgments relating to respondent's law practice. Count 7 alleged that this conduct constituted a violation of DR1-102(A)(6) [conduct adversely reflecting on fitness to practice law].

In the answer filed by respondent, most of those factual allegations were admitted, although respondent denied that any disciplinary rule violations occurred. At the hearing, the parties entered into a series of jointly stipulated facts, a copy of which are attached to this report.

Respondent testified at the hearing, and also presented the testimony of several witnesses, both fact and character witnesses.

FINDINGS OF FACT

Based upon the respondent's answer to the complaint, the stipulations of the parties and the evidence presented at the hearing, the panel finds the following facts to have been proven by clear and convincing evidence:

Respondent was admitted to the practice of law in Ohio in May of 1995, and has run her own law practice, as a sole practitioner, since December of 1995. In addition to the law degree respondent earned at Case Western Reserve University, where she graduated cum laude, respondent has a bachelor's degree in psychology from Syracuse University, a master's degree in social work, was accepted into and briefly attended the LL.M. program in tax law at Case Western Reserve University, attended medical school for four years, and is now working on a Ph.D. in clinical psychology. Respondent testified that the issue of taxes and the other financial affairs of her law practice had always been handled by her husband of thirty-five years, who is a certified public accountant.

With regard to Count 1, respondent acknowledges that she failed to pay withholding taxes for any of her employees for approximately seven years, and that she failed to file required federal tax forms for her employees, such as W-2s, W-4s and I-9s. Respondent claims that she simply had no knowledge of the concept of an employer having to withhold monies from an employee's paycheck in order to forward that money to the government for taxes. Respondent further claims that she relied upon her husband's tax advice and that she did not realize she had to prepare or file tax forms with regard to persons she employed. In light of respondent's age,

educational background, employment history and the fact her husband is a certified public accountant, the panel finds that respondent's explanation completely lacks credibility.

With regard to Count 5, respondent acknowledges that she received $29,000.00 from Clifford Thornton in May of 2006, which respondent deposited into her IOLTA account. Although respondent had previously represented Thornton as his attorney, respondent was not representing Thornton in any matter in May of 2006 and the funds received from Thornton did not relate to any legal representation of Thornton by respondent. The testimony of both respondent and Thornton was equally vague, and also not very credible, as to why respondent was holding this large sum of money for Thornton in respondent's trust account. Respondent's bank and financial records were incomplete and, at the time of the hearing, she also could not adequately account for portions of the $29,000.00 that she subsequently withdrew from her IOLTA account, although she testified they were disbursed to Thornton or paid on his behalf.

With regard to Count 7, respondent acknowledges that seventeen tax liens have been filed against her as a result of her failure to timely file federal and state income tax returns, and/or her failure to pay taxes owed for the years 2001 through 2005.

CONCLUSIONS OF LAW

Based upon the stipulations of the parties and the evidence presented at the hearing, the panel unanimously finds by clear and convincing evidence that the conduct of respondent constituted a violation of DR 1-102(A)(6) [conduct adversely reflecting on fitness to practice law] as alleged in Count 1, a violation of DR 9-102(A) [requiring that client funds be deposited into an identifiable bank account and prohibiting depositing funds belonging to the lawyer into an IOLTA account] as alleged in Count 5, and a violation of DR1-102(A)(6) [conduct adversely reflecting on fitness to practice law] as alleged in Count 7.

RECOMMENDATION

As to applicable mitigating factors, the panel finds that respondent has not been subject to any prior disciplinary sanctions, respondent did not act out of selfish motives and respondent has taken some remedial steps to insure that she does not fail in the future to comply with her obligations relating to filing tax returns and paying payroll taxes.

As to applicable aggravating factors, the panel finds that respondent engaged in a pattern of misconduct, as her failure to comply with the most basic of financial and legal obligations of law practice management went on for a period of six to seven years. The panel also finds that respondent refuses to completely acknowledge the wrongfulness of her conduct, although she readily admits engaging in the actions that form the basis of the misconduct. More specifically, the panel finds it to be an aggravating factor that respondent fails to acknowledge, or perhaps to even understand, that it was her responsibility to ensure that her office's tax affairs, her IOLTA account, and her personal income tax affairs were conducted in accordance with law.

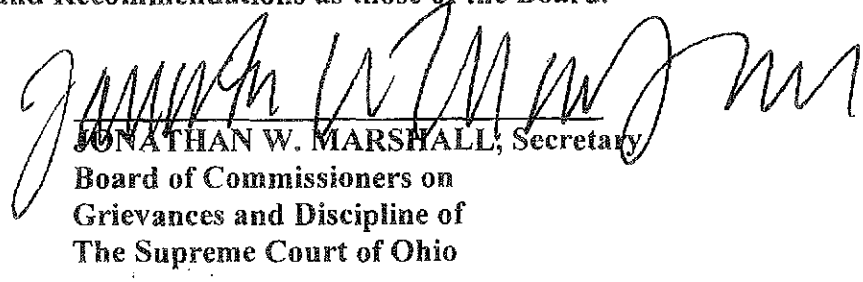
For all of the foregoing reasons, it is the recommendation of the panel that respondent be suspended from the practice of law for twelve months, but that the suspension be stayed upon the condition that respondent successfully complete a two-year term of probation, during which time respondent be required to complete at least twelve hours of continuing legal education relating to law office management, that respondent be required to have a monitor appointed to oversee respondent's law practice with respect to office management, and that respondent engage in no further professional misconduct.

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 April 11, 2008. The Board

adopted the Findings of Fact of the Panel. The Board concluded that Respondent violated DR 1-102(A)(6) in Count 1 and in Count 7. However, the Board voted to dismiss Count 5 concluding there was no violation of DR 9-102(A) because that rule only expressly prohibits co-mingling funds belonging to the lawyer with client funds, while the funds co-mingled in this case belonged to a third party. It is the Recommendation of the Board that the Respondent, Anne Veneziano, be suspended for twelve months with the entire twelve months stayed for a two-year term of probation as outlined 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

In Re:	:CASE NO 07-003
CERTIFIED GRIEVANCE COMMITTEE OF THE CUYAHOGA COUNTY BAR ASSN.	:
Relator	: **STIPULATIONS**
ANNE VENEZIANO	:
Respondent	:

The parties hereby stipulate the following:

STIPULATIONS AS TO COUNT ONE

1. Respondent did not pay required employer withholding taxes for her employees for a number of years, until 2002 when she learned such taxes were required to be withheld and paid;

2. Respondent's failure to pay required employer withholding taxes was a result of her ignorance about employment taxes and was not the result of any conscious effort to disregard her obligations.

STIPULATIONS AS TO COUNT FIVE

3. In or about May, 2006, Respondent received Twenty-nine Thousand Dollars ($29,000.00) from A. Clifford Thornton, an Ohio attorney, who asked Respondent to hold the funds for him;

4. Thornton has/does serve as co-counsel with Respondent or serves as guardian, pursuant to

probate court order, for some of Respondent's clients;

5. Respondent has represented Thornton as his attorney;

6. Respondent was not representing Thornton in any matter in May, 2006, and the funds did not represent the proceeds from any representation of Thornton by Respondent;

7. Initially, Thornton's funds were deposited into respondent's general business checking account;

8. Subsequently, Respondent transferred the funds into her IOLTA account;

9. During the course of the investigation by Relator, and upon the advice of her counsel, Respondent transferred Thornton's funds into a newly-created "payable on death" account in Respondent's name.

STIPULATIONS AS TO COUNT SEVEN

10. Respondent has or had seventeen (17) tax liens filed against her as a result of her failure to timely file federal and state income tax returns and/or her failure to pay taxes owed for the years 2001 -2005;

11. Respondent has filed her federal and state tax returns on a delayed basis;

12. Respondent has entered into a payment plan with the federal and state taxing authorities.

MITIGATING AND AGGRAVATING FACTORS

13. Respondent has not been subject to any prior disciplinary sanctions;

14. Respondent did not act out of selfish or dishonest motives;

15. Respondent has taken remedial steps to insure that she does not fail in the future to meet her obligations with respect to filing taxes returns and paying payroll taxes.

The foregoing constitute the stipulations reached by Relator and Respondent

Respectfully submitted,

CUYAHOGA COUNTY BAR ASSOCIATION
CERTIFIED GRIEVANCE COMMITTEE

BY: _____
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_____
Leif Christman (0070014)

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FOR RESPONDENT

BY: _____
Barry Y. Freeman (0062040)

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Geoffrey Stern (0013119)

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Anne D. Veneziano (0064382)