IN
THE SUPREME COURT OF OHIO

TRUMBULL COUNTY BAR ASSOCIATION	)	Case No. 2008-2097
	)	
Relator	)	
	)	
vs.	)	
	)	
GEORGE NICHOLAS KAFANTARIS	)	
	)	
Respondent	)	

RESPONDENT GEORGE KAFANTARIS' OBJECTIONS TO THE CERTIFIED REPORT OF THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE OF THE SUPREME COURT OF OHIO

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RESPONDENT GEORGE KAFANTARIS' OBJECTIONS TO THE CERTIFIED REPORT OF THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE OF THE SUPREME COURT OF OHIO

Now comes Respondent, George Nicholas Kafantaris, and hereby objects to the Amended Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline (Board) filed with the Court on November 4, 2008.

FACTS

A disciplinary complaint was filed against Respondent on June 18, 2007, for the Irene Heasley matter, pursuant to the Trumbull County Grievance Committee. Then, without certification from the Committee, the complaint was amended on June 18, 2007, to include the Williams Estate matter from three years earlier. Almost a year later, and after Respondent refused to Resign as requested by Relator's counsel, Relator again amended the complaint on March 3, 2008, this time to include a Count for filing a false affidavit with the Court back in 2003, for not accounting for the $25,000 accident settlement that he fully paid in full six months later and for not notifying the Trumbull County Probate Court of his disqualification as co-counsel in the Williams Estate when he was suspended in May 16, 2003.

For some time respondent was unrepresented as he was still engrossed in the defense of Andy Irwin, charged for the August 6, 2006 Murder of Emily Foreman, in the Columbiana County Common Pleas Court. The murder trial started on March 20, 2007, but on the last day, a witness appeared who swore under oath that another man had confessed to killing Emily, shortly after the murder. Despite this knew evidence the trial judge denied Defendant's motion for a continuance in order to allow the newly discovered witness to testify. Nonetheless, Respondent continued to

investigate the case and presented this witness among others on a motion for new trial. The trial judge overruled the motion for a new trial because he knew that the witness did not pass a polygraph test. Moreover, when yet another witness called the police with information supporting defendant's claim that he could not have killed Emily because he was outside the house at the time of the screams, the judge called the witness phantom. Nonetheless, Respondent continued to investigate the case, secured a detailed interview of this second witness, including affidavits from a neighbor that heard the screams, and another that saw the car where Irwin was sitting in at the time of the screams. These affidavits were filed on a motion for reconsideration, along with a notice of appeal.

Shortly thereafter, Respondent was again in Columbiana County, this time on a hearing for two counts of contempt. The first contempt came when Respondent asked the Coroner in the Irwin case to read silently to himself the third of several letters the Court had previously found inadmissible. Respondent was summarily sentenced to 10 days in jail for the first count of contempt, and was further warned, right there and then that if a second contempt were to follow, it would also be for another 10 days. This second contempt surely came after the jury delivered its verdict, and half of them had even left the courtroom. Immediately before the verdict had been delivered, Respondent had rushed to the courtroom from a nearby restaurant holding in his hand a detailed tape recorded interview under oath about the other man's confession to the murder. Exasperated that neither the authorities nor the Court would hear any of it, Respondent in response to the heckling from Emily's family once the verdict had been read, while holding the tape of the interview in his hand, said in the direction of Emily's family, "here is your murder."

All this was publicized in several papers and television stations, which had been covering the unusual developments of the Irwin defense for several days. When the Columbiana trial judge upheld his contempt and ordered Respondent to serve his 20 day sentence beginning on Halloween Day, it was again publicized in the news. Respondent timely appealed both contempt findings as well as the Irwin guilty verdict. The Court of Appeals has stayed Respondent's 20 day sentence pending the appeal.

Nonetheless, Respondent took a beating in the Irwin trial, which consumed all his time, as well as his finances. He finally secured counsel to represent him in his disciplinary case, and in August 2007, he started working our of his sister's law office in downtown Warren. There he found the staff he did not have for the past three years, and he began reconstructing his records to respond to Relator's discovery requests for accounting in the Irene Heasley case. Respondent's office in North Park has been in shambles ever since the widely publicized civil rape trial in 2001, and the subsequent six month suspension that followed in 2003. Respondent has had great difficulties rebuilding his practice since 2003, having to work without a staff, answering his own phone, and doing his own typing. No one in the family was working, he had three children in college, with his other child just having withdrawn from law school to his most bitter disappointment. If Respondent was not in court, he was all alone in the office, without any assistance, which contributed to his ongoing depression and difficulty in coping with his professional and family obligations.

At any rate, sometime in February 2006, he was asked by his sister to represent Irene Heasley whose ex husband deemed her a drug addict and wanted to take the $80,000 final distribution from her father's wrongful death settlement as child support. Up to this point the child was receiving payments directly from the

annuity, as did Irene's landlord. Respondent appeared for Irene in the Mahoning County Domestic Relations Court and worked out a settlement whereby the present child support was project to the time she graduated from high school, and an extra amount was added to make it $20,000, which was to be set aside after the funds were received. A couple of months later, on May 6, 2006, the $80,000 came, along with an unexpected $34,426 remainder which Respondent gave to Irene, and he deposited the $80,000 in his trust account. From there he opened a restricted account and deposited $20,000 for the payment of child support, filed the necessary documents with court, paid his $5,000 attorney fee, and a total sum of $1,600 to Emmanuel Angelis from whom she had been borrowing small amounts to get by pending her settlement. At the time of the original deposit, Irene also requested $500 in cash which was paid by a temporary check from the trust account right there and then. She requested more withdraws, all totaling $1,500 for May which were also paid. These created a pattern that continued more than a year later, a total of _____ checks were written to her, and front and back copies of all these were compiled and submitted to Relator and are part of the record, along with a complete accounting.

By this time Irene started using the $34,426 in the Seven Seventeen Credit Union and she was getting regularly overdosed and needed to be hospitalized. Respondent took her to and later brought her back from four different hospitals, bought her groceries, paid her rent and utility bills and kept her safe and away from the rough characters from her past. Respondent grappled with her drug addiction, counseled her endlessly, tried to get her to rehab programs, AA meetings, and also initiated regular phone calls to her estranged daughter. In August 2006, Irene was in fear of her life from some elements in Hubbard where she lived, and Respondent took her to SomePlace Safe, a local facility for battered women. Respondent visited with

her there regularly, brought her lunches and even groceries, but Irene also wanted cash and to be taken unsavory places. Respondent refused to do both, at which time she went and saw attorney Thomas Schubert who called Respondent and I asked him to send her over. When she came, she said she just wanted $500 which Respondent gave to her. She then left Someplace Safe and went to the motel/hotel in Youngstown, Ohio, in order to get away for a while. She called from there and asked Respondent to pay for her stay, which he did, and even paid additional for spending money. A couple days later, she came to Respondent's law office in the company of the same people that she had run away from just two weeks earlier when she went to Hubbard, Ohio. Respondent chased them away, but Irene went back to Attorney Schubert who wrote a Respondent a letter asking that her money be returned, and enclosing Irene's a letter discharging him. When Respondent received the letter and showed it to Irene, she said she still wanted Respondent to handle her money and just went to Attorney Schubert because she could not get a hold of Respondent. She put this in writing on the bottom of Attorney Schubert's letter, which I mailed to him. When Attorney Schubert received it he filed a grievance with the Trumbull County Bar Association. It was assigned to Attorney Edward Lavell whom Respondent called when he received it and even put Irene to talk to him, which he refused. Respondent then met with Attorney Lavell, who said he did not know what to make of this matter, but wanted Respondent to get some kind of an accounting in 30 days. Respondent kept no formal accounting and went to U.S. Bank and asked for copies of the statements, as well as canceled checks. No account statements were previously mailed to Respondent because it was tagged for electronic statements through the internet.

Anyway, by this time Irene was asked to leave SomePlace Safe, and she was now living in Respondent's rental home, and Respondent continued to buy her groceries, pay the rent and bills for the Hubbard apartment because she still wanted to keep it, and he continued to make regular distributions to her, sometimes three checks a day. On November __, she got into a car accident, and asked Respondent to represent her, rather than attorney Schubert, which he did and assisted her in getting a rental for almost a month and getting treatment. Before that Respondent assisted her in getting her car repaired and in getting home when she ran out of gas. In fact, the first person she would call for her needs was Respondent who always obliged and came to her aid, no matter what time, what neighborhood, or what dangerous people were around her. Indeed, Respondent continued to take care of Irene, providing room and board for her, as well as her boyfriend, and did so, for several months after the final distribution was made to her in October 2007. Indeed, he also continued the weekly phone calls to her daughter on his cell phone and also took her to a church in Youngstown on a very snowy Sunday to see her daughter when her daughter finally agreed to so.

In November respondent received copies of the requested statements from his trust account and was making some effort to do the accounting, but the task was daunting. He called and asked for more time, to which Attorney Ed Lavell graciously gave. He tried to make some sense of the statements and match them with the canceled checks, but the task was overwhelming. Finally on January 2, 2007, he received a formal letter from Ed, wherein he wanted complete records, statements, etc. Soon thereafter, Respondent was retained in the Irwin case but he did call Ed and told him he would try to put the accounting together. They agreed to meet on Friday, February 23, 2007, but on that day Respondent unexpectedly had to go to Columbus,

Ohio, for his cousin's funeral where he was the primary speaker at the Greek Orthodox Cathedral. This Relator disputed the death and asked proof which was provided during discovery.

Afterwards, Respondent met with Ed, but he still had no documentation, except the settlement sheet for Irene's auto accident which Ed tossed aside saying he wanted the accounting. By this time the Irwin trial was heating up and Respondent was consumed by it. It was publicized almost daily in the Columbiana papers, as well as the Youngstown Vindicator. Even the Warren Tribune Chronicle carried it, and did so again after the trial. In the meantime, the Trumbull County Certified Grievance Committee voted to file _____ against Respondent. When he learned this, Respondent went to Ed and asked for leave to respond early the following week, after Easter, to gather what he got so far and bring it to him. Unfortunately, that Easter weekend Responded spend all over East Liverpool investigating the Irwin case, on call that came in on his voice mail about underground drug people being with Emily after she was stabbed and sitting bleeding on the bed. Respondent spent that entire weekend, up until 3:00 a.m. Easter Eve, in the Columbiana County Jail interviewing half a dozen witness about the information on the tape. And this is after spending two days on the beat all over East Liverpool looking for the whereabouts of these drug dealers that had set shop in East Liverpool from New Jersey, and of who Emily was in fear for her life because they thought she had become an informant -- according to the letter given to the Coroner to read silently to himself during the trial and for which Respondent was found in contempt.

Having said all these, Respondent does not dispute the Board's accounting on his trust account, or that he transferred money out for his own use. Nonetheless, Irene did receive all her money in the end, and she also received a great deal of

guidance from the Respondent along the way to sustain her and keep her alive. This does not minimize or justify Respondent's serious lapses of both judgment and trust, but at the same time, it shows that Respondent had no motive to permanently deprive her of the money, and indeed felt a sense of responsibility to this women which is manifested in all the things he did for her. Without question, the proper thing to do for Respondent would have been to return her money at the outset. Not doing so was a blunder and a wrong Respondent has regretted ever since. It is not entirely clear, however, that this is also what Irene wanted, as the Board has found in its report. For example, when Respondent was about to begin the Irwin trial on March 20, 2006, and could not make the daily distribution to her, he wrote her check for the remaining balance in the account. However, she did not want to receive the balance, and insisted had the local gas station owner hold it for her, and give it to her in piece meal, as Respondent had done. And when her money was gone, she was not assisted in any way by others, whereas, Respondent continued to provide for her needs in the same manner for months thereafter.

Turning now to the Carol Williams Estate matter, the Respondent represented Carol Williams in an auto accident case which was filed in the Trumbull County Common Pleas Court, Case No. 00 CV 957. This is the same Court where her husband's Luther Williams Estate was filed, Case No. 2001 EST 1281, and the same Court where Carol Williams Estate, Case No. 2002 EST 132, was later filed on December 19, 2002. Her husband Luther's Estate had several asbestos claims which were being paid on regular intervals. Sometime in July, 2002, Carol and Respondent attended a hearing regarding the payment of additional asbestos claims which were being handled by the asbestos law firm. It was at that time that Carol told Respondent to settle the auto accident case for whatever he could. Respondent later did so when

he met with the Nationwide Insurance Company adjuster. It was after Respondent attempted to Carol to come to the office to sign the release and the draft that he learned that she had died. He then asked Carol's and Luther's two children, Maurice Williams and Sylvia May, to come in to see him. Remember that Carol was the Executrix of Luther's Estate, and a successor Fiduciary was needed for his Estate, as well as Fiduciary for Carol's Estate. Maurice wanted to be that person, and he completed a rather detailed application for the Fiduciary Bond. Please see copy of the application which is part of the record and is attached hereon as Exhibit "B". As can bee seen, Respondent made full disclosure of what he expected in the Estate:

> Nancy, here is the application for the Carol J. Williams estate bond. Primary assets are the house, 1/2 of which belongs to her husband's estate -- of which Carol is the beneficiary. Several asbestos wrongful death claims (under $7,000), and Carol's own personal injury claim of $25,000, minus attorney fees and expenses. Let me know if you have any questions, or if you need more information. Thanks, George

The next day, Nancy turned Maurice down, and his sister Sylvia therefore took his place, as she was named executrix under the Will of both Luther and Carol, and she required no bond. This did not sit well with Maurice who regularly complained about Sylvia. Her application to Administer Carol's Estate is part of the record and is attached hereon as Exhibit "C". As personal property of the estate are listed two items: "Interest in the Estate of Luther Williams, Deceased; and Personal Injury Case." Respondent did not list the full $25,000 settlement because he believed that a third of this was his fee, as well as expenses. This is consistent with what Respondent wrote to Nancy the day before, though it is not correct under Probate practice. It shows, however, that there was no intent to deceive. Besides, the auto accident case was filed in the same court, Trumbull County Common Pleas, whose Clerk records have been on line since 1998.

Later on that day, Sylvia was appointed the Executrix of the Estates of Carol Williams and the Successor Executrix of the Estate of Luther Williams, and in her new fiduciary capacity as the Executrix of the Estate of Carol Williams she then executed the Settlement Release to Nationwide Insurance Company. Respondent also took Sylvia and her two Letters of Authority to The Second National Bank and opened two Estate accounts, one for Luther's Estate and one for Carol's Estate. Then Sylvia executed Carol's $25,000 auto accident settlement draft in her capacity as the Executrix of Carol's Estate, which was deposited in Respondent's trust account for collection. Nonetheless, the Board's report makes it appear as if Sylvia signed the settlement release without authority to do so, and also that Respondent executed the settlement draft himself, instead of Sylvia, when it stated as follows:

> "Respondent endorsed the Nationwide check and deposited the check in his IOLTA trust account. The same date, Respondent also prepared, signed and filed an application for Sylvia's appointment as the fiduciary of Carol's estate. Respondent did not disclose to the probate court that he settled Carol's motor vehicle case for $25,000 or that he was holding $25,000 in his trust account."

Clearly Sylvia was authorized to sign the settlement check, and she did. Further, Respondent did disclose on the Application for Authority to Administer Estate of Carol Williams with the Probate Court: "Interest in the Estate of Luther Williams, Deceased; and Personal Injury Case." Also, it is incorrect to say that at the time of the filing of the application Respondent had $25,000 in his trust account, when in fact Sylvia was not appointed until later that day, and the draft was not deposited until even later that day. Thus there was no intent to deceive, though Respondent fully acknowledges that he did later take his 1/3 fee without prior court approval, and that the account balance in January was $728.92, rather than the $16,666 that it should have been. This serious lapse Respondent has repeatedly acknowledged, and does accept without complaint, the discipline he has coming. And plenty came his way,

because from the Carol Williams matter, also stemmed a criminal indictment a couple months after the Panel hearing, just as Relator's counsel threatened all along less Respondent resigned. Nonetheless, the $25,000 settlement was never hidden, as the Board has found, nor was there any intent to keep the money. Indeed, when the funds were returned 14 months later (less than two months after Respondent was reinstated) in full, Respondent told Attorney Chad Kelliger that he did not want any attorney fees from Carol's Estate.

After Respondent returned the $25,000 to Chad Kelliger, the new administrator for the Carol Williams estate, there was a hearing in the Probate Court in April 2004, at which Respondent testified, and before the hearing had also given the court copies of his trust account statements, the Settlement Release executed by Sylvia as the Executrix, fee agreements, and anything else the Court requested. Respondent admitted the discrepancies right there on the stand, as he did in his deposition, in front of the Panel, and shortly thereafter to the Trumbull County Grand Jury. It is thus inaccurate for the Board to state at Paragraph 11 of its report that "The Relator made several requests for records of Respondent's trust account but Respondent failed to provide copies of his IOLTA trust account during the investigation." These were provided, and were provided three years before, and the money was returned.

Perhaps the Board was thinking of the Heasley matter because, later on it states that Respondent "was preoccupied with defending a man in a complex murder case in Columbiana, some hours travel away."

Turning to the matter of the false affidavit, it is true that Respondent did not notify the Probate Court of his disqualification. He believed, however, that it was not necessary in light of the fact that his sister was co-counsel since the onset of the

Carol's Williams estate. However, Maurice Williams, the only person with whom Relator maintained contact (Sylvia had disappeared) knew that Respondent had put the money in his trust account and he expected it to be there when needed. Yes, it was removed by Respondent and this is wrong and a violation of the ethical code, but it was returned entirely -- unlike the $4,000 from Sylvia. Respondent does not mean to minimize his responsibility. Far from it, this is the only money that the Estate has, and even now, almost five years later, no distribution was made to any heirs, though the money was there since February 2004.

Respondent makes no excuses for his conduct and expects stern treatment from this Court. He is, however, a family man and despite his deficiencies, he has tried to keep that family together and assisted two of his sons to become Ohio lawyers. He helped the third one get through a difficult private automotive design school in Detroit and helped his oldest boy overcome his bitterness about the law that caused him to withdraw from law school when Respondent was publicly humiliated repeatedly in the civil rape case. It is from this event that Respondent has yet to recover as Respondent's family testified -- not the Irwin murder case which the Board refers to in page 15 of its report. Though this case was won with the jury, and though the facts were tenuous from the outset (the gale that claimed to have been imposed upon at her apartment, rode back with him to his office, and worked there for several weeks until Respondent let her go for burning up the clutch in his car). Nonetheless, Respondent was embarrassed to admit having had sex with her, and even though this was brought out fully at the trial the verdict was set aside, and the first disciplinary case against him was instituted. Yet that civil rape case is haunting him even today, and has been reported in the tail end of each and every article in the local paper. Please see Exhibits "_ and "_" Respondent thus has every reason to be depressed and

Dr. Naryan's report finding him so is well justified. Yet, the Board mentions nothing of it, despite also Dr. Narayan's uncontroverted testimony to that effect, that came via deposition. Nor is there much mention of Respondent's involvement with the Ohio Lawyers Assistance Program that has been very helpful to him. Respondent is current in his contract with OLAP, he has found the program most helpful during these difficult times, and he wants OLAP to help him mend and someday re-enter the practice of law as a better person and a better lawyer.

Yet Relator's counsel have been pressuring him all along to resign, which calls he did not head, even though they threatened prosecution. Even then Relator's counsel persisted, offering him a misdemeanor count for the felony indictment, if he does not object to the Board's recommendation. He has reported all this to the chairman of the Grievance Committee and others members, and even notified OLAP of this. DR 7-105 forbids it because it subverts the judicial process by deterring others from asserting their rights, and because it also diminishes confidence in our system of laws and procedures. Respondent, nonetheless does not want to make a big deal about it, except to point out that Relator may have exceeded the bounds of zealous prosecution in this case from the outset, and for some time now has been engaged in acts of persecution. Another sign of this was the Relator's motion for Interim Suspension claiming that Respondent was a danger to the public because of the almost two year old contempt case in Columbiana County and the imprudent allegations of a Mahoning County Judge. These had no support on the record of that case, yet Relator used them to rush this Court into an unwarranted suspension. And adding insult to injury, Relator's counsel as a week ago, again insisted that Respondent should resign because of the Berent case -- notwithstanding Respondent's laborious attempt to show that the courts rulings in that case were neither warranted,

nor can withstand scrutiny on examination, which is precisely why successor counsel in that case is seeking a dismissal.

Turning at last to the law governing Respondent's objections, the Board is correct in citing *Cleveland Bar Assn. v. Dixon,* 95 Ohio St. 3d 490-183, 2002-Ohio-2490, for proposition that presumptive sanction for misappropriation of funds is disbarment. However, this presumption was overcome as several recent cases show. One example, which was also mentioned by the Panel during closing arguments, is *Cleveland Bar Assn. v. Mishler,* 118 Ohio St.3d 109, 2008-Ohio-1810. In that case, Mishler accepted a settlement offer without the client's knowledge, obtained settlement proceeds without the client's endorsement, charged excessive fees, and failed to account to his client. As aggravating factors the Court considered pattern of misconduct, misrepresentation, multiple offenses, inability to explain misdeeds at the hearing, and selfish and dishonest motive. The mitigating factors the Court found were no prior discipline for over 30 years, the funds were paid. The sanction was two years suspension, one year stayed with conditions, including accurate accounting and restitution.

In the present case, Respondent also paid the funds -- on the Williams case he did so three years before disciplinary action was filed. He does have a prior discipline, but there is no clear selfish and dishonest motive is present, since he looked out for Irene Heasley and he returned the Carol Williams money when he was reinstated to the practice of law. As for his inability to explain, Respondent has accepted full responsibility both to the Panel and in public. In *Mishler*, it should be noted that the Court stated that although disbarment was the presumptive sanction for cases involving misappropriation of client funds, the repayment of the funds, together with lack of prior discipline struck the right balance. Respondent submits that

indefinite suspension is the right balance in present case, in light of his personal difficulties and his problem with depression.

In *Disciplinary Counsel v. Freeman,* 119 Ohio St.3d 330, 2008-Ohio 3836, Freeman had two counts of failure to cooperate, one count of failure to account for client funds, and commingling his IOLTA account, resulting in fourteen overdrafts. The aggravating factors were pattern of unethical conduct, multiple disciplinary offenses, and failure to cooperate. The mitigating factors that the Court found significant were his OLAP depression contract, his lack of selfish and dishonest motive, and no ultimate harm to clients. Freeman's sanction was one year suspension with six months stayed with conditions. In the present case, Respondent has an OLAP contract, and he is up-to-date and actively participating with OLAP. Indeed, they have been most helpful in helping him cope during these very difficult times. As far as ultimate harm to clients, again, the funds in the Carol Williams case have not been diminished, and in fact, they also Respondent's fee, as well as sums that would have gone for expenses in the filing of the two estates, the auto accident case, and the securing of the medical records and reports in the case. Thus, no apparent harm came to the clients on the Williams case. The same is true for the Heasley case. She received all the funds that were coming to her. Moreover, she received counseling, the personal care, and protection of the Respondent for a year and one half, and room and board after her funds were accounted for. This brings us to the selfish or dishonest motive. The Board found that to exist in the present case, but a closer analysis does not necessarily make it so. There was never any intention to permanently deprive her of the funds.

In *Disciplinary Counsel v. Claflin,* 107 Ohi St.3d 31, 2005 Ohio 5827. Claflin settled a case without his client's consent or permission, negotiated the draft and used

it for his personal use while in the IOLTA account with a low balance of $2.99. No settlement releases were returned to the carrier and the lawyer misrepresented to the Bar Association in the subsequent grievance that all funds were still in the account but were being held to resolve a dispute over the language in the release. Claflin eventually paid the client $6,667 owed 32 months after the settlement. As aggravating factors the Court found misrepresentations, pattern of misconduct, multiple violations, harm to client because his son was without funds and could not go to college education for two years. For mitigating factors the Court again found no prior disciplinary record and he had a cooperative attitude, though doubtful about remorse. The sanction was two years suspension, one year stayed with extensive conditions. Again, the Court found the misappropriation of client funds a presumption sanctioned for disbarment. Yet it did not in fact disbar Claflin. In the present case, there also was no harm to clients. And though there is the previous disciplinary record, Respondent is asking for an indefinite suspension with conditions, including extensive probation, monitoring of all funds, etc..

In *Toledo Bar Assn. v. Kramer,* (2000), 89 Ohio St.3d 321, 3223, 2000 Ohio 163, the Court found it significant that Kremer was treated for psychiatric depression, which is due to his father's death. Respondent, here is also treating for depression due to events stemming from the civil rape trial seven years ago. The sanction in Kramer was one year, and it was stayed entirely. Again, Respondent here asks for indefinite suspension, which makes the correct and proper balance under all the circumstances.

In *Disciplinary Counsel v. Grdina,* 101 Ohio St.3d 150, 2004-Ohio -299, Grdina used the IOLTA funds for his own purposes, failed to keep funds separate in identifiable accounts, and failed to register and cooperate in the disciplinary

investigation. The Court again was impressed with no prior discipline, but was also impressed with his OLAP contract for alcoholism, which is what we have here with Respondent. The sanction was two years suspension with one year stayed. Indefinite suspension is indicated for Respondent in light of his own difficulties in coping and his efforts to coping with depression.

In *Disciplinary Counsel v. Morgan,* 114 Ohio St.3d, 179, 2007-Ohio-3604, presumptive disbarment was avoided, even though Morgan never cooperated with the investigation. In the present case, the Board cited lack of cooperation with the disciplinary process as an aggravating factor, even though it made no such finding under either Heasley or Williams. Unlike the two year suspension, with one year stayed on conditions, Respondent submits that given his own situation, indefinite suspension would be appropriate.

In *Dayton Bar Assn. v. Rogers* (1999), 86 Ohio St.3d 25, 711 N.E.2d 222, the Court was impressed with the fact that there was no actual harm to clients and noted that commingling warrants actual suspension only where there is harm to clients. Here, as stated before, there was no harm to the Williams Estate and no harm to Irene Heasley, whom Respondent tried to wean her off her drug problem. As such, Rogers stands for the proposition that an indefinite suspension would be the appropriate sanction for Respondent.

In *Disciplinary Counsel v. Mazer* (1996), 76 Ohio St.3d 481, 668 N.E.2d 478, the Court was again impressed with the fact that there was no harm to clients. There was no prior discipline and Mazer got six months suspension, all of which was stayed. The other case involving misappropriation of client funds in *Disciplinary Counsel v. Morgan,* the Court considered the ethical duties violated, the actual or potential injury caused to the client and his mental state, and sanctions imposed in similar cases. In

reviewing similar sanctions in other cases, the Court weighed all these factors, was not bound by the presumption of disbarment announced in Dixon, on which the Board relied in recommending disbarment of Respondent.

In the present case, Respondent has no illusions about the gravity of his situation. He has accepted his fate and is ready to take his punishment. Nonetheless, he wants to mend himself and come back some day as a lawyer to practice law in Ohio.

Perhaps another individual more together mentally would have been able to cope with the pressures of their practice, family, and severe embarrassment in the community he has known ever since he came to this country from Greece forty-two years ago. Perhaps he should have sought help from a mental health professional from the onset, and before the situation became severe. However, he is seeking help now and he has been on track for the past six months. He has moved his office a year ago with his sister, and this alone has enabled him to have the necessary staff to help him in preparation of these proceedings and take care of the needs of his clients. Moreover, he has secured liability insurance for errors and omissions, and is now an employee of his sister's, who oversees all accounting and fund distributions. These are all good measures – a little late, but in the right direction nonetheless. They attest to genuine efforts to mend and avoid past mistakes.

Respondent has shown serious lapses here and understands that a lengthy actual suspension is warranted under these facts, but also has demonstrated good time honored qualities for lawyering. He has pursued cases and causes that other lawyers would not even look at, and he has stayed with them during all sorts of adversity. Maybe this is not an important quality in today's business-like approach to practice law. However, perseverance and hard work are the things that distinguish our

profession from others and it allows us to show the strength and sanctity of the human spirit, no matter the odds. Perhaps Respondent should have been more pragmatic in the Irwin case and when the conviction came out. Right or wrong, maybe he should have accepted it and moved on to his own affairs, especially in getting the requested information to the Trumbull County Grievance Committee. Yet, he persisted with his investigation, down beaten, almost penniless and ultimately found evidence to support the granting of a new trial. Perhaps people who are charged with murder, or rape, as in the Berendt case, are not worthy of such zealous defense, but this is not how the system looks at cases. Some of our most precious rights have been articulated in the cases of seemingly unworthy clients and unpopular causes.

All this notwithstanding, this Respondent as any lawyer should practice within the bounds of the law. Unfortunately, those bounds often clash with a judicial system that sometimes sees perfunctorily convict people charged with unpopular crimes, rather than acquit them. "Everybody wants to get along." But if we all subscribe to this "acceptable" way of practicing, there will be no one to stand for us to protect our cherished ideals that so many men before us have fought and even died to secure. Respondent, whatever his shortcomings, is an idealist, as can be seen in his representation of not only Irwin and Berendt, but the many other people that come to his doorstep when no one else would have them. Indeed, one of the most difficult things Respondent had to deal with the first time he was suspended were the people calling up for regular free advice, but he could not give it to them -- even though he knew the answer and was very much familiar with their background. Despite all our efforts to make law into a business to survive, it is still in many ways one human being helping another through the difficulties of life and the regular dilemmas of the law. Respondent wants to someday return to the law, which is why he has not

heeded Relator's repeated calls to resign, and which is why his own freedom may be at stake with the criminal prosecution still pending. Any man who puts that much at stake to practice his profession must find it rewarding.

WHEREFORE, Respondent prays that the Board's recommendation for disbarment not be accepted, but rather a sanction of indefinite suspension be imposed, with all conditions and requirements this Court may deem appropriate. All Respondent wants is to come back some day and practice law with his sister and sons. He doesn't care what the conditions are or what the restrictions.

Respectfully submitted,

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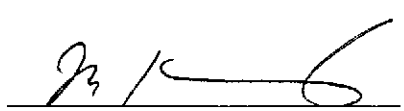
CERTIFICATE OF SERVICE

A copy of the foregoing Objection was served on Jonathan Marshall, The Ohio Judicial Center, 65 S. Front Street, 5th Flr., Columbus, Ohio 43215, Secretary of the Board of Commissioners on Grievances and Discipline; and Randil J. Rudloff, Guarnieri & Secrest, LLP, 151 E. Market Street, P.O. Box 4270, Warren, Ohio 44482, and Curtis J. Ambrosy, Ambrosy & Fredericka, Suite 200, 144 North Park Avenue, Warren, Ohio 44483, both Counsel for Relator, by hand delivery to a responsible person in their respective offices, this 8th day of December, 2008.



MARK G. KAFANTARIS
Attorney for Respondent