

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

09-1144

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| In Re: | : | |
| Complaint against | : | Case No. 08-019 |
| Justin Martus Smith | : | Findings of Fact, |
| Attorney Reg. No. 0072044 | : | Conclusions of Law and |
| | : | Recommendation of the |
| Respondent | : | Board of Commissioners on |
| | : | Grievances and Discipline of |
| Disciplinary Counsel | : | the Supreme Court of Ohio |
| | : | |
| Relator | : | |

¶1. This matter was heard December 18, 2008, in Cleveland Ohio, before a panel composed of Board Members Lisa M. Lancione Fabbro, Sheffield Lake, Ohio, David E. Tschantz, Wooster, Ohio, and panel chair, Retired Judge Thomas F. Bryant, Findlay, Ohio.

¶2. None of the panel members resides in the appellate district from which this matter arose, or served as members of the probable cause panel in this case.

¶3. Relator Disciplinary Counsel was present, represented by Assistant Disciplinary Counsel, Heather L. Hissom, Esq.

¶4. Respondent, Justin Martus Smith was present, represented by his counsel, Richard S. Koblentz, Esq. and Craig Morice, Esq.

¶5. Relator's complaint alleges respondent has violated the following disciplinary rules in effect at the times alleged:

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| FILED |
| JUN 22 2009 |
| CLERK OF COURT SUPREME COURT OF OHIO |

DR 2-106. FEES FOR LEGAL SERVICES.

(A) A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.

DR 6-101. FAILING TO ACT COMPETENTLY.

(A) A lawyer shall not:

(1) Handle a legal matter which he knows or should know that he is not competent to handle, without associating with him a lawyer who is competent to handle it.

¶6. By his Answer to the Complaint, respondent admitted most of the allegations of fact set forth in the Complaint but denied that his conduct violated any of the disciplinary rules because he has practiced law for only two years in a law firm in which he was required to follow the orders of the principal lawyer of the firm, including the actions and omissions here alleged to be professional misconduct.

¶7. Relator and respondent have entered into 34 stipulations of fact, have stipulated the admissibility of 19 relevant documents, and have stipulated to 2 of the mitigating factors recognized by BCGD Proc. Reg. § 10 (B)(2), all appended to this report. The panel adopts the stipulations and has incorporated them in large part in the narrative findings that follow. Additional findings are drawn from the testimony of respondent and the other witnesses who testified at the panel hearing. All findings and conclusions by the panel are based on evidence the panel finds to be clear and convincing.

FINDINGS OF FACT

¶8. Respondent, Justin Martus Smith, was admitted to the practice of law in the state of Ohio on May 22, 2000. Respondent is subject to the Code of Professional Responsibility and the Rules for the Government of the Bar of Ohio.

¶9. On May 22, 2002, Marvin Seltzer, his wife, and their passengers Louis and Florence Reiger were travelling in Seltzer's automobile from New York to Missouri for a vacation. Seltzer and his wife were residents of Texas. Louis Reiger and Florence Reiger were residents of the state of New York. While the car was traveling westbound on 1-76 in Portage County, Ohio, Seltzer lost control causing the car to flip into the median. Seltzer alleged that a phantom vehicle caused him to overcorrect, resulting in the accident. The motorist driving behind Seltzer also reported the actions of the phantom driver, but no other witnesses confirmed the existence of the phantom driver. Mr. Seltzer was not cited for a traffic violation. (Stip. ¶ 5)

¶10. Mr. and Mrs. Seltzer, riding in the front seat with seat belts fastened were not injured. Both Mr. and Mrs. Reiger, napping at the time in the back seat of the automobile without seat belts fastened, were injured, however. Louis Reiger, age 84, was seriously injured and required extensive medical treatment, hospitalization and rehabilitation. Florence Reiger was less seriously injured, but required medical treatment and hospitalization.

¶11. Members of the Reiger family contacted the Chapman Law Firm of Cleveland in response to the firm's advertisement in the Yellow Pages of the telephone directory. At that time, respondent was an associate in the Chapman Law Firm and assigned to the Reiger's inquiry. Respondent visited Mrs. Reiger at her hospital room in Akron General Hospital on May 24, 2002, and undertook representation of Mrs. and Mr. Reiger pursuant to a written contingent fee agreement. (Ex. 2.)

¶12. The fee agreement provides that attorney fees will be 33 1/3 percent of the gross amount if settlement is achieved without filing suit; 40 percent of the gross

settlement or judgment if suit is filed; and 45 percent of the gross settlement or judgment following trial and/or appeal.

¶13. Respondent signed the agreement on behalf of the Chapman Law Firm. Louis Reiger was a patient at Cleveland MetroHealth Hospital in Cleveland at the time and did not meet with respondent or talk to him. Florence Reiger signed the fee agreement in her own behalf and signed in behalf of her husband Louis as “POA.” Florence Reiger did not hold Louis’ power of attorney, however, then or ever. (Tr. 34)

¶14 On July 18, 2002, respondent sent a letter to Marla Cino, a daughter of the Reigers, requesting her to have Louis Reiger sign a fee agreement and return it to him. This document was never executed or returned to respondent or to the Chapman Law Firm.

¶15. Marvin Seltzer, who was driving the automobile in which Louis and Florence Reiger were riding at the time of the accident in which they were injured, was insured by a Geico automobile policy with liability limits of \$100,000 per person for personal injury. Seltzer did not have any other assets to provide additional recovery. (Stip ¶ 9)

¶16. On September 11, 2002, as counsel of record for both Florence and Louis Reiger, respondent filed a lawsuit, Case Number 2002 CV O1017 in the Portage County Court of Common Pleas, naming only Marvin Seltzer as defendant. Respondent brought no action against any other defendants and did not amend the complaint against Seltzer at any time. The complaint did not include an underinsured claim or any other claim against State Farm, the Reigers' insurance carrier. (Ex. 4). Respondent did not send Geico a demand for settlement before filing the lawsuit.

¶17. Geico paid the full amount of its \$100,000.00 per person policy limits for Florence Reiger on October 6, 2003 and the full amount of its \$100,000.00 per person policy limits for Louis Reiger on May 6, 2004. (Stip. ¶9)

¶18. Upon receiving the checks from Geico, respondent endorsed the back of the Geico check made payable to Florence Reiger (No. N68219844) by signing Florence Reiger's name, Louis Reiger's name and his own name. (Ex. 6).

¶19. Respondent endorsed the back of the Geico check made payable to Louis Reiger (No. N70155036) by signing both Florence Reiger's name and Louis Reiger's name, (Ex. 7) placing the letters "POA" after each client's name on the back of this check. At no time did respondent have a power of attorney from either client. Respondent also did not have permission to sign his clients' names to the Geico checks. (Tr. 41-42)

¶20. Louis Reiger and Florence Reiger were insured by State Farm Mutual Automobile Insurance Company (State Farm) in New York. As part of their policy, they had personal injury protection (PIP) coverage, of \$175,000.00 per person.

¶21. New York PIP coverage is no-fault insurance paid without a finding of liability. PIP claims for medical and hospitalization expenses are paid upon application of the providers of such services without the necessity for the intervention of counsel. New York statutes as interpreted by New York courts do not permit payment or collection of attorney fees on PIP claims paid.

¶22. Neither respondent nor the managing principal attorney of the Chapman Law Firm was trained or familiar with New York tort or insurance law, did little research on the subject, and did not associate with a lawyer trained or familiar with the provisions of New York law applicable to the Reigers' PIP insurance.

¶23. On November 14, 2002, respondent applied for PIP coverage on behalf of both Louis Reiger and Florence Reiger by filling out paperwork sent to him from State Farm. Respondent signed the PIP coverage forms as "POA" for Louis Reiger and Florence Reiger.

¶24. Cleveland MetroHealth Hospital had already submitted its claim to State Farm on behalf of Louis Reiger and received the policy limits of \$175,000.00 directly from State Farm.

¶25. Respondent negotiated a \$6,000.00 settlement with State Farm regarding subrogation rights on the PIP no-fault medical coverage of Florence Reiger. (Stip. 16).

¶26. State Farm paid directly to Akron General Hospital \$33,152.91 on its claim for services rendered to Florence Reiger.

¶27. At no time did respondent, the Chapman Law Firm, or either of the Reigers receive any of the funds paid by State Farm to the hospitals under the PIP coverage.

¶28. No efforts were required of Respondent for the Reiger's PIP coverage to pay their hospital and medical expenses directly to the providers pursuant to the terms of that no-fault medical coverage and applicable New York State Statutes.

¶29. On December 9, 2003, respondent sent to Louis Reiger and Florence Reiger a letter referenced "release and status update." (Stip. 17, Ex. 10).

¶30. That document itemizes Florence Reiger's recovery as:

\$100,000 from Geico + \$39,152.92 from State Farm for a gross recovery
of \$139,152.92,
less deductions for the following:
\$6,000.00 State Farm subrogation claim
\$55,661.00 Legal fees (at 40 percent)
\$3,500 Comprehensive asset investigation of Marvin Seltzer
Florence Reiger's net recovery: \$34,839.00.
(Stip. 18)

¶31. No check to Florence Reiger accompanied the letter of December 9, 2003, or was issued in December 2003. No disbursement of any kind to Florence was made until September 2004. (Stip. 19)

¶32. One of the expenses listed in the December 9, 2003 "release and status update" is \$3,500.00 for a "comprehensive asset investigation of Marvin Seltzer." The letter explains that this expense is for the benefit of Louis Reiger to determine if Seltzer had any assets from which to seek additional recovery. (Stip. 20)

¶33. On September 22, 2004, Respondent sent a "disbursement of funds" sheet to Louis and Florence Reiger listing recovery and expenses for Louis and Florence Reiger jointly rather than calculating each client's recovery and expenses separately. This disbursement sheet recites that the total recovery from State Farm and Geico was \$414,152.92. Attorney fees of \$165,661.17 are calculated on the total recovery at 40%. After deduction of expenses, the Reigers received a total joint disbursement of \$8,207.46, for which amount a check was sent. (Stip. ¶ 23)

¶34. On October 5, 2004, after receiving a complaint from one of the Reigers' children, respondent sent a letter to his clients explaining the disbursement form.

¶35. Another of Louis and Florence Reiger's children lodged a grievance with Disciplinary Counsel respecting the attorney fees charged by respondent.

¶36. The Office of Disciplinary Counsel sent respondent a letter on January 31, 2005, requesting additional information regarding respondent's actions in the case involving the Reigers, specifically requesting information about the calculation of attorney's fees.

¶37. Respondent sent a response to Disciplinary Counsel on February 15, 2005.

¶38. On February 22, 2005, respondent sent a letter and a revised disbursement sheet to his clients showing a reduced total recovery of \$408,152.92 after subtraction of the \$6,000 subrogation from the State Farm PIP payments for Florence Reiger. Her total recovery from State Farm was listed as \$33,152.92. The new attorney fee is \$163,261.17, calculated at 40% of the revised total recovery.

¶39. The revised disbursement sheet does not calculate separate percentages for the recovery from Geico and State Farm, despite the fact that State Farm was never a defendant in the law suit filed by respondent in behalf of Mr. and Mrs. Reiger. Since the fee agreement permits a 40% fee only after suit was commenced against a party, if any fee should have been taken from the State Farm PIP recovery, at the contract rate of 33 1/3% before suit was filed, the clients would have received an additional \$13,883.79.

¶40. On the revised disbursement sheet, the expenses were still combined and not separated by client. The State Farm \$6,000.00 subrogation on behalf of Florence Reiger initially deducted to arrive at the revised total recovery was then deducted a second time as an expense further reducing the clients' net recovery.

¶41. Because of the adjustment to the total recovery shown by the revised disbursement document, the total to be disbursed to the clients was calculated to be \$10,607.46 rather than the \$8,207.46 originally remitted with the initial disbursement document. The Reigers were sent a check for the \$2,400.00 difference.

¶42. At the panel hearing, Relator presented the expert testimony of Howard Mishkind, Esq., whose qualifications were stipulated by Respondent's counsel. Eighty to Ninety per cent of Mr. Mishkind's current law practice concerns catastrophic

personal injury, medical negligence, wrongful death, and other and major personal injury cases. He works on a contingency fee basis. Among Mr. Mishkind's clients are out-of-state clients whose claims involve out-of-state insurance policies and otherwise require application of the laws and the interpretation of the laws of other states and nations. He has experience in matters of legal ethics and grievances as a member of a local grievance committee since 1998 and has served as Chair of that committee.

¶43. Mr. Mishkind testified that in his opinion, the attorney fee charged the Reigers was excessive. He delivered his opinion that any fee was excessive when taken on the client's no-fault medical coverage payable directly to medical providers for their services provided for covered injuries and not to the clients or their attorneys, especially when forbidden by state law. He testified further that combining the amounts recovered for the client's separate claims for calculating attorney fees resulted in an excessive fee.

¶44. Mr. Mishkind based his opinion in part also on the facts that the Geico policy limits were paid in settlement of the claims against the tortfeasor after suit was filed. The no fault medical coverage payments were paid by the clients' insurer, State Farm, that had not been sued. Thus, adding the tortfeasor's Geico policy limits to the no fault medical coverage payments paid by the clients' insurer for the purpose of calculating a 40% attorney fee also resulted in an excessive fee, for any attorney fee payable on the no-fault payments by non-party State Farm, would have been limited to 33 1/3% by the terms of the Reigers' fee contract with the attorneys. (Tr. 129-136.)

¶45. Respondent stipulated that the fee charged was excessive.

¶46. Following their receipt of the recalculated distribution sheet and explanation sent by respondent, Mr. and Mrs. Reiger sued respondent, Frank Chapman, and the Chapman Law Firm for malpractice and excessive fees.

¶47. In a settlement of the Reigers' lawsuit, the Chapman Law Firm disgorged the attorney fees taken on the PIP coverage in the amount of \$83,261.17. The Reigers also recovered \$18,738.83 from the malpractice insurance policy held by Chapman Law Firm.

¶48. From the evidence presented at the panel hearing, the panel finds that respondent obtained the maximum compensation that could be obtained from available insurance sources for Louis and Florence Reiger for the injuries they suffered in the accident of May 22, 2002. Any further claim of lost recovery or overcharge was apparently resolved by settlement of the Reigers' malpractice suit against respondent.

CONCLUSIONS OF LAW

¶49. Expert Howard Mishkind gave his opinion that an inexperienced associate in a law firm does not escape ultimate ethical responsibility by following orders or example of a superior to perform unethically. (Tr. 140-142.)

¶50. The panel concludes that Mr. Mishkind's expert opinion is in accord with recent decisions of the Supreme Court of Ohio. See *Disciplinary Counsel v. Johnson*, 106 Ohio St.3d 365, 2005-Ohio-5323, *Cincinnati Bar Assn. v. Mullaney*, 119 Ohio St.3d 412, 2008-Ohio-4541, *Disciplinary Counsel v. Suarez* (1998), 84 Ohio St. 3d 4. In *Disciplinary Counsel v. Johnson*, the Supreme Court explained: "Respondent (Johnson) was a comparatively inexperienced lawyer at the time she committed her misconduct. And although new lawyers are just as accountable as more seasoned professionals for

not complying with the Code of Professional Responsibility, we have made some allowances in the past for novice practitioners. *Columbus Bar Assn. v. Moreland*, 97 Ohio St.3d 492, 2002-Ohio-6726, 780 N.E.2d 579; *Columbus Bar Assn. v. Taylor* (1998), 84 Ohio St.3d 149, 702 N.E.2d 411. Moreover, respondent was following the example of a lawyer whose judgment she had trusted for many years before she was admitted to the bar. Her reliance was misplaced, but understandable.” *Johnson*, at ¶ 39.

¶51. Accordingly, adopting the expert opinion of expert witness, Howard Mishkind, and the stipulation of respondent that the fee charged Louis and Florence Reiger was excessive, the panel concludes that respondent, Justin Martus Smith, has violated DR 2-106 (a) a lawyer shall not *** charge or collect a clearly excessive fee.

¶52. Respondent had no knowledge of the no-fault aspects of the Reiger’s PIP coverage or of the provisions of New York law governing the medical coverage and the additional optional coverage purchased by the Reigers. He did little research to learn about New York law and the PIP coverage, and did not associate with a lawyer knowledgeable in matters of New York law and practice. Thus he did not learn that no attorney fees were permitted to be taken from the medical payments made pursuant to the PIP coverage. As noted by expert witness Mishkind, since respondent did not know this vital fact, he could not properly advocate for his clients or advise his principal, Frank Chapman, of the impropriety of the Chapman Law Firm taking a fee on the PIP payments made by State Farm. The panel thus concludes that in that regard respondent violated DR 6-101(A)(1) by handling a legal matter which he knew or should have

known that he was not competent to handle, without associating with a lawyer who was competent to handle it.

AGGRAVATION AND MITIGATION

¶53. Relator and Respondent have stipulated to the following mitigating factors pursuant to BCGD Proc. Reg. § 10 (B)(2):

(a) absence of a prior disciplinary record;

(b) full and free disclosure to disciplinary board or cooperative attitude toward proceedings.

¶54. Respondent Smith testified in his own behalf, that he was an associate, not a principal in the Chapman Law Firm. He testified that all decisions for the law firm were made by the owner of the firm, Frank Chapman, and that he, as an associate licensed to practice law for only two years, was bound to follow Chapman's instructions. He testified that Frank Chapman approved all settlements and calculated or directed the calculation of all fees. For his efforts on behalf of the firm, Respondent received a salary and a percentage of the fees he earned for the firm.

¶55. Respondent also introduced the testimony of Nicholas Satullo, Esq., Brandon Henderson, Esq., Eric Norton, Esq., all practicing attorneys, and of Robert Morway, a second year evening law student at the University of Akron. Attorney Satullo was respondent's, Frank Chapman's, and the Chapman Law Firm's lawyer who defended the malpractice action against them brought by Louis and Florence Reiger. Attorneys Henderson and Norton and Mr. Morway all were prior employees of the Chapman Law Firm. All four witnesses testified to respondent's good character and reputation and all

testified that from personal knowledge they knew Frank Chapman made all financial decisions for the Chapman Law Firm.

¶56. The Supreme Court has instructed that because each disciplinary case is unique, BCGD Proc. Reg. § 10 (B) does not limit our consideration to the aggravating and mitigating factors listed there, but that all relevant factors may be taken into account when determining the appropriate sanction to be imposed when misconduct has been found.

¶57. In *Cincinnati Bar Association v. Mullaney, supra*, respondent Mullaney was a recently admitted attorney working for a law firm with established practices and procedures involving using a person or organization to recommend or promote the lawyers services, aiding non-lawyers in the practice of law, sharing legal fees with non-lawyers, and handling legal matters without adequate preparation. In deciding the appropriate sanction to impose upon Mullaney for his participation in the misconduct found and considering relevant factors included and not included specifically in BCGD Proc. Reg. § 10 (B), the Supreme Court said “Because each disciplinary case is unique, we are not limited to the aggravating and mitigating factors specified in BCGD Proc.Reg. 10(B) but may take into account ‘all relevant factors’ in determining what sanction to impose. In Mullaney’s case, we find that though he is subject to sanction for his failure to comply with the cited Disciplinary Rules, he was also an inexperienced associate of the Brooking firm at the time of his misconduct. As a new attorney, Mullaney devoted many hours trying to assist the clients assigned to him; however, practices in place at the Brooking firm necessarily constrained his efforts. For his part

in representing Foreclosure Solutions customers, a public reprimand is appropriate.”

Mullaney, at ¶ 40.

RECOMMENDATIONS FOR SANCTION BY PARTIES

¶58. Relator recommends that respondent be suspended from the practice of law for a period of one year with the entire suspension stayed.

¶59. Respondent’s counsel asks that the entire complaint be dismissed, but suggests in the alternative that, if respondent’s misconduct be found, a public reprimand be given.

PANEL RECOMMENDED SANCTION

¶60. A number of recent Supreme Court decisions have considered the appropriate sanction to be imposed upon an attorney for charging an excessive attorney fee accompanied by other disciplinary violations. Six months stayed suspensions were imposed in *Akron Bar Assn. v. Watkins*, 120 Ohio St.3d 307, 2008-Ohio-6144, *Cuyahoga Cty. Bar Assn. v. Cook*, 121 Ohio St.3d 9, 2009-Ohio-259, and *Toledo Bar Assn. v. Johnson*, 121 Ohio St.3d 226, 2009-Ohio-777, three cases involving experienced attorneys. In *Toledo Bar Assn. v. Sawers*, 121 Ohio St.3d 229, 2009-Ohio-778 and *Cincinnati Bar Assn. v. Mullaney*, supra, public reprimands were given to relatively inexperienced lawyers for their misconduct arising in circumstances in which they were associated with more experienced lawyers in authority.

¶61. Respondent’s employer, the owner of the Chapman Law Firm, Frank Chapman, is not a party to the Complaint before the panel and his testimony was not introduced at the panel hearing.

¶62. However, all the evidence introduced indicates that Chapman calculated the excessive fees respondent charged. Other testimony confirms that respondent was an inexperienced attorney obliged to take his orders from and to conform his conduct to the directions of his more experienced employer, Frank Chapman.

¶63. Although attorney Satullo, who represented respondent in the Reiger malpractice action, testified at the panel hearing that it was clear that no attorney fee should have been taken on the PIP payments, he nevertheless testified that Chapman was in charge of the fee calculations.

¶64. Mr. Satullo also noted respondent's good character and reputation for honesty.

¶65. Three more of respondent's acquaintances who testified at the panel hearing affirmed respondent's reputation for good character and honesty. Several character letters were also submitted on respondent's behalf.

¶66. Applying the considerations quoted above from *Disciplinary Counsel v. Johnson* and from *Cincinnati Bar Assn. v. Mullaney*, the panel recommends that respondent be publicly reprimanded for his misconduct

BOARD RECOMMENDATION

Pursuant to Gov. Bar Rule V(6)(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on June 11, 2009. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Panel and recommends that Respondent, Justin M. Smith, be publicly reprimanded in the State of Ohio. The Board further recommends that the cost of these proceedings be taxed to Respondent in any disciplinary order entered, so that execution may issue.

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

A handwritten signature in black ink, appearing to read "Jonathan W. Marshall", written in a cursive style.

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

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

FILED

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BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

Justin Martus Smith
J. M. Smith Co., L.P.A.
55 Erieview Plaza, Suite 630
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AGREED
STIPULATIONS

Attorney Registration No.: (0072044)

BOARD NO. 08-019

DISCIPLINARY COUNSEL

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

AGREED STIPULATIONS

Relator, Disciplinary Counsel, and respondent, Justin Smith, do hereby stipulate to the admission of the following facts and exhibits.

STIPULATED FACTS

1. Respondent, Justin Martus Smith, was admitted to the practice of law in the state of Ohio on May 22, 2000. Respondent is subject to the Code of Professional Responsibility and the Rules for the Government of the Bar of Ohio.
2. On May 22, 2002, Louis Reiger and Florence Reiger were passengers in a vehicle driven and owned by Marvin Seltzer when it was involved in an accident. The car was traveling westbound on I-76 in Portage County, Ohio when the driver lost control causing the car to flip into the median.
3. Louis Reiger and Florence Reiger were at all times residents of the state of New York. The driver, Seltzer, and his wife were residents of Texas. The couples were on their way to Missouri for vacation.

4. Louis Reiger and Florence Reiger suffered physical injuries in the accident. Florence Reiger suffered injuries that were less severe than her husband. Louis Reiger, 84, suffered severe injuries including a degloving injury of the scalp, bilateral hemorrhage contusions of the brain, right open-globe injury of the eye and a cervical spine fracture at C1. Louis Reiger required extensive hospitalization and rehabilitation.
5. No one was cited out of the accident. The driver, Seltzer, alleges that a phantom vehicle caused him to overcorrect, resulting in the accident.
6. At the time, Respondent was an associate attorney with the Chapman Law Firm in Cleveland, Ohio. The Reigers contacted the Chapman Law Firm through an advertisement in the yellow pages.
7. The fee agreement states fees will be earned in the following percentages:
 - 33 1/3 percent of the gross amount if settlement achieved without filing suit;
 - 40 percent of the gross settlement or judgment of suit if filed; and
 - 45 percent of the gross settlement or judgment following trial and/or appeal.
8. On July 18, 2002, respondent sent a letter to Marla Cino, a daughter of the Reigers, requesting her to have Louis Reiger sign a fee agreement and return it to him.
9. The driver, Seltzer, was insured through Geico. His policy had a limit of \$100,000 per person for personal injury. Geico paid the full amount for Florence Reiger on October 6, 2003 and for Louis Reiger on May 6, 2004. Seltzer did not have any assets to provide additional recovery.
10. Louis Reiger and Florence Reiger had insurance through State Farm Mutual Automobile Insurance Company (State Farm) in New York. As part of their policy, they had personal

injury protection (PIP) coverage. PIP coverage is also known as no-fault insurance as it is paid without a finding of liability. The policy limit was \$175,000 per person.

11. On November 14, 2002, respondent applied for PIP coverage on behalf of both Louis Reiger and Florence Reiger by filling out paperwork sent to him from State Farm. Respondent signed the PIP coverage forms as "POA" for Louis Reiger and Florence Reiger.
12. At the time that respondent completed the paperwork, Cleveland MetroHealth Hospital had already applied for coverage on behalf of Louis Reiger.
13. Cleveland MetroHealth directly received \$175,000 on behalf of Louis Reiger.
14. Akron General Hospital directly received \$33,152.91 on behalf of Florence Reiger.
15. At no time did respondent or the Chapman Law Firm receive any of the funds paid to the hospitals under the PIP coverage.
16. Respondent negotiated with State Farm regarding subrogation rights for Florence Reiger's recovery in the amount of \$6,000. The subrogation was negotiated on the PIP coverage, which is no-fault liability insurance.
17. On December 9, 2003, respondent sent a letter to Louis Reiger and Florence Reiger which is referenced as "release and status update."
18. The letter breaks down Florence Reiger's recovery as: \$100,000 from Geico + \$39,152.92 from State Farm (PIP coverage) for a gross recovery of \$139,152.92. The following expenses were deducted from the gross recovery:

\$6,000.00 State Farm subrogation claim

\$55,661.00 Legal fees (at 40 percent)

\$3,500.00 Comprehensive asset investigation of Marvin Seltzer

19. Respondent listed Florence Reiger's net recovery as \$34,839.00. Florence Reiger did not receive a check in December 2003. She did not receive any disbursements until December 2004.
20. One of the expenses listed in the December 9, 2003 letter is \$3,500 for a "comprehensive asset investigation of Marvin Seltzer." Respondent's letter explains that this expense is for the benefit of Louis Reiger to determine if Seltzer had any assets from which to seek additional recovery.
21. On September 22, 2004, Respondent sent a "disbursement of funds" sheet to Louis and Florence Reiger. Respondent listed recovery and expenses for Louis and Florence Reiger jointly. Their recovery and expenses are not calculated separately.
22. In this disbursement sheet, respondent states that the total recovery from State Farm and Geico was \$414,152.92. Attorney fees are calculated on the total recovery at 40% for \$165,661.17.
23. After deduction of the listed expenses, the Reigers received a total joint disbursement of \$8,207.46 out of a total recovery of \$414,152.92. A check for \$8,207.46 was sent to the Reigers.
24. On October 5, 2004, after receiving a complaint from Marla Cino, one of the Reigers' children, respondent sent a letter to his clients explaining the disbursement form.
25. The Office of Disciplinary Counsel sent respondent a letter on January 31, 2005 requesting additional information regarding respondent's actions in the case involving the Reigers. Disciplinary Counsel specifically requested information about the calculation of attorney's fees. Respondent sent a response to Disciplinary Counsel on February 15, 2005.

26. On February 22, 2005, Respondent sent a letter and a revised disbursement sheet to his clients.
27. Respondent's revised disbursement sheet lists a total recovery of \$408,152.92. The \$6,000 subrogation claim was subtracted from the State Farm recovery for Florence Reiger at the top of the disbursement sheet. Her total recovery from State Farm is then listed as \$33,152.92.
28. On the revised disbursement sheet, the attorney fees are listed at \$163,261.17. The fees are calculated at 40% of the revised total recovery. The revised disbursement sheet does not calculate separate percentages for the recovery from Geico and State Farm, despite the fact that State Farm was never a defendant in the law suit.
29. The fee agreement for called for a 40% fee after suit was commenced. If fees were taken from the State Farm PIP recovery at 33 1/3%, the Reigers would have received an additional \$13,883.79.
30. On the revised disbursement sheet, the expenses were still combined and not separated by client. The State Farm subrogation claim on behalf of Florence Reiger was also listed under expenses. It was deducted from the recovery twice. It was deducted from the amount of her State Farm recovery and as an expense.
31. The revised disbursement resulted in an increase to the clients of \$2,400 due to the adjustment in the amount of total recovery. The total disbursed to the clients was listed as \$10,607.46.
32. The Reigers were sent a check for the difference between the two disbursement sheets (\$2,400.00).

33. Respondent, Frank Chapman and the Chapman Law Firm were sued by the Reigers for malpractice and excessive fees. In a settlement of the claims, the Chapman Law Firm disgorged the attorney fees taken on the PIP coverage in the amount of \$83,261.17. The Reigers also recovered \$18,738.83 from the malpractice insurance policy held by Chapman Law Firm.
34. Respondent agrees that he currently understands the fee charged to the Reigers was clearly excessive.

STIPULATED EXHIBITS

1. Traffic Crash Report #67-846-67, dated May 22, 2002
2. Contingent Fee Agreement for Legal Services, dated May 24, 2002
3. State Farm Mutual policy limits, Louis and Florence Reiger
4. *Louis Reiger and Florence Reiger vs. Marvin Seltzer*, Portage County Court of Common Pleas, case # 2002 CV 01017
5. Letter to Marla Cino, dated July 18, 2002
6. Check from Geico General Insurance Company (#N68219844)
7. Check from Geico General Insurance Company (#N70155036)
8. State Farm PIP application for Florence Reiger, November 14, 2002
9. State Farm PIP application for Louis Reiger, November 14, 2002
10. Letter to Louis Reiger and Florence Reiger, dated December 9, 2003
11. February 22, 2005 letter to Louis & Florence Reiger
12. Letter to Louis Reiger and Florence Rieger, dated September 24, 2004
13. Letter to Louis Reiger and Florence Rieger, dated October 5, 2004
14. Disbursement of funds, October 2004

15. Disbursement of funds, February 2005
16. Cashier's check from Chapman Law Firm, February 22, 2005
17. Deposition of Justin Smith, given in Cuyahoga Court of Common Pleas, case no. 565521
18. Justin Smith letter to Disciplinary Counsel dated December 20, 2004, response to letter of inquiry
19. Justin Smith letter to Disciplinary Counsel dated February 15, 2005, response to request for additional information

STIPULATED VIOLATIONS

Relator and respondent have been unable to reach stipulations as to violations.

The parties leave the determination of whether or not violations have been proven by clear and convincing evidence to the discretion of the panel.

STIPULATED SANCTION

The parties are unable to reach a stipulated sanction in this matter. Instead the parties leave the determination as to appropriate sanction to the wisdom and discretion of the panel if the panel finds violations have been proven by clear and convincing evidence.

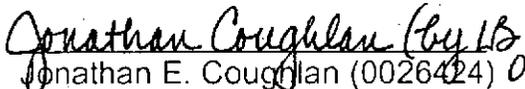
STIPULATED MITIGATION

Relator and Respondent stipulate to the following mitigating factors pursuant to BCGD Proc. Reg. § 10 (B)(2):

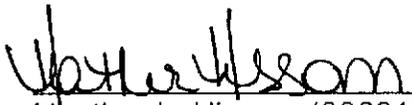
- (a) absence of a prior disciplinary record;
- (b) full and free disclosure to disciplinary board or cooperative attitude toward proceedings.

CONCLUSION

The above are stipulated to and entered into by agreement by the undersigned parties on this 5th day of December, 2008.


Jonathan E. Coughlan (0026424) 0040142)
Disciplinary Counsel

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Respondent
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CONCLUSION

The above are stipulated to and entered into by agreement by the undersigned parties on this ____ day of December, 2008.

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