

ORIGINAL

IN THE  
SUPREME COURT OF OHIO

In re: :  
:  
**William Matthew Crosby** :  
**Attorney Registration No. (0002451)** :  
:  
**Respondent** :  
:  
:  
**CASE NO. 2009-1172**  
:  
**Disciplinary Counsel** : **RELATOR'S ANSWER TO**  
250 Civic Center Drive, Suite 325 : **RESPONDENT'S OBJECTIONS TO**  
Columbus, OH 43215-7411 : **THE BOARD OF COMMISSIONERS'**  
**Relator** : **REPORT AND RECOMMENDATIONS**

---

RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS

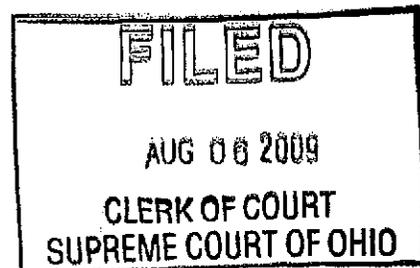
---

**JONATHAN E. COUGHLAN (0026424)**  
Disciplinary Counsel  
Relator  
250 Civic Center Drive, Suite 325  
Columbus, Ohio 43215  
614-461-0256

**LESTER S. POTASH (0011009)**  
Counsel for Respondent  
55 Public Square, Suite 1717  
Cleveland, Ohio 44113  
216-771-8400

**ROBERT R. BERGER (0064922)**  
Senior Assistant Disciplinary Counsel  
Counsel for Relator

**WILLIAM M. CROSBY (0002451)**  
Respondent



# TABLE OF CONTENTS

<u>DESCRIPTION</u>	<u>PAGE</u>
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
STATEMENT OF FACTS	2
ANSWER TO OBJECTIONS	8
I. AND II. RESPONDENT'S UNDISPUTED COMMINGLING OF FUNDS AND FAILURE TO KEEP REQUIRED IOLTA RECORDS VIOLATE DR 9-102(B)(3), RULE 1.15(a)(2), AND RULE 1.15(a)(3)	8
III. RESPONDENT USED HIS IOLTA TO EVADE INCOME TAX AUTHORITIES	12
IV. RESPONDENT'S TAX AND JUDGMENT EVIDENCE WAS PROPERLY ADMITTED BY THE HEARING PANEL	16
V. RESPONDENT FAILED TO COOPERATE DURING RELATOR'S INVESTIGATION AND FAILED TO RESPOND TO RELATOR'S DISCOVERY REQUESTS	18
VI. A 24-MONTH SUSPENSION IS APPROPRIATE FOR RESPONDENT'S "LONG STANDING FRAUDULENT TRUST ACCOUNT PRACTICES AND DELIBERATE DECEPTIONS"	21
CONCLUSION	25
CERTIFICATE OF SERVICE	26

## TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE(S)</u>
<i>Disciplinary Action Against Stanbury</i> (Supreme Court of Minnesota 1997) 561 N.W.2d 507	16
<i>Disciplinary Counsel v. McCord</i> , 121 Ohio St.3d 497, 2009-Ohio-1517, 905 N.E.2d 1182	16
<i>Disciplinary Counsel v. Morgan</i> , 114 Ohio St.3d 179, 2007-Ohio-3604, 870 N.E.2d. 1171	23, 24
<i>Disciplinary Counsel v. Vogtsberger</i> , 119 Ohio St.3d 458, 2008-Ohio-4571, 895 N.E.2d 158	23, 24
<i>Disciplinary Counsel v. Wise</i> , 108 Ohio St.3d 381, 2006-Ohio-1194, 843 N.E.2d 1198	23
<i>In the Matter of Peters</i> (Supreme Court of Minnesota 1983) 332 N.W.2d 10	16
<i>In re Application of Manayan</i> , 102 Ohio St.3d 109, 2004-Ohio-1804, 807 N.E.2d 313	16
<i>In re Judicial Complaint Against Carr</i> , 76 Ohio St.3d 320, 1996-Ohio-396, 667 N.E.2d 956	15
<i>Ohio State Bar Assn. v. Illman</i> (1976), 45 Ohio St.2d 159, 74 O.O.2d. 284, 342 N.E.2d 688	15
<i>State v. Preston</i> (1968), 38 Wis.2d 582, 157 N.W.2d 615, 159 N.W.2d 684, cert. den. 393 U.S. 981, 89 S.Ct. 452, 21 L.Ed.2d 442	15
<i>Wisconsin v. Postorino</i> (1972), 53 Wis.2d 412, 193 N.W.2d 1	15

**RULES, STATUTES AND OTHER AUTHORITIES**

**PAGE(S)**

**DISCIPLINARY RULES**

**Ohio Code of Professional Responsibility**

DR 1-102(A)	24
DR 1-102(A)(4)	24
DR 1-102(A)(5)	5, 7, 23, 24
DR 1-102(A)(6)	4, 5, 7, 23, 24
DR 9-102(A)	4, 7, 23, 24
DR 9-102(B)	24
DR 9-102(B)(3)	5, 7, 8, 10, 12, 22, 23

**Ohio Rules Of Professional Conduct**

Rule 1.15(a)	4, 5, 7
Rule 1.15(a)(2)	8, 10, 12, 22
Rule 1.15(a)(3)	5, 8, 10, 12, 22
Rule 5.3(b)	6
Rule 8.4(d)	5, 7
Rule 8.4(h)	4, 5, 7

**IN  
THE SUPREME COURT OF OHIO**

**Disciplinary Counsel,**  
Relator

:

: **CASE NO. 2009-1172**

:

: **RELATOR'S ANSWER TO  
RESPONDENT'S OBJECTIONS  
TO THE BOARD OF  
COMMISSIONERS' REPORT AND  
RECOMMENDATIONS**

**William Matthew Crosby**  
Respondent

:

:

---

**RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS  
TO THE BOARD OF COMMISSIONERS' REPORT AND RECOMMENDATIONS**

---

Now comes relator, Disciplinary Counsel, and hereby submits this answer to respondent's objections to the Report and Recommendations filed by the Board of Commissioners on Grievances and Discipline (Board).

On April 14, 2008, relator filed a three-count complaint against Respondent William Crosby alleging that he violated the ethical rules when he utilized his IOLTA as a personal and operating account, failed to properly maintain and safeguard his IOLTA, failed to properly supervise his staff, repeatedly commingled earned fees with client funds and committed these acts to evade parties to whom he owed debts, including state and federal tax authorities. Respondent filed an answer to the complaint on May 23, 2008.

After a panel hearing on December 8, 2008, the Board found respondent violated all of the disciplinary rules alleged in the complaint and recommended respondent be suspended for 24 months “based upon his long standing fraudulent trust account practices and deliberate deceptions.” [Report at 14] For the reasons set forth herein, relator requests this Court overrule respondent’s objections.

### **STATEMENT OF FACTS**

In 2005 and 2006, respondent practiced law as Crosby Law Offices, LLC. [Report at 3; Stip. 2] Respondent was a solo practitioner and practiced law primarily in the areas of worker's compensation, personal injury and tort. [Report at 4; Stip 4] Respondent employed Carol Mazanec as a secretary and “she was respondent's agent and was subject to his supervision.” [Stip 5; Report at 4]

Respondent maintained an IOLTA account and an operating account at Key Bank to manage law firm funds. [Report at 4; Stip. 6] Respondent delegated IOLTA check writing authority to Mazanec and amended the IOLTA account signature card at Key Bank to give Mazanec signature authority. [Stip. 7, 8; Report at 4] Respondent “relied on Mazanec to manage his IOLTA and operating accounts and she wrote and/or signed most of the IOLTA checks.” [Report at 4; Stip. 8, 9 and 10]

## COUNT I

### USE OF IOLTA AS A PERSONAL AND OPERATING ACCOUNT

From at least January 1, 2006 through May 31, 2007, respondent used his IOLTA as if it were his personal bank account and law office operating account. [Report at 4] Respondent paid over \$327,000 in personal and law office bills with checks written on this account, including:

- In 2006 and 2007, respondent and/or Mazanec wrote 8 checks payable to respondent's spouse, Attorney Elizabeth Crosby, totaling \$142,823.48. [Stip. 11; Relator's Ex. 3]. The checks written to Elizabeth Crosby were used to pay respondent's household and personal expenses. [Report at 5; Tr. at 118]
- In 2006 and 2007, respondent and/or Mazanec wrote 20 checks payable to Mazanec totaling \$57,713. [Report at 5; Stip. 11; Relator's Ex. 3]. All checks to Mazanec from the IOLTA represented wages and bonuses. [Tr. at 102]
- 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. [Stip 11; Report at 5] These payments totaled \$4,436.81. [Stip. 11; Relator's Ex. 3]. Mazanec set up the automatic withdrawal payments with respondent's authorization. [Tr. at 90-91, 113]
- In 2006 and 2007, respondent and/or Mazanec wrote 68 checks from the IOLTA account payable to "cash" totaling over \$88,000. [Report at 5; Stip. 11; Relator's Ex. 3]. All monies from these checks were received by the respondent. [Tr. at 101-102]
- In 2006 and 2007, respondent and/or Mazanec wrote 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 Coit Furniture Rental. [Report at 5; Stip. 11; Relator's Ex. 3]. Mazanec used the law office Home Depot account to purchase personal items and respondent was aware of her activities. [Report at 5; Tr. at 85, 105] Mazanec wrote IOLTA checks to CVS to obtain personal prescriptions because she did not have insurance. [Report at 5; Tr. at 87]

- In 2006 and 2007, respondent and/or Mazanec wrote and negotiated 13 checks from the IOLTA payable to respondent totaling \$27,755. [Report at 4; Stip. 11; Relator's Ex. 3]

From January 1, 2006 through May 31, 2007, respondent did not regularly review his monthly IOLTA statements and his IOLTA account incurred overdraft fees of \$118.50. [Report at 5; Stip. 12, 13]

With respect to Count I, the panel found that respondent violated: DR 1-102(A)(6) - [a lawyer shall not engage in conduct that adversely reflects upon his fitness to practice law]; 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]; Rule 8.4(h) - [a lawyer shall not engage in conduct that adversely reflects upon his fitness to practice law]; and Rule 1.15(a) - [a lawyer shall hold property of clients separate from the lawyer's own property]. [Report at 7]

## COUNT II

### FAILURE TO PROPERLY MAINTAIN AND SAFEGUARD IOLTA

The Board found and respondent admitted numerous problems with the management of his IOLTA and his supervision of Mazanec. The Board found that respondent “delegated responsibility for the IOLTA to Mazanec with little or no supervision, oversight or training.” [Report at 7; Tr. at 26] Respondent admitted that his “IOLTA account was mismanaged,” that he “failed to supervise Mazanec.” [Report at 8] Both respondent and Mazanec testified that there was no regular review of the monthly IOLTA statements and that no monthly reconciliations were ever performed on his IOLTA. [Tr. at 43-45, 82] Respondent claimed a lack of knowledge about numerous IOLTA transactions and was unable to produce his IOLTA account check register. [Report at 8; Tr. at 41, 46, 48, 131, 142]

This failure to supervise his staff caused the hearing panel “alarm.” [Report at 8] In addition to the improper IOLTA checks detailed in Count I, the Board report noted a check from Mazanec's boyfriend, Chris Lancsa. This check “was deposited into and negotiated through respondent's IOLTA.” [Report at 8] Based upon the evidence, the panel concluded that Mr. Lancsa was not a client and or the deposited funds were personal, not trust funds. [Report at 8]

The Board found that respondent's lack of awareness about multiple IOLTA account transactions, failure to properly monitor his IOLTA account and failure to properly supervise Mazanec's use of his IOLTA account violated: DR 1-102(A)(5) - [a lawyer shall not engage in conduct that is prejudicial to the administration of justice]; DR 1-102(A)(6); 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]; Rule 8.4(d) - [a lawyer shall not engage in conduct that is prejudicial to the administration of justice]; Rule 8.4(h); Rule 1.15(a); Rule 1.15(a)(3) - [a lawyer shall maintain a record of each IOLTA bank account]; and 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]. [Report at 8, 9]

### COUNT III

#### COMMINGLING EARNED FEES WITH CLIENT FUNDS TO EVADE CREDITORS AND TAX AUTHORITIES

In 2006, respondent settled five contingency fee cases as follows:

- April 2006, a case was settled for \$500,000.
- June 2006, a case was settled for \$12,000.
- September 2006, a case was settled for \$25,000.
- November 2006, a case was settled for \$425,000.
- December 2006, a case was settled for \$150,000. [Report at 9; Stip. 14]

In each of these cases, respondent entered into a written contingency fee agreement with his clients. [Report at 9] 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. [Report at 10] In each of these instances, respondent promptly paid each client their share of the settlement. [Report at 11; Stip. 15]

However, respondent failed to promptly withdraw from his IOLTA the over \$393,000 in attorney fees to which he was entitled. [Stip. 16; Stip. Ex. 3; Relator's Ex. 4] Instead, respondent withdrew his fee in multiple checks over several weeks or months in amounts ranging from a few dollars to thousands of dollars. [Tr. at 48-49; Stip. 17] Additionally, these checks were made payable to cash, Mazanec, respondent's wife, and various other parties to whom respondent owed a debt. [Report at 4, 5; Stip. 11; Relator's Ex. 3]

Respondent testified that he did not immediately remove his earned attorney fees from his IOLTA because he preferred to maintain a "buffer" of extra funds in his IOLTA in case of a later unexpected expense related to a case. [Tr. at 54; Report at 10] Respondent further testified that he did not maintain a written record or tally of these earned fees maintained in his IOLTA. [Tr. at 55-56] Instead, respondent testified that he kept track of the running total of what he was owed in his "head." [Report at 10; Tr. at 56]

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." [Report at 10] Additionally, "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." [Report at 10]

With respect to Count III, the Panel found that respondent violated: DR 1-102(A)(5); DR 1-102(A)(6); DR 9-102(A); DR 9-102(B)(3); Rule 8.4(d); Rule 8.4(h); Rule 1.15(a); Rule

1.15(a)(2) - [a lawyer shall maintain a record for each client on whose behalf funds are held]; and  
Rule 1.15(a)(3). [Report at 11]

### **RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS**

Respondent raises six objections to the Board's report and recommendation. As respondent's first and second objections are interrelated, relator will respond to those objections jointly.

#### **I. AND II.**

#### **RESPONDENT'S UNDISPUTED COMMINGLING OF FUNDS AND FAILURE TO KEEP REQUIRED IOLTA RECORDS VIOLATE DR 9-102(B)(3), RULE 1.15(a)(2) AND RULE 1.15(a)(3)**

Respondent's objection brief disputes that he violated the IOLTA recordkeeping requirements mandated by DR 9-102(B)(3), Rule 1.15(a)(2) and Rule 1.15(a)(3).<sup>1</sup> However, respondent's objection is plainly refuted by the undisputed evidence. Respondent admits that he repeatedly failed to withdraw earned fees from his IOLTA account promptly and instead delayed a full withdrawal of his earned fees for weeks and/or months. At the same time respondent's IOLTA was holding these personal funds, he was depositing client settlement funds into his IOLTA. [Tr. at 56-64; Stip Ex. 1; Relator's Ex. 2] No further proof is necessary to establish that respondent commingled his personal funds with client funds held in his IOLTA account. The

---

<sup>1</sup> Respondent's brief does not specify if he is referring to the violations in Count II or Count III. Respondent was found to have violated DR 9-102(B)(3) and Rule 1.15(a)(3) in Count II and DR 9-102(B)(3), Rule 1.15(a)(2) and Rule 1.15(a)(3) in Count III.

chart below and respondent's testimony in the transcript at pages 56-64 detail respondent's repeated commingling.

Respondent's IOLTA Account Commingling

Date and IOLTA account balance	Owner of funds	Date and deposit amount	Nature of deposit
March 31, 2006 \$1.48 [Ex. 2, p. 18]	Respondent	April 25, 2006 \$500,000 [Ex. 2, p. 18]	Client settlement check [Ex. 2, p. 24]
May 31, 2006 \$7,292.64 [Ex. 2, p. 35]	Respondent	June 9, 2006 \$12,000 [Ex. 2, p. 35]	Client settlement check [Ex. 2, p. 43]
August 31, 2006 \$65.50 [Ex. 2, p. 62]	Respondent	September 29, 2006 \$25,000 [Ex. 2, p. 62]	Client settlement check [Ex. 2, p. 67]
October 31, 2006 \$3,136.42 [Ex. 2, p. 80]	Respondent	November 7, 2006 \$425,000 [Ex. 2, p. 80]	Client settlement check [Ex. 2, p. 93]
November 3, 2006 \$5,468.29 [Ex. 2, p. 95]	Respondent	December 4, 2006 \$150,000 [Ex. 2, p. 95]	Client settlement check [Ex. 2, p. 105]
December 31, 2006 \$36,192.01 [Ex. 2, p. 106]	Respondent		

Further, respondent admitted that he did not maintain any written record of the earned fees that he purposefully maintained in his IOLTA. Instead, respondent claimed that he kept track of the total in his "head." Accordingly, respondent had no record that identified the total amount of funds being held in his IOLTA that belonged to him on any given date. As such,

respondent failed to maintain the basic necessary IOLTA records. Additionally, respondent and Mazanec both testified that the required monthly reconciliation was never performed on respondent's IOLTA account. [Tr. at 45, 82] This "method" of IOLTA accounting falls well below the standard required to properly account for client funds.

Disciplinary Rule 9-102(B)(3) states "a lawyer shall maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them." [Emphasis added] Rule 1.15(a)(2) states a lawyer shall "maintain a record for each client on whose behalf funds are held that sets forth . . . the name of the client, the date, amount and source of all funds received on behalf of such client; the date, amount, payee and purpose of each disbursement made on behalf of such client; the current balance for such client. [Emphasis added] Rule 1.15(a)(3) states a lawyer shall maintain a record for each [IOLTA] bank account that sets forth . . . the name of such account; the date, amount, and client affected by each credit and debit; the balance in each account." [Emphasis added]

The intent of each of these rules is to ensure that every attorney keeps a scrupulous record of all funds deposited into and paid out of their IOLTA. Respondent's claim that he kept all of the required records must fail. It is not possible for respondent to have maintained the required records, when he admits he did not maintain a written tally of the total amount of earned fees he held his IOLTA account at any given time. Clearly, respondent has failed to meet the IOLTA standards required by DR 9-102(B)(3), Rule 1.15(a)(2) and Rule 1.15(a)(3) when he failed to

keep the required records, commingled funds and used his IOLTA as a personal account. [Stip. Ex. 1; Relator's Ex. 2; Report at 4, 5, 10]

Respondent's brief offers several statements in support of his objection that are not accurate. First, respondent's brief misleadingly asserts that he "did not deposit personal funds into the IOLTA." [Respondent's objection brief at 2] However, respondent's claim does not acknowledge that his failure to withdraw his earned fees is the functional equivalent of depositing personal funds into his IOLTA. Additionally, a check from Mazanec's boyfriend, Chris Lancsa "was deposited into and negotiated through respondent's IOLTA." [Report at 8; Stip. Ex. 1, p. 12; Relator's Ex. 2 at 12] The panel found that Mr. Lancsa was not a client and the funds deposited into the IOLTA were not actually client funds. [Report at 8]

Second, respondent states that after December 2006, no client funds remained in his IOLTA. [Respondent's objection brief at 2] However, the IOLTA bank records and respondent's own testimony show that respondent was using his IOLTA to hold client funds and disburse co-counsel fees and expense payments in February and May 2007. [Tr. at 71-74; Stip. Ex. 1 at 114, 117, 127, 131; Relator's Ex. 2 at 114, 117, 127, 131]

Respondent's brief next asserts that "at no time were any client funds put at risk." [Respondent's objection brief at 3] However, respondent's commingling, automatic bill payment withdrawals for several telephone bills and failure to maintain a written record of the amount of respondent's earned fees that were being held in the IOLTA, clearly did put client funds at risk.

Finally, respondent erroneously claims that the Board found in mitigation “that no client monies were ever at risk.” [Respondent’s objection brief at 5] There is no such statement in the Board report. What Board report actually states is “there was no evidence that a client failed to receive all of the client’s monies.” [Report at 12] There is clearly a difference between these two statements and the risk created by respondent’s unethical practices is obvious.

Respondent’s commingling of his earned fees with client funds, combined with his failure to properly document the amount and ownership of funds in his IOLTA in 2006 and 2007 constitutes a violation of DR 9-102(B)(3), Rule 1.15(a)(2) and Rule 1.15(a)(3).

### **III.**

#### **RESPONDENT USED HIS IOLTA TO EVADE INCOME TAX AUTHORITIES**

The Board report found that respondent’s IOLTA misconduct was driven by his desire to hide his income from creditors. Specifically, the Board found that respondent:

- Paid “his own creditors and other parties directly out of his IOLTA;” [Report at 10]
- “Avoided creating a paper trail by which state and federal tax authorities could determine respondent’s taxable income;” [Report at 10]
- “Used his trust account instead of an operating account in an effort to keep funds safe from collection procedures by taxing authorities and other creditors with judgments;” [Report at 11]
- “Shield[ed] his assets from garnishment by using his trust account in an unethical manner;” [Report at 13]

- “Implemented a scheme through the use of his trust account which effectively shielded his assets from garnishment.” [Report at 13]
- Did not “respond fully to discovery” requested by relator regarding questions about his taxes and IOLTA account; and [Report at 12]
- “Did not cooperate fully with the investigation” conducted by relator of his IOLTA misconduct. [Report at 12]

Respondent objects to the Board’s findings and asserts that these conclusions by the Board are not based upon evidence, but instead “a classic case of building an inference upon an inference.” [Respondent’s objection brief at 8]. However, the sole evidentiary basis for respondent’s objections are his self-serving claims that the evidence is wrong. These are the same claims that the Board previously reviewed and found not credible.

The evidence is clear and convincing that respondent used his IOLTA to hide his income from his creditors. There are five key areas of factual support for the Board’s conclusion. First, respondent admits that during a 17-month period he paid over \$327,000 in personal and law office expenses directly from his IOLTA, despite the fact that he had an operating account for this purpose. [Tr. at 26-27 and 35-36; Relator’s Ex. 3; Stip. 11]

Second, after hearing the evidence, the Board found that respondent’s many claims and explanations were not credible. The Board found that respondent “lied” about why he used his IOLTA account as a personal account. [Report at 12] The Board found that respondent “refused to acknowledge that the reason for using his trust account rather than his operating account was

to avoid paying debts owed to creditors.” [Report at 12] The Board found that respondent’s actions had a “dishonest” and “selfish” motive. [Report at 11] Respondent’s testimony “that he had his accountant, Steve Newman train Mazanec regarding how to perform a monthly reconciliation of the IOLTA account” was disputed by Mazanec and “the panel accepted Mazanec's testimony as being more credible.” [Tr. at 44; Report at 7] Despite respondent’s testimony that he “inadvertently signed a trust check payable to Brook's Brothers and another payable to Wyatt Tractor,” the panel found “that respondent willfully and knowingly made the conscious decision to use his trust account as if it were his operation account.” [Tr. 139-141; Report at 8]

Third, respondent admitted at his deposition [and acknowledged his prior statement during the hearing] that the reason he kept earned fees in his IOLTA instead of his operating account was “obviously the moment I withdraw the money, its income.” [Tr. at 54-55 reading respondent’s deposition transcript at 119]

Fourth, at the time of the disciplinary hearing, respondent had a strong incentive to hide his income. Respondent owes over \$25,000 in judgments -- \$4,000 to three private creditors and over \$21,000 to state tax authorities. [Tr. at 67; Relator’s Ex. 6] These judgments date back as far as 1996. When the accumulated interest is considered, the actual amount owed is much greater.

Fifth, respondent asserted his Fifth Amendment privilege against self incrimination and refused to answer whether or not he filed state and federal income tax returns for the tax years

2004, 2005, 2006 and 2007. [Tr. at 69-71] By refusing to answer questions pertaining to his tax returns, respondent assumed the risk of this Court drawing an adverse inference about his conduct.

While respondent has the right to invoke the Fifth Amendment, he does not enjoy the blanket immunity it affords in a criminal proceeding. This Court has applied these limiting principles to disciplinary cases. “The standards of due process in a disciplinary hearing are not equal to those in a criminal matter. *In re Judicial Complaint Against Carr*, 76 Ohio St.3d 320, 1996-Ohio-396, 667 N.E.2d 956, citing *Ohio State Bar Assn. v. Illman* (1976), 45 Ohio St.2d 159, 162, 74 O.O.2d. 284, 342 N.E.2d 688. The Court continued, “Although the burden may be upon the complainant to prove the allegations, the respondent who chooses not to testify or otherwise present evidence to refute the allegations made assumes the risk of adverse findings.” *Id.*

Additionally, the Supreme Court of Wisconsin has held that “taking the Fifth Amendment does not foreclose a court in a civil action from drawing an inference from the invocation of the Fifth Amendment on an issue involving grounds for discipline.” *Wisconsin v. Postorino* (1972), 53 Wis.2d 412, 417, 193 N.W.2d 1, citing *State v. Preston* (1968), 38 Wis.2d 582, 157 N.W.2d 615, 159 N.W.2d 684, cert. den. 393 U.S. 981, 89 S.Ct. 452, 21 L.Ed.2d 442.

For these reasons, respondent’s objections to the Board’s finding that he used his IOLTA to evade income tax authorities should be overruled.

#### IV.

### RESPONDENT'S TAX AND JUDGMENT EVIDENCE WAS PROPERLY ADMITTED BY THE HEARING PANEL

Respondent offers three reasons why the hearing panel erred in allowing testimony and exhibits into evidence regarding his compliance with state and federal income tax obligations and the entry of 12 judgments against him totaling over \$25,000.<sup>2</sup> Respondent's objections to this evidence are without merit and should be overruled.

First, respondent suggests that he had no notice of these tax allegations prior to the disciplinary hearing. Specifically, respondent's brief states that "nowhere within the complaint . . . had relator mentioned or even intimated that this case involved tax issues or outstanding judgments against Crosby." [Respondent's objection brief at 9] Respondent's assertion is not correct. Paragraph 27 of relator's disciplinary complaint alleges "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." Additionally,

---

<sup>2</sup> Respondent does not specifically object to the Board's recommendation that he be required to "fully pay or provide evidence of a compromise" of the 12 judgments against him. However, his objection to the admission of this evidence would foreclose this recommendation. The Board relied upon this Court's finding in *Disciplinary Counsel v. McCord*, 121 Ohio St.3d 497, 2009-Ohio-1517, 905 N.E.2d 1182 which states that "an attorney should pay his debts without a court order. As noted by relator, this court has repeatedly refused to approve applications to sit for a bar examination when the applicant has failed to "scrupulously honor all financial commitments." *In re Application of Manayan*, 102 Ohio St.3d 109, 2004-Ohio-1804, 807 N.E.2d 313, ¶ 14. We expect no less from those already admitted to the bar of Ohio." Other courts have also found the failure to pay judgments a disciplinary violation and subsequently ordered the offending attorney to satisfy the debt as a part of the disciplinary sanction. See *Disciplinary Action Against Stanbury* (Supreme Court of Minnesota 1997), 561 N.W.2d 507 and *In the Matter of Peters* (Supreme Court of Minnesota 1983), 332 N.W.2d 10.

respondent was asked about his state and federal tax obligations, filings and payment history at his November 14, 2007 deposition, in a March 5, 2008 letter to his attorney and in a September 2008 formal discovery request. [Tr. at 75; Relator's Ex. 5, 7] Clearly, respondent was on notice that this was an issue in his disciplinary proceeding.

Second, respondent asserts that there was "no evidence produced whatsoever of any effort or attempt by any creditor to collect upon any outstanding judgment." [Respondent's objection brief at 9] This is not accurate. Respondent's creditors have obtained 12 separate judgments. This action alone clearly demonstrates their intent to collect that debt. Additionally, Relator's Exhibit 6 includes court dockets for four judgments and details the additional collection efforts undertaken taken by the State of Ohio, West Publishing Corporation and Imagenet. Moreover, respondent's undisputed practice of keeping all of his personal income in his IOLTA effectively precludes other action by these creditors.

Finally, respondent asserts that there was no evidence introduced at the hearing proving that he used his IOLTA to avoid paying debts owed to his creditors. Respondent's assertion appears to be solely based upon his bald denial this allegation. However, as the Board report indicates, the hearing panel repeatedly found respondent's testimony not credible. For an accounting of instances in which the hearing panel found respondent's testimony not credible, see pages 13 and 14 of this brief.

V.

**RESPONDENT FAILED TO COOPERATE DURING RELATOR'S INVESTIGATION  
AND FAILED TO RESPOND TO RELATOR'S DISCOVERY REQUESTS**

At the hearing, relator argued that respondent's failure to cooperate during the investigation of his conduct and during the prosecution of the disciplinary case was an aggravating factor. Specifically, relator asserted that respondent gave false and misleading answers to relator, improperly refused to answer numerous questions at his deposition, purposely failed to provide requested IOLTA bank records and personal income tax returns and gave relator an evolving series of false explanations for his failure to answer questions and comply with requests for documents and records.

In his brief, respondent asserts that "whatever was asked was answered, with the exception of privileged matters" and "whatever [respondent] was asked to produce, if available, was provided." [Respondent's objection brief at 10] The testimony and evidence at the disciplinary hearing show this claim to be untrue.

Respondent's False Answers to Relator

During relator's investigation and at the disciplinary hearing, respondent gave false and misleading answers to conceal his misconduct and avoid disciplinary sanction. Respondent falsely stated that he did not know that Mazanec had arranged for several telephone bills to be paid by automatic withdrawal from his IOLTA account, despite the fact that these bills were

noted on his monthly IOLTA statements 18 times. [Tr. at 46] Respondent falsely stated that he did not know that Mazanec had made payments to CVS for her prescriptions and Home Depot for personal items using IOLTA checks. [Tr. at 48] Mazanec testified that respondent had knowledge and in each of these instances, the Board found respondent's testimony to be not credible. [Report at 5; Tr. at 86, 91, 105, 112-113]

#### Respondent's Failure to Provide Answers and Documents

During the investigation of respondent's conduct and after the disciplinary complaint was filed against respondent, he repeatedly refused to provide answers to questions and copies of documents. Respondent did not assert a Fifth Amendment privilege in response to these requests or offer any other legal basis for his refusal. At respondent's deposition on November 14, 2007, he repeatedly refused to answer questions about:

- How Mazanec was compensated as his employee; [Tr. at 74]
- Whether he paid Mazanec with IOLTA checks; [Tr. at 75]
- Mazanec's convictions for theft and misuse of credit cards in 2002; [Tr. at 26]
- Mazanec's mental health status; [Tr. at 28]
- Mazanec's chemical dependency status; [Tr. at 30]
- Whether he used his IOLTA account to shield his income from state and federal tax authorities; [Tr at 75]
- Whether the checks written to his wife and Mazanec were used to avoid paying taxes on that income; [Tr. at 75] and
- Whether he paid taxes prior to 2006. [Tr. at 75]

During the investigation of respondent's conduct, relator requested respondent bring a copy of his IOLTA account check register to his deposition. Respondent failed to bring his check register to his deposition. [Tr. at 37-38 reading respondent's deposition transcript at page 12] At the deposition, respondent stated that he would produce the check register as soon as possible and that his accountant may have the check register. [Tr. at 37-38 reading respondent's deposition transcript at page 14] After respondent failed to produce the check register, in September 2008 a request for the production of documents was served on respondent's legal counsel, which again requested a copy of the check register. [Relator's Ex. 5] In respondent's response he falsely stated that relator already had a copy of his IOLTA account check register. [Relator's Ex. 5 at p. 3-4]

Respondent never produced his IOLTA account check register for relator. Additionally, at the hearing respondent engaged in an extended obfuscatory exchange in an attempt to avoid directly admitting that he failed to produce the document to relator. [Tr. at 41-43] Respondent's check register is not a "privileged" document and respondent never asserted the Fifth Amendment in defense of producing this document.

#### Respondent's Assertion of the Fifth Amendment in Response to Requests for Documents

During the investigation of respondent's conduct and after the disciplinary complaint was filed against respondent, he refused to provide copies of documents by asserting a Fifth Amendment privilege. As such, a negative inference should be drawn from respondent's refusals to provide information.

In March 2008, relator requested a copy of respondent's federal income tax returns for tax years 2004, 2005 and 2006. [Tr. at 77] Respondent declined to provide the tax returns and asserted his Fifth Amendment privilege against self incrimination. [Tr. at 77; Relator's Ex. 7] After the disciplinary case was filed against respondent, he was served with a document production request for his federal tax returns for tax years 2004, 2005, 2006 and 2007. [Tr. at 78] Respondent declined to produce these tax returns with a response that stated "such are not available." [Tr. at 78-79; Relator's Ex. 5]

Because respondent gave false and misleading answers, improperly refused to answer questions and purposely failed to provide requested documents, his objection should be overruled.

## **VI.**

### **A 24-MONTH SUSPENSION IS APPROPRIATE FOR RESPONDENT'S "LONG STANDING FRAUDULENT TRUST ACCOUNT PRACTICES AND DELIBERATE DECEPTIONS"**

The Board recommended that respondent's license be suspended for 24 months based upon his "long standing fraudulent trust account practices and deliberate deceptions." While respondent objects to the Board's recommended sanction, he does not dispute that he:

- Used his IOLTA account as a personal and office account as charged in Count I, violating four disciplinary rules;
- Failed to properly maintain his IOLTA and failed to properly supervise Mazanec as charged in Count II, violating six disciplinary rules; and

- Repeatedly commingled his earned fees with client funds as charged in Count III, violating six disciplinary rules.

Respondent's argument for a lesser sanction is based upon three premises. Respondent asserts that his conduct did not violate DR 9-102(B)(3), Rule 1.15(a)(2) and Rule 1.15(a)(3). Respondent claims that there is not sufficient evidence to establish that he used his IOLTA to avoid creditors and tax obligations. Respondent argues that the evidence is not sufficient to find that he did not cooperate during relator's investigation or fail to properly respond to discovery requests. However, based upon the facts, the multiple disciplinary rule violations, the eight aggravating factors present and this Court's prior case law, a 24-month suspension is appropriate in this matter.

#### Aggravating Factors

After considering the facts and disciplinary rules as recounted above, the Board found seven aggravating factors.<sup>3</sup> The Board found that:

- "Respondent's misuse of his trust account continued over several years and represented a pattern of misconduct." [Report at 11]
- Respondent's use of "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" were "dishonest and prejudicial to the administration of justice [and] . . . evidenced a selfish motive." [Report at 11]

---

<sup>3</sup> Though not specifically noted by the Board, respondent's commingling, concealing his income from creditors, failure to properly maintain his IOLTA and failure to keep required records, implicates the aggravating factor of multiple offenses.

- Respondent refused to acknowledge the wrongfulness of his conduct when he “refused to admit that what he did was also unethical” and “refused to acknowledge that the reason for using his trust account rather than his operating account was to avoid paying debts owed to creditors.” [Report at 12]
- Respondent “lied about his reasons for the ‘unorthodox’ manner in which he used his IOLTA.” [Report at 12]
- Respondent “did not cooperate fully with the investigation or respond fully to discovery.” [Report at 12]
- Respondent’s creditors were harmed as victims of respondent’s improper IOLTA conduct when respondent “used his trust account instead of an operating account in an effort to keep funds safe from collection procedures by taxing authorities and other creditors with judgments.” [Report at 11]

In determining their sanction, the Board relied upon the prior guidance given by this Court in *Disciplinary Counsel v. Wise*, 108 Ohio St.3d 381, 2006-Ohio-1194, 843 N.E.2d 1198 *Disciplinary Counsel v. Vogtsberger*, 119 Ohio St.3d 458, 2008-Ohio-4571, 895 N.E.2d 158 and *Disciplinary Counsel v. Morgan*, 114 Ohio St.3d 179, 2007-Ohio-3604, 870 N.E.2d. 1171.

Wise failed to maintain client ledgers, used his IOLTA as a personal account, was evasive in his answers to relator and the hearing panel, lacked cooperation and candor and failed to produce records. 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. The Court found that Wise violated DR 1-102(A)(5), DR 1-102(A)(6), DR 9-102(A) and DR 9-102(B)(3).

Based, in part, on a prior disciplinary sanction against Wise, he received an indefinite suspension.

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 advances for costs or expenses, funds over which a dispute exists, and funds reasonably sufficient to pay bank charges. Morgan received a two-year suspension, with one year stayed.

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. Vogtsberger admitted that he used his IOLTA to shield his income from creditors. In a default proceeding, Vogtsberger was given a two-year suspension with one year stayed.

After considering the case law, the Board recommended a 24-month suspension based upon respondent's "long standing fraudulent trust account practices and deliberate deceptions." [Report at 14] In consideration of the facts, the multiple disciplinary rule violations, the eight aggravating factors present and this Court's prior case law, respondent's objection to the recommended sanction should be overruled.

**CONCLUSION**

For the foregoing reasons, respondent's objections to the Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline should be overruled by this honorable Court.

Respectfully submitted,



Jonathan E. Coughlan (0026424)



Robert R. Berger 0064922  
Senior Assistant Disciplinary Counsel  
Counsel of Record  
Office of Disciplinary Counsel  
250 Civic Center Drive, Suite 325  
Columbus, Ohio 43215-7411  
614.461.0256

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Relator's Answer to Respondent's Objections was served via U.S. Mail, postage prepaid, upon respondent's counsel, Mr. Lester S. Potash, 55 Public Square, Suite 1717, Cleveland, OH 44113 and upon the Board of Commissioners on Grievances and Discipline, c/o Jonathan W. Marshall, Secretary, 65 South Front Street, 5<sup>th</sup> Floor, Columbus, Ohio 43215-3431 this 6<sup>th</sup> day of August, 2009.



---

Robert R. Berger  
Counsel for Relator