ORIGINAL

IN THE SUPREME COURT OF OHIO

Disciplinary Counsel, Relator, v. William Matthew Crosby, Respondent.	: : : : : : :	CASE NO. 2009-1172 On Certified Report From Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio Case No.: 08-018

RESPONDENT WILLIAM M. CROSBY'S OBJECTIONS TO THE CERTIFIED REPORT OF THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE OF THE SUPREME COURT OF OHIO

RECEIVED
JUL 27 2009
CLERK OF COURT
SUPREME COURT OF OHIO

Lester S. Potash (0011009)
55 Public Square, Suite #1717
Cleveland, OH 44113
Tel.: (216) 771-8400
Fax: (216) 771-8404
E-mail: lsp@potash-law.com

Counsel for Respondent
William M. Crosby

Robert R. Berger, Esq. (0064922)
Assistant Disciplinary Counsel
250 Civic Center Drive, #325
Columbus OH 43215-5454
Tel: (800) 589-5256
Fax: (614) 461-7205
E-mail: bergerr@sconet.state.oh.us

Counsel for Relator
Office of Disciplinary Counsel

FILED
JUL 27 2009
CLERK OF COURT
SUPREME COURT OF OHIO

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

OBJECTIONS 1

Statement of the Facts 1

Objection No. 1: Crosby Did Not Violate DR 9-102(B)(3) or Rule 1.15(a)(2) [maintenance of complete records of funds, securities and other properties of client possessed by attorney]. 6

Objection No. 2: Crosby Did Not Violate Rule 1.15(a)(3) [maintenance of a record of each IOLTA bank account]. 6

Objection No. 3: The Hearing Panel Erred In Finding That Crosby Avoided Creating A Paper Trail By Which State And Federal Tax Authorities Could Determine Tax Liability. 7

Objection No. 4: The Hearing Panel Erred In Admitting Evidence Of "Tax Issues," Outstanding Judgments Against Crosby, And Exhibit 6. 8

Objection No. 5: The Hearing Panel Erred In Concluding That Crosby Did Not Cooperate Fully Or Respond Fully To Discovery. 9

Objection No. 6: A Public Reprimand Or A Stayed Suspension Accomplishes The Goal Of The Disciplinary Process Which Is Not To Punish An Errant Lawyer, But To Protect The Public. 10

CONCLUSION 15

CERTIFICATE OF SERVICE 15

APPENDIX

Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio (June 12, 2009) . . . . . Appx. 1

TABLE OF AUTHORITIES

Page

CASES

Akron Bar Association v. Holda, 111 Ohio St.3d 418, 2006-Ohio-5860 11
Cuyahoga County Bar Association v. Hardiman, 100 Ohio St.3d 260, 2003-Ohio-5596 12
Cuyahoga County Bar Association v. Judge, 96 Ohio St.3d, 2002-Ohio-4741 9
Cuyahoga County Bar Association v. Nance, 119 Ohio St.3d 55, 2008-Ohio-3333 14
Cuyahoga County Bar Association v. Veneziano, 120 Ohio St.3d 451, 2008-Ohio-6789 11
Disciplinary Counsel v. Fletcher, Slip Opinion No. 2009-Ohio-3480 . . . . . 11, 13
Disciplinary Counsel v. Freeman, 119 Ohio St.3d 330, 2008-Ohio-3836 14
Disciplinary Counsel v. Maley, 119 Ohio St.3d 217, 2008-Ohio-3923 11
Disciplinary Counsel v. Morgan, 114 Ohio St.3d 179, 2007-Ohio-3604 . . . . . 11, 13
Disciplinary Counsel v. Newcomer, 119 Ohio St.3d 351, 2008-Ohio -4492 14
Disciplinary Counsel v. Simecek (1998), 83 Ohio St.3d 320 9
Disciplinary Counsel v. Vogtsberger, 119 Ohio St.3d 458, 2008-Ohio-4571 13
Disciplinary Counsel v. Wise, 108 Ohio St.3d 381, 2006-Ohio-1194 . . . . . 11, 13

CODE OF PROFESSIONAL RESPONSIBILITY

DR 1-102(A)(5) 4
DR 1-102(A)(6) 4
DR 9-102(A) 4
DR 9-102(B)(3) 4, 6

RULES OF PROFESSIONAL CONDUCT

RPC 1.15(a) 4
RPC 1.15(a)(2) 4, 6
RPC 1.15(a)(3) 4, 6, 7
RPC 5.3(b) 4
RPC 8.4(d) 4
RPC 8.4(h) 4

RULES AND REGULATIONS GOVERNING PROCEDURE ON COMPLAINTS AND HEARINGS BEFORE THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE OF THE SUPREME COURT

BCGD Proc.Reg. 10(B) 11

RESPONDENT WILLIAM MATTHEW CROSBY'S OBJECTIONS TO THE CERTIFIED REPORT OF THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE OF THE SUPREME COURT OF OHIO

Statement of the Facts

The essential facts in this case involving Respondent William M. Crosby's use and maintenance of his IOLTA have been stipulated and have been adopted by the Hearing Panel and the Board of Commissioners.[1]

Crosby was admitted to the practice of law in November 1982.[2] During 2005 and 2006, Crosby practiced law as a sole practitioner, i.e., Crosby Law Offices, LLC, engaged primarily in areas of workers' compensation and personal injury, representing injured individuals, after which time Crosby accepted an "of counsel" position with Elizabeth A. Crosby & Associates.[3]

Between 2005 and August 2007, Crosby maintained two bank accounts, an IOLTA in the name of The Crosby Law Offices, LLC ("IOLTA") and a general operating account in the name of The Crosby-Dodge Law Group, LLC ("Operating Account").[4] Carol Mazanec ("Mazanec") provided clerical, administrative, and paralegal services for Crosby and Crosby amended the

---

[1] Exhibit A ("Stip."), Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio ("Report"), ¶1.

[2] Report, ¶1.

[3] Report, ¶8-9.

[4] Stip., ¶6.

signature card for the IOLTA to designate Mazanec as an authorized signer on both the IOLTA and the Operating Account.[5]

Between April and December 2006 Crosby settled five matters wherein he received settlement proceeds ranging from $12,000 to $500,000.[6] In each of these matters, Crosby had a written contingency fee agreement with the client;[7] he "promptly" paid each client his/her distributive share of the settlement proceeds; and he prepared a closing (disbursement) statement indicating the total amount of the settlement, the expenses incurred, the attorney fees to be paid, and the net amount disbursed to the client.[8] After the distribution for the matter for which funds were received in December 2006, no client monies remained in the IOLTA.[9]

Crosby did not deposit personal funds into the IOLTA.[10]

At the conclusion of the settled cases, following client distribution and payment of case expenses, Crosby did not promptly issue to himself from the IOLTA either the entire attorney fee then earned or full reimbursement of expenses.[11] Crosby periodically withdrew his fees and reimbursement of expenses from the IOLTA over a period of several weeks or months by checks prepared and signed by Mazanec or Crosby. These checks were issued to Crosby, to Crosby's

---

[5] Report, ¶10, 12-13.

[6] Report, ¶32.

[7] Report, ¶33.

[8] Report, ¶34-35.

[9] Tr. 95.

[10] Unknown to Crosby, Mazanec deposited a check issued to her from her boyfriend into the IOTLA. (Tr. 42-43, 92).

[11] Report, ¶36.

wife, to Mazanec, and/or to third parties in payment of Crosby's personal and/or business obligations.[12]

Relator presented no evidence that Crosby separately deposited any personal funds into the IOLTA from which these third-party checks were issued.

Crosby admitted to not closely monitoring his IOLTA or supervising Mazanec in her use of the IOLTA, relying upon Mazanec to manage this account.[13] Crosby was unaware that Mazanec issued checks from the IOLTA in payment of Mazanec's personal bills, but subsequently ratified these payments by Mazanec.[14] At no time were any client funds put at risk.[15]

At the hearing and over objection, Relator referenced "tax issues"[16] and outstanding judgments against Crosby.[17] Over objection, the Hearing Panel admitted Exhibit 6, copies of entries of judgments (i.e., personal, business, and tax[18]), none of which were referenced in

---

[12] Report, ¶37.

[13] Tr. 26.

[14] Report, ¶27, 29-30.

[15] Report, 35, 44, Tr. 94.

[16] Tr. 64. Relator's Complaint did not allege that Crosby failed to file tax returns in any year.

[17] Tr. 67.

[18] The reference to tax judgments explicitly and expressly contradicts Relator's claim of Crosby having "avoided creating a paper trail by which state and federal tax authorities could determine [Crosby's] taxable income." Relator's Complaint, ¶27.

Relator's Complaint and which Relator raised for the first time at the December 8, 2008, hearing.[19]

The Hearing Panel determined that Crosby committed all of the ethical violations asserted in Relator's Complaint, to wit:

Count I Use of IOLTA As A Personal And Operating Account
- DR 1-102(A)(6) and RPC 8.4(h) [engaging in conduct adversely reflecting upon Crosby's fitness to practice law]
- DR 9-102(A) [maintain IOLTA for client funds with prohibition against attorney depositing funds into IOLTA]
- RPC 1.15(a) [maintain client property separate from attorney's]

Count II Failure to Properly Maintain and Safeguard IOLTA
- DR 1-102(A)(5) and RPC 8.4(d) [engaging in conduct prejudicial to the administration of justice]
- DR 1-102(A)(6) and RPC 8.4(h) [engaging in conduct adversely reflecting upon Crosby's fitness to practice law]
- DR 9-102(B)(3) [maintenance of complete records of funds, securities and other properties of client possessed by attorney]
- RPC 1.15(a) [maintain client property separate from attorney's]
- RPC 5.3(b) [assure non-lawyer's conduct compatible with attorney's professional obligations]

Count III Failure to Promptly Withdraw Earned Fees
- DR 1-102(A)(5) and RPC 8.4(d) [engaging in conduct prejudicial to the administration of justice]
- DR 1-102(A)(6) and RPC 8.4(h) [engaging in conduct adversely reflecting upon Crosby's fitness to practice law]
- DR 9-102(A) [maintain IOLTA for client funds with prohibition against attorney depositing funds into IOLTA]
- DR 9-102(B)(3) [maintenance of complete records of funds, securities and other properties of client possessed by attorney]
- RPC 1.15(a) [maintain client property separate from attorney's]
- RPC 1.15(a)(2) [maintain record for each client of client's funds]
- RPC 1.15(a)(3) [maintain record for each IOLTA]

---

[19] Tr 76, 120-121.

In finding facts and recommending a sanction, the Hearing Panel found Crosby to have operated his trust account "in an effort to keep funds safe from collection procedures by the taxing authorities and other creditors with judgments" calling such conduct "dishonest and prejudicial to the administration of justice," evidencing a selfish motive.[20] The Hearing Panel further determined that Crosby lied about his reasons for the unorthodox manner of maintaining his IOLTA, and that he did not fully cooperate with the investigation or respond to discovery.[21]

In mitigation, the Hearing Panel recognized that no client monies were ever at risk and that Crosby had no prior disciplinary record.[22]

The Hearing Panel recommended a two year suspension, with one year stayed upon conditions of completing CLE in law-office management and accounting, the payment of the costs of these proceedings, and the resolution (satisfaction or compromise) of judgments.[23]

The Board adopted the Findings of Fact and Conclusions of Law, but recommended a straight two year suspension "based on [Crosby's] long standing fraudulent trust account practices and deliberate deceptions."[24]

Respondent William M. Crosby presents his objections to the Board's Report and Recommendation.

---

[20] Report, ¶43.

[21] Id.

[22] Report, ¶44.

[23] Report, ¶47.

[24] Report, p. 14.

Objection No. 1: Crosby Did Not Violate DR 9-102(B)(3) or Rule 1.15(a)(2) [maintenance of complete records of funds, securities and other properties of client possessed by attorney]

The Stipulations, the evidence, and the findings in the Report established that for each of the five settled cases, constituting the basis of Relator's Complaint, Crosby "completed a closing statement for each client that indicated the total amount of the settlement, expenses, and attorney fees to be paid out of the settlement and the amount of the settlement that each client would receive."[25] The issue is not whether the Hearing Panel or the Board approved of Crosby's methods, but whether Crosby maintained a complete record of funds, securities and other properties of client. The unchallenged and stipulated facts confirm that Crosby complied with his ethical obligations to do so. Aside from the absence of any explanation by the Hearing Panel or the Board as to how Crosby failed to account for funds, securities and other properties of client in light of the preparation and presentation to each client of a distribution statement, the Report failed to explain how Crosby's disbursement statements did not constitute a complete record of the clients' funds or property. Each disbursement statement reflected a zero balance. Relator failed to prove and the Report failed to identify any unrecorded or unaccounted-for funds, securities and other properties of any Crosby client.

Finally, as all settlements occurred prior to February 1, 2007, the effective date for the Rules of Professional Conduct, Crosby could not have violated Rule 1.15(a)(2).

Crosby did not violate DR 9-102(B)(3) or Rule 1.15(a)(2).

Objection No. 2: Crosby Did Not Violate Rule 1.15(a)(3) [maintenance of a record of each IOLTA bank account]

---

[25] Report, ¶32, 34; Relator did not claim and presented no evidence that Crosby failed to pay any client medical bills or other expenses of suit from the settlement proceeds, or that the expenses noted in the distribution statements were incorrect.

For all practical purposes, Crosby's IOLTA ceased being used as an IOLTA after the distribution of funds to the client and payment of case-related expenses in December 2006. As affirmed by Mazanec, once the last client received the distribution of funds from the IOLTA, all monies remaining in that account were earned fees which belonged to Crosby.[26] Notwithstanding Crosby's comments about maintaining a cushion in the IOLTA for possible payment of overlooked client expenses,[27] Mazanec definitively testified all funds remaining in the IOLTA after client distribution and expense payment belonged to Crosby and that at no time subsequent to any client disbursement had any unpaid client expense come to her attention.[28]

Crosby did not violate Rule 1.15(a)(3).

Objection No. 3: The Hearing Panel Erred In Finding That Crosby Avoided Creating A Paper Trail By Which State And Federal Tax Authorities Could Determine Tax Liability.

Paragraph 41 of the Report copied word-for-word paragraph 27 of Relator's Complaint which alleged that Cosby's use of his IOLTA was undertaken to avoid "creating a paper trail by which state and federal tax authorities could determine [his] taxable income." Without evidence of any efforts by taxing authorities– successful or otherwise– to determine Crosby's income, the Hearing Panel leaps, again without any evidence presented, to the conclusion that Crosby "implemented a scheme through the use of his trust account which effectively shielded his assets

---

[26] Tr. 95.

[27] Tr. 62, Report, ¶ 38.

[28] Tr. 97-98. Crosby testified that over the years a case expense may have come in after disbursement to the client had been made, but he (Crosby) paid this expense from his own funds. Tr. 134.

from garnishment."[29] Relator submitted no proof of Crosby the efforts of garnishment. Not every case wherein an IOLTA had been used in the payment of an attorney's personal and business expenses constituted an effort to shield income or avoid the payment of creditors.[30] Absent any evidence of income shielding or creditor avoidance, the Board's speculation exhibits a classic case of building an inference upon an inference.

The Hearing Panel found Mazanec's testimony more credible than Crosby's,[31] thus even though the Hearing Panel may have chosen to discount Crosby's testimony regarding his consulting with an accountant for tax preparation purposes, Mazanec independently confirmed Crosby's testimony of working with "our accountant" in connection with tax issues.[32] Relator presented no evidence from any taxing authority suggesting such agency's (in)ability to determine Crosby's taxable income. The finding constitutes speculation and supposition, not a conclusion based upon clear and convincing evidence.

The Board erred in making the findings contained in paragraph 47 and in considering such in its recommendation of the sanction.

Objection No. 4: The Hearing Panel Erred In Admitting Evidence Of "Tax Issues," Outstanding Judgments Against Crosby, And Exhibit 6.

---

[29] Report, ¶ 47.

[30] E.g., cases cited and discussed at page 14, infra.

[31] Report, ¶26.

[32] Tr. 114.

Relator's Complaint was always about Crosby's IOLTA and allegations of his misuse.[33] Nowhere within the Complaint, in no disclosure, in no stipulation, and in no proposed exhibit discussed prior to the hearing, had Relator mentioned or even intimated that this case involved tax issues or outstanding judgments against Crosby.[34] Exhibit 6 did not relate to any of the claimed disciplinary violations arising from Crosby's IOLTA and there was no evidence produced whatsoever of any effort or attempt by any creditor to collect upon any outstanding judgment. As such, no evidence, let alone such rising to clear and convincing, exists to support the Hearing Panel's conclusion that Crosby used his IOLTA instead of his general operating account "to avoid paying debts owed to creditors."

Arguendo, were the Hearing Panel's conclusion correct, which Crosby has denied and for which no evidence exists, Crosby had not been put on notice of such charge. Imposing punishment for an uncharged violation is untenable, as the absence of fair notice as to the reach of the grievance procedure and the precise nature of the charges asserted deprives an attorney of procedural due process.[35]

The Hearing Panel erred in admitting into evidence testimony about "tax issues," outstanding judgments, and Exhibit 6.

Objection No. 5: The Hearing Panel Erred In Concluding That Crosby Did Not Cooperate Fully Or Respond Fully To Discovery.

---

[33] Tr. 120.

[34] Per the stipulation

[35] *Cuyahoga County Bar Association v. Judge*, 96 Ohio St.3d, 2002-Ohio-4741, ¶4, citing *Disciplinary Counsel v. Simecek* (1998), 83 Ohio St.3d 320, 322.

The Report provided no indication of Crosby's failure to fully cooperate or to fully respond to discovery. Whatever was asked was answered, with the exception of privileged matters. Whatever Crosby was asked to produce, if available, was provided. If an item was not available, it could not be provided.

In his closing statement counsel for Relator alleged that Crosby "failed to cooperate with [R]elator in this matter, refused to answer questions at his deposition * * *." Tr. 156. Prior to the initiation of the formal proceedings against Crosby (the presentment of Relator's proposed Complaint to the Probable Cause Panel of the Board of Commissioners) and in accordance with Relator's request, Crosby appeared at Relator's office to give a statement, under oath, recorded by a court reporter. This statement was not a deposition per Civ.R. 30 and Crosby objected to the categorization by Relator as a Civ.R. 30 deposition.[36] During the course of the statement Relator's counsel asked questions of Crosby which, on the advice of counsel, Crosby did not answer. Raising a constitutional privilege available to all citizens of this state cannot support a finding of Crosby's failure to cooperate or of a failure to respond to discovery.

Objection No. 6: A Public Reprimand Or A Stayed Suspension Accomplishes The Goal Of The Disciplinary Process Which Is Not To Punish An Errant Lawyer, But To Protect The Public.

This Court has expressed concern about an attorney's management of an IOLTA and of the responsibility of properly supervising those who have access to this account. In many instances, the attorney's neglect in failing to monitor the IOLTA and his office staff resulted in

---

[36] Tr. 16.

the misappropriation of funds.[37] That did not happen here. No client funds were misappropriated.

In cases involving IOLTA violations, this Court has issued sanctions ranging from public reprimand[38] to six-month stayed suspension[39] to two year suspension with one year stayed[40] to indefinite suspension.[41] This Court recognizes the uniqueness to each disciplinary case and this Court reviews and considers all relevant factors in determining what sanction to impose.[42] Considering all relevant factors, Crosby's mistakes do not justify an actual suspension from the practice of law.

That which the Board considered as aggravating factors do not have a factual basis from the evidence presented. It appears that critical to the Board-recommended sanction of two years is the conclusion that Crosby used his IOLTA to hide money from creditors and taxing authorities. As previously mentioned, there is no evidence of such for which a conclusion can be drawn, or which can serve as an aggravating factor in the consideration of an appropriate sanction.

---

[37] *Disciplinary Counsel v. Maley*, 119 Ohio St.3d 217, 2008-Ohio-3923, and cases cited therein.

[38] E.g., *Akron Bar Association v. Holda*, 111 Ohio St.3d 418, 2006-Ohio-5860.

[39] E.g., *Disciplinary Counsel v. Fletcher*, Slip Opinion No. 2009-Ohio-3480.

[40] E.g., *Disciplinary Counsel v. Morgan*, 114 Ohio St.3d 179, 2007-Ohio-3604.

[41] *E.g., Disciplinary Counsel v. Wise*, 108 Ohio St.3d 381, 2006-Ohio-1194.

[42] *Cuyahoga County Bar Association v. Veneziano*, 120 Ohio St.3d 451, 2008-Ohio-6789, BCGD Proc.Reg. 10(B).

What has been established is that for 26 years Crosby handled personal injury and workers' compensation cases on behalf of injured persons, scrupulously assuring that all funds belonging to his clients and all expenses in connection with the clients' cases were accounted-for and properly disbursed. Crosby separated his personal interests from his business in that, notwithstanding personal outstanding claims/judgments, not one penny of client funds were ever at risk. Not once in the hearing was there evidence of any inkling of a temptation to misappropriate client funds. This is not a pattern of deceit but evidence that Crosby separated his personal affairs from his business.

Crosby neglected to properly supervise his IOLTA and Mazanec who he authorized to write checks from the IOLTA. He has never denied this.

Aside from no client funds having been at risk and that Crosby has no prior disciplinary history, as expressed in *Cuyahoga County Bar Association v. Hardiman*,[43] what an attorney has accomplished during his career merits consideration. During the years at issue herein, Crosby undertook to represent victims of sexual abuse, very difficult, labor intensive and emotion-laden.[44] Over this time period, he settled five cases, meaning that there were times when his funds were not as plentiful as in other times, as confirmed by Mazanec,

> There was really never a steady paycheck because we would go through some periods where we weren't making any money, barely any money, and so whenever he would get a settlement , he would reimburse me for the money I wasn't getting

---

[43] 100 Ohio St.3d 260, 2003-Ohio-5596.

[44] Tr. 125-127.

> paid for a month or two months. * * * Mr. Crosby would pay me as much as he could and he would write me a check from the IOLTA account.[45]

In many of the cases this Court decided which involved IOLTA violations, the offending attorney either had a prior disciplinary history,[46] admitted to having used the IOLTA for shield income or evade creditors,[47] had the office or operating account closed,[48] and/or had a pattern of "bounced" checks and/or a negative account balance[49] for which this Court imposed a more severe sanction. Crosby has no prior disciplinary history; has neither admitted to nor does there exist any evidence that he shielded income or evaded creditors; did not have his operating account closed; and did not have a pattern of bouncing checks or a negative balance in his IOLTA.

In *Fletcher*, the attorney committed IOLTA violations similar to those charged herein,[50] and, as did Crosby, ceased using the IOLTA in such a manner. There were no accusations of misappropriation or client funds put at risk. Unlike Crosby (who promptly disbursed all client monies and case-related expenses, retaining no client funds in his IOLTA), the attorney in *Fletcher* wrote IOLTA checks for personal matters not knowing what monies in the IOLTA belonged to him. In *Fletcher*, this Court imposed a six month stayed suspension with conditions.

---

[45] Tr. 100.

[46] *Wise*

[47] *Disciplinary Counsel v. Vogtsberger*, 119 Ohio St.3d 458, 2008-Ohio-4571.

[48] *Id.*

[49] *Wise*, *Morgan*

[50] The attorney in *Fletcher* was also charged with providing and found to have provided financial assistance to a client.

In *Cuyahoga County Bar Association v. Nance*,[51] this Court found the attorney to have paid an employee with an IOLTA check without sufficient funds and to have paid personal and business expenses from the IOLTA account over 120 times. Aside from a brief suspension for having failed to register, the attorney had no prior disciplinary history. This Court ordered a six month stayed suspension.

In *Disciplinary Counsel v. Newcomer*,[52] the attorney who used his IOLTA for his personal banking needs, as his bank closed his personal account due to poor financial condition, received a six month stayed suspension.

In *Disciplinary Counsel v. Freeman*,[53] this Court imposed a period of actual suspension (one year, six months stayed) where the attorney misused his IOLTA, paying personal and office bills from that account while client funds remained therein, overdrawing that account 14 times. Additionally the attorney ignored the inquiries by Disciplinary Counsel and was found to have failed to cooperate in connection with two separate inquiries. While this Court gave consideration to a stayed suspension, it imposed an actual suspension of six months due to the attorney having been diagnosed and treated for anxiety and depression, to both protect the public and provide the attorney with additional time to complete his treatment and recovery.[54]

Crosby's situation warrants this Court's imposing a sanction of a public reprimand or a six month stayed suspension.

---

[51] 119 Ohio St.3d 55, 2008-Ohio-3333.

[52] 119 Ohio St.3d 351, 2008-Ohio -4492.

[53] 119 Ohio St.3d 330, 2008-Ohio-3836.

[54] Id, ¶22-23.

CONCLUSION

WHEREFORE, for the reasons expressed herein, Respondent William M. Crosby respectfully prays that this Court sustain his objections and impose a sanction of a public reprimand or a six month stayed suspension.

Respectfully submitted,

Lester S. Potash (#0011009)
Attorney for Respondent
William M. Crosby, Esq.
55 Public Square, Suite 1717
Cleveland, OH 44113
Tel.: (216) 771-8400
Fax: (216) 771-8404
E-mail: lsp@potash-law.com

CERTIFICATE OF SERVICE

A true copy of the foregoing Objections of Respondent William Matthew Crosby has been deposited in the U.S. Mail, postage prepaid, for service upon Robert R. Berger, Esq., Assistant Disciplinary Counsel, counsel for Relator, at Office of Disciplinary Counsel, 250 Civic Center Drive, #325, Columbus, OH 43215-5454, and a copy has been served upon Jonathan Marshall, Esq., Secretary, Board of Board of Commissioners on Grievances and Discipline of The Supreme Court of Ohio, 65 S. Front Street, 5th Floor, Columbus, OH 43215, this 25th day of July, 2009.

Lester S. Potash
Counsel for Respondent
William M. Crosby, Esq.

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

In Re:	:	
Complaint against	:	**Case No. 08-018**
William Matthew Crosby **Attorney Reg. 0002451**	:	**Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio**
Respondent	:	
Disciplinary Counsel	:	
Relator	:	

This matter came on for hearing on December 8, 2008, before David E. Tschantz, Nancy D. Moore and Walter Reynolds, Esq., Panel Chair. 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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Prior to the hearing, Relator and Respondent entered into stipulations ("Stipulations") a copy of which is attached hereto as Exhibit A. Respondent was admitted to the practice of law in November 1982.

2. On April 14, 2008, a complaint was filed against Respondent and he filed his answer on May 27, 2008.

3. The complaint contained three (3) counts alleging professional misconduct. Regarding Count 1, Respondent allegedly used his IOLTA as if it were his personal bank account and/or his law office operating account.

4. The misconduct charged in Count 1 allegedly violated the following:

a. DR 1-102(A)(6) – [a lawyer shall not engage in conduct that adversely reflects upon his fitness to practice law];

b. DR 9-102(A) – [all funds of clients paid to a lawyer shall be deposited in one or more identifiable bank accounts and no funds belonging to the lawyer or law firm shall be deposited therein];

c. Rule 8.4(h) – [a lawyer shall not engage in conduct that adversely reflects upon his fitness to practice law]; and

d. Rule 1.15(a) – [a lawyer shall hold property of clients separate from the lawyer's own property].

5. In Count II, Respondent allegedly failed to properly maintain and safeguard his IOLTA account. The misconduct charged gave rise to the following alleged violations:

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

b. DR 1-102(A)(6) – [a lawyer shall not engage in conduct that adversely reflects upon his fitness to practice law];

c. DR 9-102(B)(3) – [a lawyer shall maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer];

d. Rule 8.4(d) – [a lawyer shall not engage in conduct that is prejudicial to the administration of justice];

e. Rule 8.4(h) – [a lawyer shall not engage in conduct that adversely reflects upon his fitness to practice law];

f. Rule 1.15(a) – [a lawyer shall hold property of clients separate from the lawyer's own property];

g. Rule 1.15(a)(3) – [a lawyer shall maintain a record of each IOLTA bank account];

h. Rule 5.3(b) – [a lawyer shall take reasonable efforts to ensure that a nonlawyer's conduct is compatible with the professional obligations of the lawyer].

6. In Count III, Respondent allegedly failed, on repeated occasions, to promptly withdraw from his IOLTA account earned fees. The misconduct charged gave rise to the following alleged violations.

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

b. DR 1-102(A)(6) – [a lawyer shall not engage in conduct that adversely reflects upon his fitness to practice law];

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

d. DR 9-102(B)(3) – [a lawyer shall maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer];

e. Rule 8.4(d) – [a lawyer shall not engage in conduct that is prejudicial to the administration of justice];

f. Rule 8.4(h) – [a lawyer shall not engage in conduct that adversely reflects upon his fitness to practice law];

g. Rule 1.15(a) – [a lawyer shall hold property of clients separate from the lawyer's own property];

h. Rule 1.15(a)(2) – [a lawyer shall maintain a record for each client on whose behalf funds are held]; and

i. Rule 1.15(a)(3) – [a lawyer shall maintain a record for each IOLTA bank account].

7. Although Respondent's answer admitted many of the facts supporting the violations alleged in the Relator's complaint, Respondent denied that these admitted facts supported the charged violations.

8. During 2005 and 2006, Respondent practiced law as Crosby Law Offices, LLC. Around December 2006, Respondent ceased practicing as Crosby Law Offices, LLC. and accepted a position as counsel for Elizabeth A. Crosby & Associates. (Stip. ¶2 and 3)

9. During 2005 and 2006, Respondent was a solo practitioner and practiced law primarily in the areas of worker's compensation, personal injury and tort.

10. Between 2004 and 2006, Respondent hired Carol Mazanec as a secretary. At the hearing, Respondent contended that Mazanec was not an employee, but rather an independent contractor. Mazanec testified that she was not a W-2 employee, but did not receive a 1099 tax form for income paid to her by Respondent. Regardless of whether Mazanec was an employee or an independent contractor, she was Respondent's agent and was subject to his supervision.

11. In 2005 and 2006, Respondent maintained two bank accounts at KeyBank to manage law firm funds. Respondent maintained an IOLTA bank account under the name of The Crosby Law Offices, LLC. Respondent also maintained an operating account under the name of The Crosby-Dodge Law Group, LLC.

12. On July 7, 1999, Respondent's IOLTA was opened. On July 16, 2004, Respondent amended the signature card at KeyBank to add Mazanec as having signature authority on the IOLTA.

13. There was no dispute that Respondent delegated IOLTA check writing authority to Mazanec. Respondent admitted that he relied on Mazanec to manage his IOLTA and operating accounts and she wrote and/or signed most of the IOLTA checks. (Stip. ¶ 9 and 10)

COUNT I – ALLEGED USE OF IOLTA AS A PERSONAL AND OPERATING ACCOUNT

14. From at least January 1, 2006 through May 31, 2007, Respondent used his IOLTA as if it were his personal bank account and/or his law office operating account. The testimony and exhibits admitted at the hearing confirmed numerous examples of this misconduct:

(a) In 2006 and 2007, Respondent and/or Mazanec wrote and negotiated approximately 13 checks from the IOLTA payable to Respondent totaling $27,755. (Stip. 11(a))

(b) In 2006 and 2007, Respondent and/or Mazanec wrote approximately 8 checks payable to Respondent's spouse, Elizabeth Crosby, totaling $142,823.48. (Stip. 11(b)). At the hearing, Mazanec testified that the checks written to Mrs. Crosby were used to pay household and personal expenses. (Tr. 116)

(c) In 2006 and 2007, Respondent and/or Mazanec wrote approximately 20 checks payable to Mazanec totaling $57,713. (Stip. 11(f)). Apparently, Mazanec did not receive a regular paycheck. When funds were available, Mazanec was paid a lump sum from the IOLTA as compensation. Mazanec testified that all checks to her from the IOLTA represented wages and bonuses.

(d) On 18 occasions in 2006 and 2007, Respondent paid monthly Verizon and/or Ameritech/AT&T telephone bills through automatic payment withdrawals taken directly from his IOLTA. These payments totaled $4,436.81. (Stip. 11(c)). Mazanec testified that she set up the automatic withdrawals relationship with the various vendors, and that the arrangements were made with Respondent's authorization.

(e) In 2006 and 2007, Respondent and Mazanec wrote approximately 68 checks from the IOLTA account payable to cash totaling over $88,000. (Stip. 11(d)). Mazanec testified that all monies received from a check payable to "cash" was delivered to Respondent. She testified that she never kept any cash. (Tr. 101-102)

(f) In 2006 and 2007, Respondent and/or Mazanec wrote approximately 16 checks for a total of $5,407.09 to pay personal and/or law firm bills owed to Dominion East Ohio Gas, Topetto's Pizza, Home Depot, Plant Crafters, CVS, Wyatt Tractor, Brook's Brothers, Web Office Solutions, and Cort Furniture Rental. (Stip. 11(e)).

(g) Mazanec testified that she used the law office Home Depot account to purchase personal items and that Respondent was aware of her activities. Mazanec also testified that she wrote IOLTA checks to CVS to obtain personal prescriptions because she did not have insurance. (Tr. 87)

15. From January 1, 2006 through May 31, 2007, Respondent's IOLTA account incurred overdraft fees of $118.50. (Stip. 12)

16. Respondent contends that he did not violate any Disciplinary Rules and that prior to the enactment of the Ohio Rules of Professional Conduct effective on February 1, 2007, he

had ceased all activities in the IOLTA. Respondent's counsel contends that Respondent maintained his IOLTA in an unorthodox manner, but not in an unethical manner.

17. Respondent's defense to the charges relies on his practice of immediately paying client settlement funds from the IOLTA to his clients. Thus, Respondent argues that when he or Mazanec wrote checks for personal use or business activities, all of the funds remaining in the IOLTA must have belonged to Respondent.

18. Respondent also argued that there was no evidence that any client failed to receive monies due and owing.

19. In considering the alleged violations and Respondent's defenses thereto, the Panel reviewed *Disciplinary Counsel v. Wise*, 108 Ohio St.3d 381, 2006-Ohio-1194, *Disciplinary Counsel v. Vogtsberger*, 119 Ohio St.3d 458, 2008-Ohio-4571, and *Disciplinary Counsel v. Morgan*, 114 Ohio St.3d 179, 2007-Ohio-3604.

20. In *Wise* the Supreme Court affirmed the Board's finding that Wise violated DR 1-102(A)(5), DR 1-102(A)(6), DR 9-102(A) and DR 9-102(B)(3) where he paid personal obligations and funded personal accounts from money in his "Interest On Lawyers' Trust Account" (IOLTA). Wise admitted that he treated his IOLTA account as though it were just a regular office account, but denied that there were ever any client funds in the account.

21. In *Morgan*, the Supreme Court found a violation of DR 9-102(A) and DR 1-102(A) based on commingling of funds where Morgan used his IOLTA for purposes other than safekeeping client-entrusted funds. The Court pointed out that under DR 9-102(A), a client trust account may contain only funds belonging to clients excluding (1) advances for costs or expenses, (2) funds over which a dispute exists, and (3) funds reasonably sufficient to pay bank charges.

22. In *Vogtsberger*, the Supreme Court found a violation of DR 1-102(A)(4), DR 1-102(A)(5), DR 1-102(A)(6), DR 9-102(A) and DR 9-102(B) where Vogtsberger used his trust account as a "safe haven" for his money to avoid his personal financial responsibilities.

23. With respect to Count I, based on the foregoing, and the Stipulations by the parties, the Panel finds by clear and convincing evidence that Respondent violated the following:

a. DR 1-102(A)(6) – [a lawyer shall not engage in conduct that adversely reflects upon his fitness to practice law];

b. DR 9-102(A) – [all funds of clients paid to a lawyer shall be deposited in one or more identifiable bank accounts and no funds belonging to the lawyer or law firm shall be deposited therein];

c. Rule 8.4(h) – [a lawyer shall not engage in conduct that adversely reflects upon his fitness to practice law]; and

d. Rule 1.15(a) – [a lawyer shall hold property of clients separate from the lawyer's own property].

COUNT II – FAILURE TO PROPERLY MAINTAIN AND SAFEGUARD IOLTA

24. During the hearing, the testimony of Respondent and Mazanec basically confirmed that Respondent delegated responsibility for the IOLTA to Mazanec with little or no supervision, oversight or training.

25. Mazanec testified that she received no supervision from Respondent regarding the IOLTA; had no training regarding the IOLTA or the operating account; the IOLTA was not reconciled; and, that no monthly reconciliation was performed on the IOLTA. (Tr. 82)

26. Respondent testified that he had his accountant, Steve Newman train Mazanec regarding how to perform a monthly reconciliation of the IOLTA account. (Tr. 44) However, Mazanec testified that Respondent did not bring an accountant into the office to train her in the proper use of the IOLTA account. Respondent failed to call Mr. Newman as a witness to testify on this issue. The Panel accepted Mazanec's testimony as being more credible.

27. At the hearing, Respondent admitted that the IOLTA account was mismanaged and that he failed to supervise Mazanec. Respondent also testified several times that he ratified everything Mazanec did. The Panel was alarmed by Respondent's ratification especially with respect to the check from Mazanec's boyfriend, Chris Lancsa. Mr. Lancsa issued a check payable to Mazanec and the check was deposited into and negotiated through Respondent's IOLTA. Respondent offered no evidence that Mr. Lancsa was a client or that the funds deposited into the IOLTA were actually trust funds.

28. At the hearing, Respondent testified that sometimes he asked Mazanec for checks written on the operation account, but that she would mistakenly complete checks written on the trust account and he would sign the checks without appreciating the error. For example, Respondent testified that he inadvertently signed a trust check payable to Brook's Brothers and another payable to Wyatt Tractor. (Tr. 139-141) The Panel does not find Respondent's representations credible. Rather, the Panel finds that Respondent willfully and knowingly made the conscious decision to use his trust account as if it were his operation account. By so doing, he was able to avoid collection actions by his creditors, including the tax authorities.

29. Respondent testified that he was not fully aware of the activities of Mazanec regarding checks written to CVS and Home Depot totalling $1,323.40. These payments were made by Mazanec for her personal bills.

30. Respondent's lack of awareness about multiple IOLTA transactions, failure to properly monitor his IOLTA, and failure to properly train and supervise Mazanec's use of the IOLTA violated Ohio's ethical rules.

31. Based upon the foregoing, including the Stipulations, the Panel finds by clear and convincing evidence that Respondent's conduct alleged in Count II violated the following:

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

b. DR 1-102(A)(6) – [a lawyer shall not engage in conduct that adversely reflects upon his fitness to practice law];

c. DR 9-102(B)(3) – [a lawyer shall maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer];

d. Rule 8.4(d) – [a lawyer shall not engage in conduct that is prejudicial to the administration of justice];

e. Rule 8.4(h) – [a lawyer shall not engage in conduct that adversely reflects upon his fitness to practice law];

f. Rule 1.15(a) – [a lawyer shall hold property of clients separate from the lawyer's own property];

g. Rule 1.15(a)(3) – [a lawyer shall maintain a record of each IOLTA bank account];

h. Rule 5.3(b) – [a lawyer shall take reasonable efforts to ensure that a nonlawyers conduct is compatible with the professional obligations of the lawyer].

COUNT III – FAILURE TO PROMPTLY WITHDRAW EARNED FEES

32. In 2006, Respondent settled five contingency fee cases as follows:

(a) April 2006, a case was settled for $500,000

(b) June 2006, a case was settled for $12,000

(c) September 2006, a case was settled for $25,000

(d) November 2006, a case was settled for $425,000

(e) December 2006, a case was settled for $150,000

33. In each of these cases, Respondent entered into a written contingency fee agreement with his clients.

34. Respondent completed a closing statement for each client that indicated the total amount of the settlement, expenses and attorney fees to be paid out of the settlement and the amount of the settlement that each client would receive.

35. In each of these instances, Respondent promptly paid each client their share of the settlement.

36. However, Respondent failed to promptly withdraw from his IOLTA the attorney fee to which he was entitled.

37. Instead, Respondent withdrew his fee in multiple checks over several weeks or months in amounts ranging from a few dollars to thousands of dollars. (Stip. ¶17) Additionally, these checks were made payable to cash, Mazanec, Respondent's wife, and various other parties to whom Respondent owed a debt.

38. At his deposition, Respondent testified that he did not immediately remove all of his earned attorney fees from his IOLTA because he preferred to maintain a "cushion" of extra funds in his IOLTA in case of a later unexpected expense related to a case.

39. Respondent further testified that he did not maintain a written record or tally of this "cushion" of earned fees maintained in his IOLTA. Instead, Respondent testified that he kept track of the running total of what he was owed in his "head." (Tr. 56)

40. As a result of the conduct detailed above, Respondent commingled client and personal funds in his Key Bank IOLTA and failed to maintain an appropriate accounting of client funds deposited into the account.

41. By paying his own creditors and other parties directly out of his IOLTA, Respondent avoided creating a paper trail by which state and federal tax authorities could determine Respondent's taxable income.

42. With respect to Count III, the Panel finds by clear and convincing evidence the following violations:

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

b. DR 1-102(A)(6) – [a lawyer shall not engage in conduct that adversely reflects upon his fitness to practice law];

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

d. DR 9-102(B)(3) – [a lawyer shall maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer];

e. Rule 8.4(d) – [a lawyer shall not engage in conduct that is prejudicial to the administration of justice];

f. Rule 8.4(h) – [a lawyer shall not engage in conduct that adversely reflects upon his fitness to practice law];

g. Rule 1.15(a) – [a lawyer shall hold property of clients separate from the lawyer's own property];

h. Rule 1.15(a)(2) – [a lawyer shall maintain a record for each client on whose behalf funds are held]; and

i. Rule 1.15(a)(3) – [a lawyer shall maintain a record for each IOLTA bank account].

AGGRAVATION AND MITIGATION

43. In aggravation, the Panel finds that Respondent's misuse of his trust account continued over several years and represented a pattern of misconduct. It was clear to the Panel that Respondent used his trust account instead of his operating account in an effort to keep funds safe from collection procedures by the taxing authorities and other creditors with judgments. These actions were dishonest and prejudicial to the administration of justice. Moreover, they evidenced a selfish motive. During the hearing, Respondent testified that he maintained his

IOLTA account in an unorthodox manner, but refused to admit that what he did was also unethical. Further, he refused to acknowledge that the reason for using his trust account rather than his operating account was to avoid paying debts owed to creditors. The Panel finds that Respondent lied about his reasons for the "unorthodox" manner in which he used his IOLTA. Also, the Panel finds that Respondent did not cooperate fully with the investigation or respond fully to discovery.

44. In mitigation, the Panel notes that there was no evidence that a client failed to receive all of the client's monies. Also, Respondent has no prior discipline.

SANCTION

45. Respondent asserts that in the event a violation is recommended, a public reprimand is the appropriate sanction. Relator seeks a 24-month suspension. The Panel notes that in *Vogtsberger* and *Morgan,* the sanction was a two-year suspension, with one-year stayed on conditions. In *Wise*, the Relator and the Board recommended that Mr. Wise be suspended from the practice of law for one year with six months of the suspension stayed. This recommendation was rejected by the Supreme Court. The Court concluded that the appropriate sanction for Mr. Wise was an indefinite suspension. In *Wise*, there was other serious misconduct, unrelated to the trust account, and there was a record of prior discipline.

46. In this case, the Panel recommends that Respondent be suspended from the practice of law for two years with one year stayed on the condition that Respondent (1) satisfactorily complete 6 hours of additional CLE in law-office management and accounting; (2) pay all costs of this proceeding; and (3) fully pay or provide evidence of a compromise of the obligations listed on Exhibit 6 relating to the following:

a. Certificate of Judgment No. ST00069639 in the principal sum of $6,717.51;

b. Certificate of Judgment No. ST98045500 in the principal sum of $5,729.50;

c. Certificate of Judgment No. ST02085583 in the principal sum of $4,262.04;

d. Certificate of Judgment No. ST03091227 in the principal sum of $3,761.74;

e. *West Publishing Corp. v. Crosby*, Case No. 1999 CVF 013387 judgment in the principal sum of $2,408.44;

f. *National City Bank v. Crosby*, Case No. 01 CVF 647, judgment in the principal sum of $1,349.42;

g. Certificate of Judgment No. ST96022309 in the principal sum of $386.54;

h. *Imagenet v. Crosby*, Case No. 2000 CVI 2786, judgment in the principal sum of $362.43;

i. Certificate of Judgment No. ST97027119 in the principal sum of $315.37;

j. Certificate of Judgment No. ST96022308 in the principal sum of $164.20;

k. Certificate of Judgment No. ST99051486 in the principal sum of $142.72; and

l. Certificate of Judgment No. ST98040329 in the principal sum of $129.13.

47. In recommending Respondent fully pay or provide evidence of a compromise of the obligations listed on Exhibit 6, the Panel gave consideration to the ability of Respondent to shield his assets from garnishment by using his trust account in an unethical manner. Also, the Panel relied upon *Disciplinary Counsel v. McCord*, 121 Ohio St.3d 497, 2009-Ohio-1517 wherein the Court noted that "[a]n attorney should pay his debts without a court order." Id. at ¶13. In this case, Respondent did more than not pay his debts. He implemented a scheme through the use of his trust account which effectively shielded his assets from garnishment.

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 12, 2009. The Board adopted the Findings of Fact and Conclusions of Law of the Panel. However, the Board recommends, based on his long standing fraudulent trust account practices and deliberate deceptions, that Respondent, William Matthew Crosby, be suspended from the practice of law for twenty-four months. 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.

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

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

IN RE	)	CASE NO. 08-018
COMPLAINT AGAINST	)	
WILLIAM MATTHEW CROSBY	)	**STIPULATIONS**
Respondent,	)	
DISCIPLINARY COUNSEL	)	
Relator.	)	

FILED
DEC 5 - 2008
BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

Relator and Respondent do hereby stipulate to the following statements for purposes of these proceedings and without the need to present further evidence to establish the truth of the following:

Stipulated Facts

1. Respondent, William Matthew Crosby ("Crosby"), was admitted to the practice of law in the State of Ohio on November 15, 1982.

2. During 2005 and 2006, Crosby practiced law as Crosby Law Offices, LLC.

3. Around December 2006, Crosby ceased practicing as Crosby Law Offices, LLC and accepted a position as of counsel for Elizabeth A. Crosby & Associates.

4. In 2005 and 2006 Crosby practiced as a sole practitioner engaged primarily in areas of workers' compensation, personal injury, and tort law.

5. Carol Mazanec ("Mazanec") provided clerical, administrative, and paralegal services for Crosby during the years 2005-2006.

6. Crosby maintained two bank accounts, an IOLTA in the name of The Crosby Law Offices, LLC ("IOLTA") and a general operating account in the name of The Crosby-Dodge law Group, LLC ("Operating Account").

7. Crosby amended the signature card for the IOLTA to designate Carol Mazanec as an authorized signer on the IOLTA.

8. Crosby authorized check writing authority to Mazanec on the IOLTA.

9. Crosby permitted Mazanec to manage the IOLTA and the Operating Account.

10. Mazanec wrote and signed a number of checks from the IOLTA on behalf of and as authorized and/or ratified by Crosby.

11. Among checks issued and/or withdrawals authorized in 2006 and 2007 by Crosby and/or Mazanec from the IOLTA, involving funds belonging to Crosby, were the following:

a. 13 checks payable to Crosby totaling $27,755.00,
b. 8 checks payable to Crosby's wife totaling– $142,823.48,
c. 18 payments to Verizon and/or Ameritech/ATT totaling $4,436.81,
d. 68 checks payable to cash in excess of $88,000.00,
e. 16 checks in payment of various obligations, e.g., Dominion East Ohio Gas, Topetto's Pizza, Home Depot, Plant Crafters, CVS, and Wyatt Tractor, Brook's Brothers, Web Office Solutions, and, Cort Furniture Rental, totaling $4,436.81,
f. 20 checks payable to Mazanec totaling $57,713.00

12. From January 1, 2006 through May 31, 2007, the IOLTA incurred overdraft fees of $118.50.

13. From January 1, 2006 through May 31, 2007, Crosby did not regularly review the monthly IOLTA statements.

14. During 2006, Crosby settled five matters, to wit:

April 2006	$500,000.00
June 2006	$12,000.00
September 2006	$25,000.00
November 2006	$425,000.00
December 2006	$150,000.00

15. Crosby promptly paid each client his/her distributive share of the settlement per the closing statement.

16. In each of the above matters, Crosby did not promptly withdraw from the IOLTA the entire attorney fee earned and/or the reimbursement of expenses following disbursement to the client.

17. In each of the above matters, Crosby would withdraw his fee and receive reimbursement of expenses over several weeks or months in checks issued from the IOLTA as previously set forth in paragraph 11.

Stipulated Mitigation

18. Crosby has no prior disciplinary history.

Stipulated Exhibits

19. Joint Exhibit 1 – Crosby's IOLTA records from January 2006 - May 2007.
Joint Exhibit 2 – Signature Card for the IOLTA
Joint Exhibit 3 – Five Closing statements

Conclusion

The above are stipulated to and entered into by agreement by the undersigned parties/counsel this 8th day of DECEMBER, 2008.

Jonathan E. Coughlan (by LB 0040142)
Jonathan E. Coughlan (0026424)
Disciplinary Counsel

William M. Crosby (0002451)
Respondent

Robert R. Berger (0064922)
Assistant Disciplinary Counsel

Lester S. Potash (0011009)
Counsel for Respondent