

IN THE SUPREME COURT OF OHIO

TRUMBULL COUNTY BAR ASSOCIATION

Relator

CASE NO. 2008-2097

-vs-

GEORGE NICHOLAS KAFANTARIS

Respondent

**RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS
TO THE BOARD OF COMMISSIONERS' REPORT AND RECOMMENDATION
FOR PERMANENT DISBARMENT**

**RANDIL J. RUDLOFF #0005590
BAR COUNSEL FOR RELATOR
TRUMBULL COUNTY BAR ASSOCIATION
CERTIFIED GRIEVANCE COMMITTEE
151 East Market Street, P. O. Box 4270
Warren, Ohio 44482
Phone: (330) 393-1584
Fax: (330) 395-3831**

**GEORGE N. KAFANTARIS #0009748
183 West Market Street
Warren, Ohio 44481
Phone: (330) 394-1587
Respondent**

**CURTIS J. AMBROSY #0022121
CO-COUNSEL FOR RELATOR
TRUMBULL COUNTY BAR ASSOCIATION
CERTIFIED GRIEVANCE COMMITTEE
144 North Park- Suite 200
Warren, Ohio 44481
Phone: (330) 393-6400
Fax: (330) 392-5685**

**MARK G. KAFANTARIS #0080392
625 City Park Avenue
Columbus, Ohio 43206
Phone: (614) 223-1444
Fax: (614) 221-3713
Counsel for Respondent**

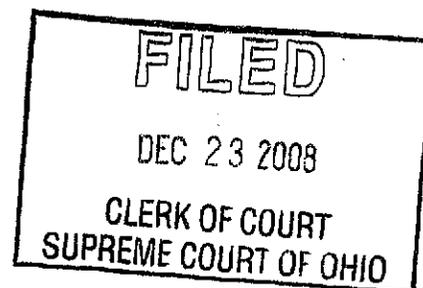


TABLE OF CONTENTS

Table of cases, authorities and statutes3

Procedural Posture.....4

Deficiencies in Respondent’s Objections.....4

Statement of Facts.....5

 Respondent’s Background5

 Undisputed Facts.....7

Argument10

Count One: The Irene Nicole Heasley Matter10

Count Two: The Carol J. Williams Estate Matter.....19

Count Three: The False Affidavit Matter24

Sanction.....28

Conclusion38

Certificate of Service39

TABLE OF CASES, AUTHORITIES AND STATUTES

Disciplinary Counsel v. Kafantaris (2003), 99 Ohio St. 3d 94.....5

Mahoning County Bar Assn. v. Guarnieri(2005), 106 Ohio St. 3d 24.....19

Lake County Bar Assn. v. Vala(1998), 82 Ohio St. 3d 57.....19

Disciplinary Counsel v. Roberts, (2008),117 Ohio St. 3d 9931

Stark Cty. Bar Assn. v. Ake (2006), 111 Ohio St. 3d 26631

Columbus Bar Association v. Foster (2002), 97 Ohio St. 3d 292.....31

Cleveland Bar Assn. v. Dixon (2002), 95 Ohio St. 3d 49031,34,36

Disciplinary Counsel v. France (2002), 97 Ohio St. 3d 24031

Cincinnati Bar Association v. Reis (1999), 86 Ohio St. 3d 54036

PROCEDURAL POSTURE

This case is before the Court upon the Objections of Respondent, George Nicholas Kafantaris, Attorney Registration # 0009748, to the November 4, 2008 recommendation of this Court's Board of Commissioners on Grievances and Discipline that Respondent be permanently disbarred based on three (3) separate and distinct acts of misconduct constituting at least thirteen (13) violations of the Code of Professional Responsibility and the Disciplinary Rules. Respondent seeks a lesser sanction of indefinite suspension. Relator seeks Respondent's permanent disbarment.

DEFICIENCIES IN RESPONDENT'S OBJECTIONS

On November 4, 2008 this Court entered a Show Cause Order that Respondent, if he so chose, show cause within twenty days as to why this Court should not confirm the Board of Commissioners recommendation that Respondent be permanently disbarred. Respondent's objections, if filed, were to comply with The Rules of Practice of the Ohio Supreme Court.

Respondent's objections are improper and/or deficient in the following respects:

1. Respondent has failed to cite to the trial transcript in support of the facts he argues in his Objections/Brief:
2. Respondent argues facts and events which are not contained in the trial record or supplement thereto;
3. Respondent has failed to make specific objections to specific findings of fact and conclusions of law made by The Board of Commissioners in recommending Respondent's permanent disbarment.

4. Respondent does not set forth specific objections in proposition of law type form relative to the Board of Commissioners findings of fact, conclusions of law and recommended sanction.

5. Respondent's filings make apparent accusations of misconduct by counsel for the Relator which is specifically denied by both of the undersigned counsel and which are totally irrelevant to the findings and recommendations of the Board of Commissioners. Neither of Relator's counsel have had any discussions with the Prosecutor in Respondent's criminal case regarding plea bargains or sentencing nor did either seek Respondent's indictment. Counsel for the Relator respectfully suggests that the Court should strike that portion of Respondent's filing beginning with the 8th line on Page 14 through the second line on Page 15 as being scurrilous, inappropriate and irrelevant.

Although Relator respectfully suggests that the Respondent's filing does not comply with the Court's requirements regarding 12 pt. type, references to the record, and format, it will nonetheless respond to those objections perceived to be made by Respondent to the Board of Commissioners' Amended Findings of Fact and Conclusions of Law and Respondent's objections thereto, including the recommended penalty of permanent disbarment.

STATEMENT OF FACTS

RESPONDENT'S BACKGROUND

Respondent was admitted to the practice of law in the state of Ohio on May 11, 1981, (Tr I, p. 39) and is subject to the Code of Professional Responsibility and the Rules for the Government of the Bar of Ohio.

Respondent has previously been the subject of a disciplinary action before this Court in Disciplinary Counsel v. Kafantaris (2003), 99 Ohio St.3d 94 (Tr I, pp. 39-40). That case was

commenced March 26, 2002, with the filing of a complaint by the Disciplinary Counsel. The case was heard by a panel of the Board of Commissioners on November 22, 2002. At the hearing before the panel, the parties submitted an agreed stipulation of facts, stipulated violations, stipulated exhibits, and a stipulated jointly recommended sanction of a suspension from the practice of law for twelve months, with six months stayed. Subsequently, this Court adopted the recommendation of the parties and imposed upon Respondent a six-month suspension from the practice of law in the State of Ohio for the period May 16, 2003, through December 12, 2003, for giving false testimony under oath, in a deposition and in an Affidavit, in a civil case in which Respondent was a Defendant, said conduct being in violation of DR-1-102(A)(4) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation), DR-1-102(A)(5) (engaging in conduct prejudicial to the administration of justice), and DR-7-102(A)(3) (concealing or knowingly failing to disclose that which he is required by law to reveal). (Tr Exhibit 32)

On May 16, 2003, this Court entered an Order suspending Respondent from the practice of law in the State of Ohio for a period of one(1) year with six months stayed and imposing specific requirements upon Respondent in relation to this suspension, including, but not limited to, that within 30 days from date of the Court's Order (May 16, 2003) "Respondent shall:..." (2)...deliver to all clients being represented in pending matters any papers or other property pertaining to the client, or notify the clients or co-counsel, if any, of a suitable time and place where the papers or other property may be obtained, calling attention to the urgency for obtaining such papers or other property; (3) refund any part of any fees or expenses paid in advance that are not earned or not paid, and account for any Trust money or property in the possession or control of Respondent; (4) . . .file a Notice of Disqualification of Respondent with

the Court or agency before which litigation is pending for inclusion of the respective file or files; ... (6) . . . file with the Clerk of this Court and Disciplinary Counsel of the Supreme Court an Affidavit showing compliance with this Order, showing proof of service of notices required herein and setting forth the address where Affiant may receive communications; . . .” (Tr Exhibit 30)

On June 19, 2003, Respondent signed an Affidavit, in which he swore, under oath, that he had complied with this Court’s order of May 16, 2003. Respondent delivered that affidavit to the Clerk of this Court who stamped it as received on June 20, 2003. The affidavit was later stamped as filed with the clerk on August 19, 2003. (Tr Exhibit 31) Based upon the evidence presented in the **CAROL J. WILLIAMS ESTATE MATTER**, infra, Respondent’s June 19, 2003 affidavit of compliance, as filed with this Court, was false.

UNDISPUTED FACTS

Unlike Respondent’s prior disciplinary proceeding, Respondent would not agree to stipulations and stipulations were not presented to the Panel in the present disciplinary matter but, rather, testimony was presented to the Panel over the course of two (2) days (April 10 & May 27, 2008) along with the submission of fifteen (15) deposition transcripts which are part of the record in this proceeding. Nonetheless, there are certain undisputed facts in the record by virtue of admissions of the Respondent made during his opening and closing statements as well as during his testimony when called on cross-examination.

Respondent admitted during his opening statement to the Panel that he used funds belonging to the Estate of Carol Williams, for whom he acted as counsel. (Tr P. 23.) Respondent testified that he did not notify the Trumbull County Probate Court that he was holding \$25,000.00 from a motor vehicle accident case of Carol Williams settled after her death

and had not sought approval from the Probate Court for either the settlement of the case or the distribution of the funds. (Tr P. 54). Respondent conceded in his testimony that he removed money belonging to the Williams' Estate from his trust account and spent it for his own purposes. (Tr P. 56). Respondent admitted that he deposited the entire \$25,000.00 automobile settlement of deceased client, Carol Williams, into his IOLTA account on December 19, 2002, and that his trust account balance was \$262.73 on May 30, 2003, a mere two (2) weeks after his suspension had begun for his prior misconduct and without having given any of the money to either his client or the other attorney on the Estate file, his sister, Irene. (Tr PP. 62-65).

Further, upon inquiry as to whether or not this diversion of the funds from deceased Carol William's personal injury case and failure to report and disclose the funds at that time to the Probate Court and the Estate Executor violated the disciplinary order issued in connection with his May 16, 2003, suspension, the following testimonial exchange occurred:

Q. Now, do you remember receiving from the Ohio Supreme Court an order as to your suspension?

A. Yes.

Q. Would you look at Exhibit 30, please? Is that a copy of the order?

A. It looks like it.

Q. And on the second page towards the bottom, there's language that says, "It is further ordered that on or before 30 days from the date of this order, Respondent shall: ", and then there's, I think, seven items listed that you were required to do.

A. Right.

Q. Did you, in fact, comply with all of those items that you were ordered to comply with?

A. No.

(Tr P. 65).

In regard to his handling of the funds of client, Irene Heasley and the services rendered to her, Respondent noted in his opening statement to the Panel:

“I think the evidence will show there was some commingling. The evidence will show that the money was not there.”

(Tr P. 37). On cross-examination, Respondent conceded that between 6/1/06 and 3/18/07, he electronically transferred funds belonging to Irene Heasley from his IOLTA account to his business/personal account. (Tr P. 70).

Under oath, Respondent conceded that he had no formal agreement with Client Heasley or writing stating that she wanted him to hold her money in his trust account and manage it this way. (Tr P. 83). Respondent testified that he did not maintain any type of written record allowing him to know what was in his IOLTA account at any given time on behalf of any given client. (Tr PP. 40-42). His law firm business account was described by him as also being used for his funeral home business and as a personal checking account. (Tr P. 45). The final accounting he did in writing for Client Heasley, (Tr Exhibit 26), was a document he created after the fact to try to account for her money. (Tr PP. 76-77). On that so-called accounting, he listed \$3,000.00 being claimed by to him for rent for Heasley although he had no written documentation to support that number. (Tr Exhibit 26; Tr P. 95). Indeed, Respondent testified that he rented an apartment to his client, Ms. Heasley, and did not have a written lease agreement with her. (Tr P. 94).

Respondent admitted in cross-examination receiving notice of the grievance investigation and receiving requests from Investigator Lavelle for documents in the Fall of 2006. (Tr Exhibit 36; Tr Exhibit 22; Tr PP. 85-86). Respondent testified that he first produced documents relative to the Heasley investigation in connection with his discovery responses in October, 2007. (Tr P. 91; Tr Exhibit 28).

Finally, Relator conceded in testimony that a reporter for the Warren Tribune Chronicle accurately reported his comments regarding the Williams Estate and in the following testimony:

Q. Was this an article that appeared in the Warren Tribune Chronicle?

A. Right.

Q. And you are quoted in there as saying, "Maybe we didn't follow the rules. Yes, there was some dipping. And yes, there was some commingling."

So you're telling the reporter that you were doing that; is that correct?

A. I didn't deny it to anybody, Randy. . .

(Tr P. 92)

ARGUMENT

COUNT ONE

THE IRENE NICOLE HEASLEY MATTER

The record before the Hearing Panel and the Board of Commissioners' Amended Findings of Fact and Conclusions of Law establish by clear and convincing evidence the following facts:

Respondent was retained by Irene Nicole Heasley ("Heasley") to represent Heasley in a domestic relations matter in the Mahoning County Common Pleas Court, Domestic Relations Division, in a case styled *John Edward Heasley vs. Irene Nicole Heasley*, Case No. 93-DR-485, in which case John Heasley was attempting to obtain, for child support purposes, some, or all, of certain annuity funds Heasley was to receive from her deceased father in the total sum of \$114,426.00. (Tr I, pp. 67-68)

In resolution of the proceedings in the Mahoning County Domestic Relations Court, (Tr Exhibit 10), Respondent received two checks from Symetra Life Insurance Company payable to Heasley, both dated May 15, 2006, one for \$80,000.00 (Tr Exhibit 11) and the other for

\$34,426.00. (Tr I, p. 69; Tr Exhibit 12). Respondent delivered the check for \$34,426.00 to Heasley. (This check/sum is not in issue in these proceedings.) The check for \$80,000.00 was endorsed by Heasley at Respondent's insistence and deposited by Respondent into Respondent's IOLTA Trust Account #1-301-0846-1422 at U.S. Bank. (Tr I, p. 69; Tr Exhibit 13) On May 15, 2006, Respondent, per Order of the Mahoning County Domestic Relations Court, wrote a check on his IOLTA Trust Account for \$20,000.00 and deposited the \$20,000.00 into a restricted bank account at Sky Bank to provide future child support for Heasley's minor daughter. (This check/sum is not in issue in these proceedings.) Respondent further deducted the sum of \$5,000.00 for his fees. (This check/sum is not in issue in these proceedings.) Respondent also wrote a check on his IOLTA Trust Account to repay a loan owed by Heasley to Emmanuel Anglis in the sum of \$1,600.00. (This check/sum is not in issue in these proceedings). Respondent also wrote checks to Heasley at her request from his IOLTA Trust Account in the sum of \$1,500.00. (This check/sum is not an issue in these proceedings.)

As of May 31, 2006, Respondent should have and did hold \$51,900.00 of Heasley's money in his IOLTA Trust Account. (Tr Exhibit 16)

Respondent does not maintain, and apparently never has maintained, written records of the funds he holds on deposit in his IOLTA Trust Account for each of his clients. Instead, Respondent relies upon his memory as to what funds he holds for each client and what funds he has disbursed for each client. (Tr I, pp. 40-44)

From June 1, 2006, through March 18, 2007, Respondent made distributions to Heasley from time to time as she requested, but Respondent also transferred via numerous internet banking/electronic transfers, substantial sums of Heasley's money from Respondent's IOLTA Trust Account to Respondent's office/personal checking account which did not represent fees or

other sums to which Respondent was entitled. (Tr I, pp. 70-71; Tr Exhibit 17, pp 813013, 15, 21, 25, 29, 31, 37 etc) Respondent used Heasley's money for his own uses and purposes, and without Heasley's knowledge, consent or permission.

Respondent's IOLTA Trust Account records show that as of May 31, 2006, Respondent's IOLTA Trust Account should have contained the sum of \$51,900.00 of Heasley's money. Respondent's IOLTA Trust Account balance on May 31, 2006 was \$60,645.00 which apparently included money belonging to other clients. (Tr Exhibit 16; Tr Exhibit 17, p 813011)

In the month of June, 2006, Respondent wrote checks on his IOLTA Trust Account of \$3,000.00 to or for the benefit of Heasley. As of June 30, 2006, Respondent's IOLTA Trust Account should have contained \$48,900.00 of Heasley's money. Respondent's IOLTA Trust Account balance on June 30, 2006 was \$27,153.43. (Tr Exhibit 16; Tr Exhibit 17, p 813015)

In the month of July, 2006, Respondent wrote checks on his IOLTA Trust Account of \$1,424.50 to or for the benefit of Heasley. As of July 31, 2006, Respondent's IOLTA Trust Account should have contained \$47,475.50 of Heasley's money. Respondent's IOLTA Trust Account balance on July 31, 2006 was \$18,061.27. ((Tr Exhibit 16; Exhibit 17, p 813919)

In the month of August, 2006, Respondent wrote checks on his IOLTA Trust Account of \$4,885.00 to or for the benefit of Heasley. As of August 31, 2006, Respondent's IOLTA Trust Account should have contained \$42,590.50 of Heasley's money. Respondent's IOLTA Trust Account balance on August 31, 2006 was \$5,084.27. (Tr Exhibit 16; Tr Exhibit 17, p 813023)

In the month of September, 2006, Respondent wrote checks on his IOLTA Trust Account of \$6,451.56 to or for the benefit of Heasley. As of September 30, 2006, Respondent's IOLTA Trust Account should have contained \$36,138.94 of Heasley's money. Respondent's IOLTA

Trust Account balance on September 30, 2006 was \$5,698.44, with a low balance of \$90.11 as of September 26, 2006. (Tr Exhibit 16; Tr Exhibit 17, p 813027)

As of September 26, 2006, Respondent had stolen \$36,048.83 of Heasley's money, assuming that the \$90.11 remaining in Respondent's IOLTA Trust Account was Heasley's money. After September 26, 2006, and until March 18, 2007, Respondent continued to write checks to Heasley from Respondent's IOLTA Trust Account in the total sum of \$34,351.24. The source of the funds used to cover the \$34,351.24 in checks to Heasley is unclear, except for approximately \$13,726.00 Respondent received in settlement of a motor vehicle accident case for Heasley. Presumably, the \$20,625.24 difference used to cover those subsequent checks to Heasley belonged to other clients of Respondent. (Tr Exhibit 16)

The Heasley matter was brought to the attention of Relator via a complaint filed by Attorney Thomas E. Schubert, who had learned of Heasley's situation when Heasley consulted with Attorney Schubert about Respondent's refusal to give Heasley her money. Respondent received a letter from Attorney Schubert, sent at Heasley's request, directing that all of Heasley's funds be accounted for and paid over to Heasley in care of Attorney Schubert. (Tr I, pp. 79-80) At the time of that letter, September 26, 2006, Respondent should have been holding \$36,138.94 of Heasley's money. Respondent's IOLTA Trust Account balance on September 26, 2006 was \$90.11. (Tr Exhibit 16; Tr Exhibit 17, p 813029)

On October 5, 2006, Attorney Schubert filed a complaint with the Trumbull County Bar Association Certified Grievance Committee setting forth what he had been told by Heasley, and Respondent's explanation as to what he was doing with Heasley's money. (Tr I, pp. 84-85)

On October 12, 2006, Attorney Schubert's grievance was assigned to Attorney Edward Lavelle for investigation. (Tr Exhibit 35) On October 12, 2006, Respondent was given written notice of the grievance (Tr Exhibit 36) and a copy of the grievance. (Tr I, p. 85; Tr Exhibit 37)

On October 26, 2006, Lavelle met with Respondent. During that meeting, Lavelle requested that Respondent provide to Lavelle a complete accounting for all of Heasley's money. Lavelle also asked Respondent to provide copies of Respondent's IOLTA Trust Account bank statements from May of 2006 through that time. (Tr I, p. 86) As of the October 26, 2006, meeting with Lavelle, Respondent's IOLTA Trust Account should have contained \$30,802.59 of Heasley's money. Respondent's IOLTA Trust Account balance on October 26, 2006 was \$5,643.97. (Tr Exhibit 16; Tr Exhibit 17, p 813033)

Respondent did not provide to Lavelle any of the requested materials, nor did Respondent offer any explanation to Lavelle for not doing so. (Tr I, pp. 87-88)

During the month of November, 2006, Respondent wrote checks on his IOLTA Trust Account of \$5,840.00 to or on behalf of Heasley. On or about November 22, 2006, Respondent received on Heasley's behalf in the sum of \$1,726.00 in property damage insurance proceeds arising from a motor vehicle accident in which Heasley was involved on October 5, 2006. That sum was deposited to Respondent's IOLTA Trust Account. As of November 30, 2006, Respondent's IOLTA Trust Account should have contained \$26,688.59 of Heasley's money. Respondent's IOLTA Trust Account balance on November 30, 2006, was \$298.63. (Tr Exhibit 16; Tr Exhibit 17, p 813170)

In the month of December, 2006, Respondent wrote checks on his IOLTA Trust Account of \$3,724.85 to or on behalf of Heasley. As of December 31, 2006, Respondent's IOLTA Trust Account should have contained \$22,963.74 of Heasley's money. Respondent's IOLTA Trust

Account balance on December 31, 2006, was \$5,397.89, with a low balance of \$58.20 as of December 21, 2006. (Tr Exhibit 16; Tr Exhibit 17, p 813035)

On January 2, 2007, Lavelle wrote to Respondent and again requested a complete accounting of all of the money held by Respondent for Heasley and copies of Respondent's Trust Account statements for the period May, 2006, to date. (Tr Exhibit 21) In that letter, Lavelle advised Respondent that Lavelle needed to have the requested information within the next 30 days or Lavelle would complete his investigation and report to the Grievance Committee that Respondent was failing to cooperate in the investigation. Respondent still did not provide to Lavelle any of the requested information, nor did Respondent offer any explanation to Lavelle for not doing so.

During the month of January, 2007, Respondent wrote checks on his IOLTA Trust Account of \$4,013.00 to or on behalf of Heasley. As of January 31, 2007, Respondent's IOLTA Trust Account should have contained \$18,950.74 of Heasley's money. Respondent's IOLTA Trust Account balance on January 31, 2007, was \$45,441.14, with a low balance of \$636.89 as of January 29, 2007. (Tr Exhibit 16; Tr Exhibit 17, p 813063)

In February, 2007, Respondent wrote checks on his IOLTA Trust Account of \$3,582.81 to or on behalf of Heasley. In February, 2007, Respondent settled the bodily injury portion of Heasley's October 5, 2006, motor vehicle accident case for \$12,000.00, which Respondent deposited to his IOLTA Trust Account. As of February 28, 2007, Respondent's IOLTA Trust Account should have contained the sum of \$27,367.93 of Heasley's money. Respondent's IOLTA Trust Account balance on February 28, 2007, was \$15,119.87, with a low balance of \$10,564.84 as of February 26, 2007. (Tr Exhibit 16; Tr Exhibit 17, pp 813102 - 813104)

In March, 2007, Respondent wrote checks of \$11,854.23 to or on behalf of Heasley. As of March 31, 2007, Respondent's IOLTA Trust Account should have contained \$15,513.70 of Heasley's money. Respondent's IOLTA Trust Account balance on March 31, 2007 was \$1,056.97. (Tr Exhibit 16; Tr Exhibit 17, p 813128)

On March 13, 2007, Lavelle again wrote to Respondent advising Respondent (Tr Exhibit 22) that he still had not provided an accounting for Heasley's money, nor copies of Respondent's Trust Account bank statements for the period of May, 2006, through the present. Lavelle also noted in that letter that while Respondent had provided a copy of the Settlement Statement for the October 5, 2006 motor vehicle accident, Respondent had provided no explanation for where that money had been deposited or how it was disbursed. Lavelle asked Respondent to provide an accounting for the money Respondent was holding from Heasley's motor vehicle accident settlement. Lavelle advised Respondent that his report to the Grievance Committee for the investigation was long past due and would be made, one way or another, at the April 5, 2007, Grievance Committee meeting. Respondent never provided to Lavelle any of the documents or records that Lavelle had asked Respondent in writing to provide and Respondent never offered any explanation to Lavelle for not doing so.

On or about October 24, 2007, nearly a year after Lavelle first requested an accounting for Heasley's money and copies of Respondent's IOLTA Trust Account bank statements, and nearly four and one-half months after Relator filed its original Complaint against Respondent and propounded formal discovery requests to Respondent, Respondent finally provided Relator with information about Heasley's money (Tr Exhibit 27) and copies of Respondent's IOLTA Trust Account bank statements. (Tr Exhibit 17)

Respondent was entitled to attorney fees and out-of-pocket expenses for his representation of Heasley in the motor vehicle accident case in the total sum of \$4,632.36. (Tr Exhibit 15)

On or about October 24, 2007, Respondent issued a check from his law office business/personal account, and not his IOLTA Trust Account, to Heasley for \$1,324.28. (Tr Exhibit 18) Apparently this sum represented funds for which Respondent could not otherwise account or explain. (Tr I, p. 75)

After deducting the payment of \$1,324.28 and \$4,632.36 of Attorney fees and expenses, the balance of Heasley's money that should have remained in Respondent's IOLTA Trust Account for Heasley's benefit was \$9,557.06. (Tr Exhibit 16)

As of the end of October, 2007, Respondent was holding none of Heasley's money. In order to explain the \$9,557.06 of Heasley's money then missing from Respondent's IOLTA Trust Account, Respondent claimed that he had advanced cash to Heasley of at least \$1,010.00, paid various expenses for her of at least \$3,354.09, provided legal services valued at \$2,250.00, and provided her living quarters valued at \$3,000.00, for a total of non-check expenditures of \$9,605.09 . Heasley denies Respondent's story. (Tr Exhibit 16; Tr Exhibit 27)

Respondent claims that Heasley was a drug dependent person, that he personally counseled her and that it was necessary for him to manage Heasley's money or she would "blow" it all. By Respondent's own testimony he knew that Heasley was dependent upon him, that he had control over her because he had her money and would not turn it over to her, and that he was her landlord and could "put her out" at anytime (Tr I, p. 94)—which he, in fact, did after she testified against him before the Hearing Panel. (Tr I, pp. 82-83) Much like George du Maurier's character in the novel *Trilby*, Respondent was Heasley's *Svengali* as he acted, with

evil intentions, to manipulate Heasley to do as he said, to accept her own money as Respondent saw fit, to not ask questions, and to submit to his decisions.

A. The Amended Findings of Fact of the Board of Commissioners regarding, Count 1, the Irene Nicole Heasley matter, is supported by clear and convincing evidence.

The Board of Commissioners' Amended Findings of Fact regarding Respondent's handling of Client Irene Heasley's money and legal matters is found beginning on Page 3 through the top of Page 9 of this missive, and is based on the uncontroverted evidence in the record concerning Respondent's trust account and his admissions in his testimony and opening statement. Moreover, they are not specifically challenged Respondent's Objections. (Rather, Respondent's objections appear primarily to go to the sanction recommendation).

B. The Board's Amended Legal conclusions, that Respondent's misconduct in the Heasley matter, Count 1, violated the Code of Professional Responsibility and the Disciplinary Rules are supported by clear and convincing evidence:

(a) DR9-102(A) (2) requiring a lawyer to maintain client funds in a separate identifiable bank account;

(b) DR9-102(B) (3) requiring a lawyer to maintain complete records and appropriate accounts for client funds;

(c) DR9-102(B) (4) requiring prompt payment of a client's funds or other property in the lawyer's possession to the client at the client's request; and

(d) DR1-102(5) providing that a lawyer shall not engage in conduct that is prejudicial to the administration of justice.

It is beyond cavil that when a lawyer admits to transferring funds belonging to his client into an account that he uses not only for his law practice but for another personally owned

business (in this case, a funeral home) and for personal transactions, he has violated the requirement of keeping the client funds in a separate, identifiable bank account. Similarly, violations of the aforementioned subsections of DR 9-102(B) are obvious and mandated from the admissions previously noted by the Respondent in his opening statement and testimony. It does not appear from the “objections” filed by the Respondent that he in fact objects to any of the Board of Commissioners’ findings of violations of the then governing disciplinary code by Respondent.

Although Relator makes no objection to the Panel’s finding that there was not clear and convincing evidence of a violation of Gov. Bar V (4)(G) and the duty to cooperate noted therein, it’s respectfully suggested that the findings of the Panel that the Respondent did not provide to the investigator any of the documents or records he requested and that it was approximately a year after Relator first requested an accounting of Heasley’s money and IOLTA account records that Respondent finally provided the same is indeed a violation of the duty to cooperate. See Mahoning County Bar Association v. Guarnieri (2005), 106 Ohio St. 3d 24; Lake County Bar Association v. Vala (1998), 82 Ohio St. 3d 57. But for Respondent’s failure to supply the records during the investigation, formal discovery steps would have been unnecessary. Respondent’s failure to cooperate should be considered by the Court as an aggravating factor supporting the sanction of Respondent’s permanent disbarment.

COUNT TWO

THE CAROL J. WILLIAMS ESTATE MATTER

The Record before the Hearing Panel and the Board of Commissioners Amended Findings of Fact and Conclusions of Law establish by clear and convincing evidence the following facts:

Prior to March 26, 2002, Carol J. Williams ("Carol") hired Respondent to represent her in a claim for personal injuries arising from a motor vehicle accident which occurred on or about June 7, 1998. (Tr I, p. 48)

On March 26, 2002, the Disciplinary Counsel of the Ohio Supreme Court filed a Complaint against Respondent with the Board of Commissioners on Grievances and Discipline, Case No. 02-15, which was certified for prosecution. The case involved Respondent lying in his deposition and in an affidavit he gave as a defendant in a sexual harassment/sexual assault lawsuit by a former employee.

On about September 9, 2002, Carol died. (Tr I, p. 48) Carol's daughter, Sylvia May ("Sylvia"), subsequently hired Respondent to represent her in the administration of Carol's estate which was opened December 19, 2002. (Tr Exhibit 4, p 5) Sylvia was appointed as Carol's fiduciary on December 19, 2002. (Tr Exhibit 4, p 10)

On October 9, 2002, however, after Carol's death, and before the opening of her estate, Respondent met with Tim Cheadle, an adjuster with Nationwide Insurance Company, and negotiated a settlement of Carol's personal injury claim for the sum of \$25,000.00. On October 9, 2002, Cheadle issued Nationwide's check #92C-518882 in the sum of \$25,000.00 payable to Carol and Respondent in full settlement of Carol's claims. (Tr Exhibit 2) Respondent did not tell Cheadle that Carol had died on September 9, 2002. (Tr I, pp. 49-50) Respondent claims he did not know of Carol's death at the time of the settlement on October 9, 2002.

On November 22, 2002, Respondent's first disciplinary case was heard by a Panel of the Board of Commissioners. (Tr I, p. 49) The parties submitted Stipulations of fact, stipulated violations, stipulated Exhibits, and stipulated a jointly recommended sanction of a suspension from the practice of law for twelve months, with six months stayed. (Tr I, p. 56)

On December 19, 2002, Respondent had Sylvia endorse the \$25,000.00 Nationwide check (Tr Exhibit 2) and sign a Release. Respondent endorsed the Nationwide check and deposited the check to his IOLTA Trust Account No. 1159008408 at Second National Bank of Warren. (Tr I, pp. 50- 51; Tr Exhibit 2)

On December 19, 2002, Respondent prepared, signed and filed in the Trumbull County, Ohio, Probate Court, an Application to admit Carol's Will to probate. (Tr Exhibit 4, p 5) On the same date, Respondent also prepared, signed and filed an application for Sylvia's appointment as the fiduciary of Carol's estate. (Tr I, p.49; 51; Tr Exhibit 4, p 8)) Respondent did not disclose to the Probate Court that he had settled Carol's motor vehicle accident case for \$25,000.00 or that he was holding the \$25,000.00 in his IOLTA Trust Account. (Tr I, p. 54) At no time did Respondent seek the Probate Court's approval of the settlement of Carol's personal injury case, nor did Respondent ever disclose in writing to the Court that such a settlement existed. (Tr I, p. 54)

At the same time Respondent opened Carol's estate, Respondent's sister, Attorney Irene Makridis, appeared as co-counsel with Respondent in the estate. (TR I, p. 54; Tr Exhibit 4, p 15) Subsequently, when this Court suspended Respondent from the practice of law on May 16, 2003, Makridis assumed full responsibility for the estate. Respondent never told Makridis of the \$25,000.00 settlement or that he had the money. Makridis eventually prepared and filed an inventory for the estate which did not include the \$25,000.00 settlement that Respondent had received. (TR I, p. 54; Tr Exhibit 4, pp 18-21)

Respondent's IOLTA Trust Account records for Account No. 1159008408 at Second National Bank of Warren show a deposit on December 19, 2002 of \$25,000.00 representing Carol's personal injury settlement proceeds. (Tr I, p. 50; Tr Exhibit 9, p 1)

Respondent admits that he thereafter took Carol's settlement of \$25,000.00 from his IOLTA Trust Account for his own use and purposes. (Tr I, p. 56; 63-64) As of January 21, 2003, approximately 30 days after the deposit of \$25,000.00, Respondent's Trust Account balance was \$728.92. (Tr I, p. 64; Tr Exhibit 9, p 5)

On May 16, 2003, this Court, in Case No. 03-0381, adopted the recommendation of the Board of Commissioners on Grievances and Discipline, and suspended Respondent from the practice of law in the State of Ohio for a period of six months from May 16, 2003, through December 12, 2003 (twelve month suspension with six months stayed) (Tr Exhibit 30) for giving false testimony under oath, in a deposition and in an affidavit, in a civil case, in which Respondent was a Defendant, said conduct being in violation of DR1-102(A)(5) (engaging in conduct prejudicial to the administration of justice), and DR7-102(A)(3) (concealing or knowingly failing to disclose that which he is required by law to reveal). (Tr I, p. 64)

On December 12, 2003, after completing his six month suspension from the practice of law, Respondent was reinstated to the practice of law by this Court.

In late January – early February 2004, one of Carol Williams' children made inquiry of Respondent as to the status of Carol's personal injury case. Respondent then mortgaged one of his properties for approximately \$26,000.00 which he deposited to his IOLTA Trust Account. (Tr Exhibit 9, p 29) (TR I, p. 58) Respondent then issued a check drawn on his IOLTA Trust Account to the Carol J. Williams estate in the sum of \$25,000.00.

Respondent failed to provide copies of his Second National Bank of Warren IOLTA Trust Account records to Relator's counsel during the investigation despite several requests therefore. (Tr Exhibits 5, 6, 7 & 8)

The Board of Commissioners properly found, by clear and convincing evidence, that Respondent's misconduct in the Williams matter violated the Code of Professional Responsibility and the Disciplinary Rules as follows:

(a) DR1-102(A) (4) prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation;

(b) DR1-102(A) (5) prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice;

(c) DR1-102(A) (6) providing that a lawyer shall not engage in conduct that adversely reflects on the lawyer's fitness to practice law;

(d) DR7-102(A) (3) prohibiting a lawyer from concealing or knowingly failing to disclose that which he is required by law to reveal;

(e) DR9-102(B) (3) requiring a lawyer to maintain complete records and appropriate accounts for client funds; and

(f) DR9-102(B) (4) requiring a lawyer to promptly pay over a client's funds or other properties in the lawyer's possession.

C. The Amended Findings of Fact of the Board of Commissioners regarding the Carol J. Williams Estate matter, Count 2, are supported by clear and convincing evidence.

The Board of Commissioners' Amended Findings of Fact regarding Respondent's handling of Client Carol Williams's money and legal matters, found beginning on Page 93 through the top of Page 12 of its submission, and is based on the uncontroverted evidence in the record concerning Respondent's trust account and his admissions in his testimony and opening statement. Moreover, the central findings of taking the money from his trust account for his

personal use and failing both to directly reveal the asset to the Court and account therefore are unchallenged by Respondent.

D. The Board of Commissioners' legal conclusions that Respondent violated DR 9-102(A)(4), (5) and (6), DR-7-102(A)(3) and DR 9-102(B)(3) and (4) are justified as based on clear and convincing evidence.

Again, the central findings of the Board that Respondent took client Heasley's money from his trust account without her prior knowledge to use for his personal benefit is admitted by Respondent. His primary objection appears to be that the Board didn't sufficiently recognize that while he was stealing from her, he was frequently being kind to her and seeking to assist her with personal, non-legal problems.

COUNT THREE

THE FALSE AFFIDAVIT MATTER

The Record before the Hearing Panel and the Board of Commissioners Amended Findings of Fact and Conclusions of Law establish by clear and convincing evidence the following facts:

On May 16, 2003, this Court entered an Order suspending Respondent from the practice of law in the State of Ohio for a period of six months and imposing specific requirements upon Respondent in relation to this suspension, including, but not limited to, that within 30 days from the date of the Court's Order (May 16, 2003) "Respondent shall: . . .(2) . . . deliver to all clients being represented in pending matters any papers or other property pertaining to the client, or notify the clients or co-counsel, if any, of a suitable time and place where the papers or other property may be obtained, calling attention to the urgency for obtaining such papers or other property; (3) refund any part of any fees or expenses paid in advance that are not earned or not

paid, and account for any Trust money or property in the possession or control of the Respondent; (4) . . . file a Notice of Disqualification of Respondent with the Court or agency before which litigation is pending for inclusion of the respective file or files; . . . [and] (6) file with the Clerk of this Court and Disciplinary Counsel of the Supreme Court an affidavit showing compliance with this Order, showing proof of service of notices required herein and setting forth the address where Affiant may receive communications, . . .” (TR I, pp. 92-93)

On June 19, 2003, Respondent signed an affidavit, which he had prepared, and in which he swore, under oath, that he had complied with this Court’s Order of May 16, 2003. Respondent delivered that affidavit to the Clerk of this Court who stamped it as received on June 20, 2003. (Tr Exhibit 31) The affidavit was later stamped as filed with the Clerk on August 19, 2003. (Tr I, p. 92)

During Respondent’s discovery deposition on February 18, 2008, Relator learned that the affidavit filed by Respondent with this Court on June 20, 2003, in fact, was false in that, in relation to the Carol J. Williams Estate (Count Two of Relator’s Second Amended Complaint), Respondent had not accounted to the estate for the \$25,000.00 he was to have had in his IOLTA Trust Account; Respondent had not filed a Notice of Disqualification in the Carol J. Williams Estate which was then still pending in the Trumbull County Probate Court; and Respondent had not turned over the \$25,000.00 to the Williams Estate. (Tr I, pp. 65-66)

At the time Respondent prepared, signed under oath, and filed his affidavit with the Ohio Supreme Court, he knew that he had not returned to the Carol J. Williams Estate the \$25,000.00 he had misappropriated while his first disciplinary case was pending action by the Board of Commissioners on Grievances and Discipline, he knew that he had not filed a Notice of Disqualification in the Carol J. Williams Estate then pending in the Trumbull County Probate

Court, and he knew that he had not provided an accounting to the Carol J. Williams Estate for the money belonging to the estate and which he should have held in his IOLTA Trust Account.

The Board of Commissioners properly found, by clear and convincing evidence, that Respondent's misconduct in the False Affidavit matter violated the Code of Professional Responsibility and the Disciplinary Rules as follows:

(a) DR1-102(A) (4) prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation;

(b) DR1-102(A) (5) prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice;

(c) DR1-102(A) (6) providing that a lawyer shall not engage in conduct that adversely reflects on the lawyer's fitness to practice law; and

(d) DR7-102(A) (3) prohibiting a lawyer from concealing or knowingly failing to disclose that which he is required by law to reveal.

E. The Amended Findings of Fact by the Board that Respondent filed a false affidavit in his prior disciplinary matter in relation to the Carol Williams personal injury/estate matter, Count 3, is supported by clear and convincing evidence.

Respondent signed and submitted an affidavit to this Court swearing he had complied with this Court's disciplinary order of May 16, 2003, that specifically required him within 30 days from the order to "deliver to all clients being represented in pending matters. . . property pertaining to the client" and to "account for any trust money or property in the possession or control of the Respondent". (Tr Exhibit 30) and (Tr Exhibit 31). Respondent admits that he did not turn over the funds to the Estate Executor until 7 or 8 months after he had filed his affidavit (TR Exhibit 66).

The prior disciplinary order also required Respondent to file a notice of disqualification in each Court in which he had litigation pending. (Tr Exhibit 30). Respondent admits he did not file such a document with the Probate Court, apparently relying instead on the fact that his sister was co-counsel and that he had filed in the General Division of the Common Pleas Court a certificate. See Respondent's Objections, PP 12-13 thereof. The order, however, was clear and Respondent chose not to comply as directed.

Again Respondent testified under oath that he did not in fact comply with all of the items of the order of this Court. (Tr P. 65). Nonetheless, he signed and filed the affidavit indicating he had done so. The argument in Respondent's objections that he had somehow "accounted" for this money and made "full disclosure" to the Probate Court because had he provided a note to an insurance agent named "Nancy" when applying for a fiduciary bond and in that note mentioned the \$25,000.00 settlement is silly. There is no indication in the Probate Court file or in the record below that this note to the insurance agent was submitted to the Court, since the insurance company refused to issue the bond (for Maurice May). See Respondent's Objections at P. 10. Indeed, Respondent notes that he then had Sylvia appointed by the Probate Court since she was named Executrix under the Will of decedent and, therefore, needed no bond. Respondent's Objections, P. 10.

F. The Board of Commissioners' Amended conclusions of law that Respondent violated three (3) sections of DR1-102(A) as well as DR7-102(A)(3), Count 3, are supported by clear and convincing fashion.

The record is abundantly clear that Respondent was not forthright at the outset with the Probate Court and eventual appointed Successor-Fiduciary, Chad Kelligher, Esq. It was not until early in 2004, six (6) months after he signed an affidavit indicating that he had indeed accounted

to these clients and returned their property that he tendered the settlement monies to Mr. Kelligher. Unquestionably, he knowingly failed to disclose that which he was required by law to reveal to the Probate Court for more than a year! Filing the affidavit, he engaged in conduct involving dishonesty, fraud, deceit and misrepresentation, and conduct prejudicial to the administration of justice. It's apparent he signed the false affidavit in furtherance of the lenient sanction conditionally being granted him in the prior disciplinary matter, *i.e.*, the staying of six (6) months of his one (1) year suspension on the condition that he perform these required acts.

SANCTION

Respondent's many disciplinary violations in the Heasley, Williams Estate and False Affidavit matters have been established by clear and convincing evidence. Respondent's violations are the most severe and egregious a member of the Bar can commit: **stealing from clients and lying under oath to The Ohio Supreme Court!**

Respondent's misconduct relative to the three matters charged are neither isolated, singular violations of a lawyer's duty to his clients, his obligations under the Code of professional Responsibility and the Disciplinary Rules, nor negligent inadvertent transgressions.

Respondent's theft of decedent Carol Williams' funds from Respondent's IOLTA Trust Account for his personal use was intentional, not inadvertent. His failure to return those funds for more than thirteen months, and then only when his misconduct was about to be discovered, demonstrates an ongoing, systematic subjection of this client's interests and rights to Respondent's personal interests. Worse yet, respondent stole money from the Williams estate while he was in the midst of pending disciplinary proceedings before this Court's Board of Commissioners on Grievances and Discipline. He had already stipulated his violations of DR1-102(A) (4) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation), DR-1-

102(A) (5) (engaging in conduct prejudicial to the administration of justice), and DR7-102(A) (3) (concealing or knowingly failing to disclose that which he is required by law to reveal). Further, Respondent had agreed to a twelve month suspension from the practice of law with the six months stayed. It is obvious that Respondent's first disciplinary case taught him nothing, and made no impression upon him, as once he was reinstated by this Court to practice law he continued undeterred on a course of fraud, dishonesty and deceit.

Respondent's actions in misappropriating the funds of Irene Heasley occurred on repeated occasions over many months. Electronic transfers of Heasley's money from Respondent's IOLTA Trust Account to Respondent's personal business account for Respondent's personal use were done purposely. Even more incredible is the fact that while Respondent was being investigated by Relator for the Heasley matter, Respondent continued undeterred to steal her money from his IOLTA Trust Account, while at the same time ignoring and stonewalling Relator's investigation.

Respondent clearly lacks the fundamental qualities of honesty and integrity required of every member of the legal profession. Respondent has intentionally, consciously and repeatedly abandoned his clients' interests, and indeed, his clients' rights, in favor of stealing their money for the benefit of himself, his business, and his family members.

However, Respondent's most egregious misconduct is knowingly preparing, signing and filing a false affidavit with this Court. In that affidavit, Respondent swore under oath, and as an officer of this Court, that he had complied with this Court's orders of May 16, 2003, when he knew he had not. Respondent's affidavit, in part, was a condition of Respondent's reinstatement to practice law in the State of Ohio on December 12, 2003. That affidavit was relied upon by this Court in granting Respondent's reinstatement to practice law. The fact that Respondent

would lie to this Court in order to obtain reinstatement of his license to practice law is the real evidence of Respondent's lack of character and fitness to be a member of the most honored profession in the history of our State or Nation. It is the most important reason Respondent should not be a lawyer.

The manner of discovery of Respondent's violations of the Code of Professional Responsibility and the Disciplinary Rules, and Respondent's procrastination and stonewalling of the investigation, is further evidence of his efforts to promote his own interests and hide his misconduct at the expenses of his clients, the legal profession, and the judicial system. Such misconduct is inexcusable and must not be tolerated by this Court.

Relator's investigation of Respondent's misconduct in the three matters charged, and the Board of Commissioners report, reveal a practice of law divorced from the rules governing attorney conduct; a practice of law devoid of ethical standards or moral values; and a course or repeated professional misconduct that endangers the public on a regular, repeated basis and causes irreparable harm, damage, and embarrassment to the legal profession and the judicial system.

Respondent's penalty must correspond to the harm and damage he has knowingly and intentionally caused to his clients, the legal profession and the judicial system.

Further, the public must be protected from Respondent and must not be left asking, "Why is this man allowed to practice law when he is the antithesis of all that the law stands for?"

Relator respectfully suggests that the facts concerning Respondent's multiple, repeated violations of Ohio's then existing Code of Professional Conduct, the findings made by the Hearing Panel and the Board of Commissioners, and relevant law announced by this Court require the Court to impose the severe penalty of permanent disbarment.

In considering the appropriate penalty to impose for attorney misconduct, this Court has stated:

“We consider the duties violated, the actual or potential injury caused, the attorney’s mental state, the existence of aggravating or mitigating circumstances, and the sanctions imposed in similar cases.”

Disciplinary Counsel v. Roberts (2008), 117 Ohio St.3d 99, quoting Stark Cty. Bar Assn. v. Ake, 111 Ohio St.3d 266, at Paragraph 44.

Disbarment is ordinarily the appropriate sanction when an attorney’s misconduct permeates his practice. Columbus Bar Association v. Foster (2002), 97 Ohio St.3d 292. Similarly, misappropriation of client funds carries the “presumptive sanction of disbarment”. Cleveland Bar Assn. v. Dixon (2002), 95 Ohio St.3d 490, at Paragraph 15. See also Disciplinary Counsel v. France (2002), 97 Ohio St.3d 240, at Paragraph 11.

Respondent has admitted that while representing clients, Irene Heasley and the Estate of Carol Williams, he took for his own personal use from his Trust Account, without the prior knowledge and authorization of his clients, the personal injury settlement monies of Carol Williams and funds entrusted to him by client Irene Heasley. The funds belonging to the Carol Williams estate were taken in late December 2002 and early January 2003 while Respondent was the subject of disciplinary proceedings for having lied under oath. He replaced the money more than a year later, but only after he was confronted by one of decedent Williams’ children. Respondent did not, however, make the Williams estate whole as the Estate lost the use of its \$25,000.00 for more than fourteen months. Respondent also admits taking, without the prior knowledge and authorization, Irene Heasley’s money held in his Trust Account; and did so on a repeated basis from June 1, 2006, through March 18, 2007, even while Relator was investigating Respondent’s conduct as relates to the Heasley matter. Respondent claims to have paid to Irene

Heasley all monies owned by issuing various payments to or on behalf of Irene Heasley from either his Trust Account, his personal/multi-business account or in cash. But, in fact, there is in excess of \$9,000.00 of Heasley's money that Respondent can't account for and so he has fabricated an explanation which makes no sense and which Heasley disputes.

Indeed, the Respondent has admitted publicly (by what he conceded is an accurate quotation in the local newspaper) that:

“Maybe we didn't follow the rules. Yes there was some dipping. And yes, there was some commingling. . .” (Tr I, p. 92)

Respondent admits that he did not maintain accurate, current records of the funds held for these clients. Respondent did not produce an accounting of the Heasley funds nor any information relative to the initial sums of money he held for her to the Grievance Committee Investigator. Only after Relator commenced prosecution of the Heasley grievance and pursued formal discovery did Respondent then begin to supply information. Respondent's lack of co-operation is obvious.

Moreover, during the course of these proceedings, Respondent has admitted: that he does not inform his clients that he does not have malpractice insurance as required by Ohio's Applicable Rules of Professional Conduct; that he entered into a business relationship with client, Irene Heasley, in terms of being her landlord and charging her rent without a specific written agreement or any other protocols to protect both her interests and assets; and that he does not maintain written records of client funds held in his IOLTA Trust Account. The evidence establishes Respondent's numerous and repeated instances of misappropriation of client funds over a period of several years. Respondent's admitted failure to maintain rudimentary but required records of client funds and timely produce these required records (although possessing a law license for twenty-five (25) years) further demonstrates, in light of his prior disciplinary

record, that misconduct does indeed permeate his practice and that he has learned nothing from his prior disciplinary experience before this Court.

Further, while the Hearing Panel and Board of Commissioners found that there was not clear and convincing evidence that Respondent failed to cooperate in the Heasley grievance investigation, the record certainly demonstrates Respondent's failure to cooperate, and for the obvious reason that if he had cooperated and provided the records requested by Relator's investigator Respondent's misconduct would have been discovered sooner. In fact, the Heasley grievance was initially certified for prosecution by Relator's Grievance Committee based on Respondent's failure to cooperate in the investigation and on the strong suspicion that Respondent had, in fact, misappropriated Heasley's funds. Indeed, it took Respondent more than a year to provide the financial records Relator had requested on numerous occasions, and only then when the requests were repeated via formal discovery.

While Respondent was the subject of a serious pending disciplinary case, and while he knew that he would be suspended from the practice of law by this Court for at least six months, he stole \$25,000.00 from the estate of his deceased client, Carol Williams. Fourteen months later, and only after being confronted by one of the Decedent's children, and fearing that he was about to be found out, Respondent replaced the stolen \$25,000.00.

After being suspended by this Court, Respondent knowingly and intentionally prepared, signed under oath, and filed with this Court's Clerk a false affidavit that he had complied with this Court's Suspension Order of May 16, 2008.

G. The Board of Commissioners recommended sanction of Respondent's permanent disbarment, as requested by Relator in this case, is appropriate based on the evidence and existing law.

It appears that Respondent's only true objection to the report of the Board of Commissioners is to the recommended sanction of disbarment. See Respondent's Objections, PP. 13-21. Indeed, the prayer or conclusion of his submission is simply that the Court reject the recommendation of disbarment and impose an indefinite suspension; Respondent does not ask or request the Court to actually overturn findings of fact or conclusions of law made on any of the three (3) counts. See Respondent's Objections, P. 21.

The Board began its determination of the appropriate sanction with the presumption that disbarment is the appropriate penalty for misappropriation of client funds as announced in the prior decision of this Court of Cleveland Bar Association v. Dixon (2002), 95 Ohio St. 3d 490.

The Board of Commissioners properly found in examining the admitted and uncontroverted facts within the context of Section 10(B) of the Rules and regulations governing Procedure on Complaints and Hearings before the Board of Commissioners on Grievances and Discipline ("BCGD Proc. Reg.") virtually all of the aggravating factors are present without the existence of any recognized mitigators. Specifically, the record supports recognition of the following elements of aggravation:

- (a) Prior disciplinary offense (lying under oath in prior judicial proceedings);
- (b) Dishonest/selfish motive (taking money from multiple clients over many months for personal use);
- (c) A pattern of misconduct (e.g., repeatedly taking Heasley funds for personal use for many months, and even after Respondent knew Relator had initiated an investigation into Respondent's conduct);

- (d) Multiple offenses (misappropriation from two (2) different clients, failure to account, failure to maintain required records, lying under oath in an affidavit filed with the Ohio Supreme Court in prior disciplinary proceedings);
- (e) Lack of cooperation in the disciplinary process (e.g., taking more than a year to produce the records requested by the grievance investigator in the Heasley Case and never producing them in the Williams case);
- (f) Submission of false evidence or statements or other deceptive practices during the disciplinary process (false affidavit to Supreme Court during prior disciplinary matters, false responses to Admissions regarding re-retaliation against client Irene Healey for her testimony during this disciplinary proceeding);
- (g) Refusal to acknowledge wrongful nature of conduct (refusal to enter into stipulations as to wrongful conduct);
- (h) Vulnerability of and resulting harm to victims of the misconduct (e.g., no return of funds "held" for Heasley, eviction from apartment being "rented" to her without following required legal procedures); and
- (i) Failure to make restitution (i.e., although restitution claimed through unsupported and unverified "accounting" manufactured by Respondent, no true, verified and documents restitution to Heasley).

Conversely, the Board of Commissioners properly found, and the record supports, that there is an absence of established mitigating factors:

- (a) Absence of a prior disciplinary records (Respondent has a disciplinary history);
- (b) Absence of a dishonest or selfish motive (clearly the multiple misappropriations of client funds were not the result of inadvertence);
- (c) Timely good faith effort to make restitution or to rectify the consequences of misconduct (e.g., returning the personal injury settlement to the Williams Estate more than a year after misappropriating the money is far from timely [and only after inquiry made by an heir]);
- (d) Full and free disclosure to the Disciplinary Board or cooperative attitude toward proceedings (e.g., months passed before producing requested records, continuously being late in responding to discovery requests, failing to enter into a single stipulation, etc.);
- (e) Character or reputation (evidence of stealing from multiple clients, previously admitted lying under oath, and retaliating against Mrs. Heasley during these proceedings discredits any testimony of good character);

- (f) Imposition of other penalties or sanctions (none for these multiple instances of misconduct);
- (g) Chemical dependency or (qualified) mental disability (i.e., testimony of mental depression does not meet qualifications required in BCGD Proc. Reg. (g) (i)-(iv), Respondent testified in deposition that his misconduct was not caused by mental illness, substance abuse or chemical dependency, and Respondent's treating professionals have testified that Respondent's claimed depression would not explain Respondent's pattern of lying, cheating and stealing; and
- (h) Other interim rehabilitation (while undertaking some mental health treatment, no evidence of help or mentoring with practice deficiencies such as record keeping failures; and the help that Respondent now claims he is getting was not sought until after Relator had rested its case against Respondent and Respondent knew that from the evidence presented, his permanent disbarment was almost certain).

Respondent's misconduct equals (if it does not exceed) that described in prior disciplinary matters in which this Court imposed the ultimate sanction of disbarment. See Cincinnati Bar Assn. v. Reis (1999), 86 Ohio St.3d 540. See also Columbus Bar Association v. Foster, supra. and Cleveland Bar Assn. v. Dixon, supra.

Respondent argues that the appropriate sanction for his misconduct and numerous disciplinary violations should be an indefinite suspension, as that will allow him the opportunity to some day return to the practice of law. In support of his argument, Respondent refers to nine disciplinary cases previously decided by this Court. Apparently, it is Respondent's belief that those case stand for the proposition that a lawyer who has a prior disciplinary history for lying under oath multiple times in a civil case, stealing from multiple clients (one while the first disciplinary case was pending), giving a false affidavit to the Ohio Supreme Court while under suspension, not co-operating in a disciplinary investigation, not properly maintaining an IOLTA Trust Account, comingling client and personal funds, not carrying malpractice insurance and failing to disclose such to clients, and not making full restitution to his victims, should not be permanently disbarred.

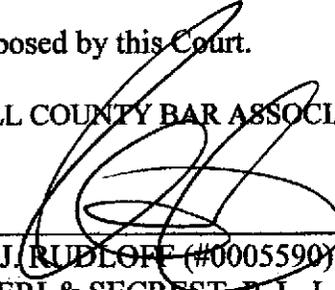
Respondent's assertion that the existence of an OLAP Contract is a mitigation factor misinterprets prior decisions of the Court. Since Respondent produced no evidence that his violations of the Code of Professional Conduct in the Carol Williams matter, the Irene Heasley matter, or the false affidavit of the Supreme Court arose out of or were proximately caused by either a mental disability (*i.e.*, his depression) or chemical dependency (*i.e.*, drinking too much), claiming that the OLPA Contract satisfies either Subsection (g) or Subsection (h) as mitigating factors is disingenuous. Neither the psychologist nor the medical doctors who gave depositions for the Respondent testified that his depression or some degree of alcoholism caused or contributed to his lying, or cheating and stealing from his clients, the basic misconduct in the instant disciplinary proceeding. Indeed, it appears that the OLAP Contract is simply an after-the-fact straw that Respondent grasps in attempt to someday return to the legal community.

Respondent learned nothing from his first disciplinary experience as is evident by the fact that he is now before this Court again for even more serious disciplinary violations. Worse yet, Respondent has learned nothing from this pending case as he now been placed on an Interim Remedial Suspension by this Court for further misconduct and disciplinary violations occurring after the events which serve as the basis for this case. See Trumbull County Bar Association v. George Nicholas Kafantaris, 2008-2196. Indeed, Respondent has even supplemented the record to show that he continued for four (4) months without malpractice insurance after the close of testimony in the matters during which he admitted neither having malpractice insurance nor advising his clients of his lack of such insurance coverage. The documented history of Respondent demonstrates abundantly that compliance with Court Rules and professional standards are not priorities in his practice of law.

CONCLUSION

The evidence clearly and convincingly establishes that the Respondent has followed a course of repeated professional misconduct, harming his clients, endangering the public and damaging the profession, while hindering the administration of justice and the functioning of our legal system. Permanent Disbarment is the only appropriate sanction for Respondent's actions and Relator therefore requests that such be the penalty imposed by this Court.

TRUMBULL COUNTY BAR ASSOCIATION

By: 
RANDIL J. RUDLOFF (#0005590)
GUARNIERI & SECREST, P. L. L.
151 East Market Street
P.O. Box 4270
Warren, Ohio 44482
(330) 393-1584
Attorney for Relator

By: 
CURTIS J. AMBROSY (#0022121)
AMBROSY & FREDERICKA
Suite 200 - 144 North Park Avenue
Warren, OH 44481
Phone: 330) 393-6400
Co-counsel for Relator

PROOF OF SERVICE

Relator served a copy of the foregoing Answer to Respondent's Objections to the Board of Commissioners' report and Recommendations upon the following this 22 day of December, 2008:

Mark G. Kafantaris, ESQ.

625 City Park Avenue

Columbus, Ohio 43206

Counsel for Respondent

and

George N. Kafantaris #0009748

183 West Market Street

Warren, Ohio 44481

Phone: (330-394-1587)

Respondent

and

Hon Jonathan W. Marshall, Secretary

The Supreme Court of Ohio

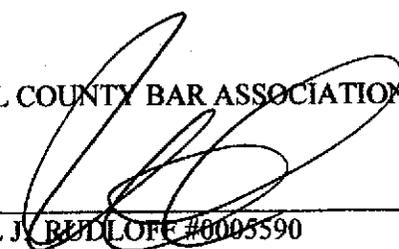
Board of Commissioners on Grievances and Discipline

65 South Front Street, 5th Floor

Columbus, Ohio 43215

TRUMBULL COUNTY BAR ASSOCIATION, RELATOR

By


RANDIL J. BEDLOFF #0005590

Attorney for Relator