ORIGINAL

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

| | | |
|---|---|---|
| **In re:** | : | 08-1991 |
| **Complaint against** | : | **Case No. 07-098** |
| **John Joseph Chambers**<br>**Attorney Reg. No. 0064627** | : | **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** | : | |

FILED
OCT 26 2009
CLERK OF COURT
SUPREME COURT OF OHIO

## BACKGROUND

1. Disciplinary Counsel filed a complaint against Respondent on November 27, 2007. The complaint contained a single count alleging that Respondent failed to cooperate with Disciplinary Counsel in violation of Gov. Bar Rule V(4)(G).

2. On April 2, 2008, Disciplinary Counsel filed an amended complaint containing two counts. The first count repeated the single count in the original complaint and contained a second count that alleged that Respondent violated Prof. Cond. R. 8.4(a) (No lawyer shall violate or attempt to violate the Ohio Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another); Prof. Cond. R. 8.4(d) (No lawyer shall engage in conduct that is prejudicial to the administration of justice); Prof. Cond. R. 8.4(h) (No lawyer shall engage in any other conduct that adversely reflects on the lawyer's fitness to practice law); and Gov. Bar Rule V(4)G (No lawyer shall neglect or refuse to testify in disciplinary investigation or hearing).

3. Respondent did not answer either complaint, and a motion for default was filed by Disciplinary Counsel on September 9, 2008. The matter was referred to Master Commissioner Scott Gwin who prepared a report that was presented to the Board on October 3, 2008. The Board adopted the recommendations of the Master Commissioner and recommended that Respondent be suspended from the practice of law for a period of one year with six months stayed on the conditions that Respondent: (1) successfully complete an approved anger management program; (2) complete six months of monitored probation pursuant to Gov Bar R. V(9); and (3) pay the cost of the proceedings.

4. The Board's recommendation was filed in the Supreme Court of Ohio on October 14, 2008. Respondent, for the first time took some action in the case, and objected to the Board's report. Disciplinary Counsel also objected, and the Supreme Court remanded the case to the Board for hearing.

5. On March 4, 2009, Disciplinary Counsel filed a Second Amended Complaint alleging the same two counts as the first amended complaint. Count One, however, contained additional factual allegations as well as more alleged rule violations, including DR 1-102(A)(4) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); DR 1-102(A)(5) (A lawyer shall not engage in conduct prejudicial to the administration of justice); DR 1-102(A)(6) (A lawyer shall not engage in conduct that adversely reflects on the lawyer's fitness to practice law); DR 6-101(A)(3) (A lawyer shall not neglect a legal matter entrusted to him); DR 7-101(A)(1) (A lawyer shall not intentionally fail to seek the lawful objectives of a client); DR 7-101(A)(2) (A lawyer shall not intentionally fail to carry out a contract of employment of a client); DR 9-102(B)(4) (A lawyer shall promptly pay or deliver to the client all funds which the client is entitled to receive); and Gov. Bar R. V(4)(G) (No lawyer shall neglect or

refuse to assist or testify in a disciplinary investigation or hearing). Count Two contained the same alleged rule violations as the first amended complaint.

6. Respondent filed an answer to the Second Amended Complaint on March 31, 2009.

7. The matter was scheduled for hearing on September 17, 2009, in Cleveland, Ohio, before a panel composed of Jana Emerick, Roger Gates, and Judge John Street, Chair. None of the panel members was from the district in which the complaint arose or served on the probable cause panel that certified the matter to the Board. Carol Costa appeared as counsel for Disciplinary Counsel. Respondent John Joseph Chambers was present for the hearing. He was represented by Mary Cibella.

8. At the hearing, Disciplinary Counsel questioned Respondent upon cross-examination, offered the attached stipulations and exhibits referred to therein, and rested its case.

9. Respondent presented the testimony of himself, Dr. Gintautas Z. Sabataitis, John Goodman, and Paul Caimi.

## FINDINGS OF FACT

## COUNT ONE

10. Respondent was admitted to the practice of law in the State of Ohio on May 15, 1995.

11. In June or July 2005, Michael David Wilmore contacted Respondent to represent him in obtaining an early release from prison. Wilmore was serving a twenty-five year prison sentence for a manslaughter offense in causing the death of a child.

12. Respondent visited Wilmore in prison and offered to represent him for $2,500.00. He wrote Wilmore on August 18, 2005, saying that he had not received his fee and that he would not pursue the matter without full payment. The letter also stated: "If you elect to pay my fees, I will promptly file the motion for judicial release we discussed, and request that Judge Hastings bring

you back for full hearing."

13. In September 2005, Respondent's fee of $2,500.00 was paid by Mr. and Mrs. James Smith. Respondent accepted and retained the fee.

14. Respondent entered an appearance in Wilmore's case and obtained permission from the judge to review the probation report. Respondent, however, did not file a motion for judicial release or any other motions on behalf of Wilmore.

15. On June 12, 2006, Disciplinary Counsel received a grievance against Respondent from Wilmore. Disciplinary Counsel sent letters of inquiry to Respondent on July 5, 2006, August 3, 2006, and March 7, 2007, but Respondent did not respond to these letters.

16. On April 11, 2007, Disciplinary Counsel served a subpoena upon Respondent requesting that he appear for deposition on May 4, 2007.

17. On May 1, 2007, Respondent called Disciplinary Counsel's office and requested an extension of time to respond to the letters of inquiry. He was given until May 30, 2007, to respond.

18. Respondent still did not respond.

19. On June 20, 2007, Disciplinary Counsel sent a letter to Respondent saying that it had determined sufficient evidence existed to establish probable cause to believe that Respondent had committed an ethical violation. Still, Respondent did not respond.

**COUNT TWO**

20. On August 19, 2006, Respondent got into a physical altercation with one of his neighbors, Thomas Stump. As a result of this altercation, Respondent was charged with assault. Eventually, on December 7, 2006, he pled no contest to a charge of attempted aggravated disorderly conduct, a second degree misdemeanor, in the Cleveland Municipal Court. He was

sentenced to one year probation.

21. On May 15, 2007, Stump filed a civil lawsuit against Respondent in the Cuyahoga Court of Common Pleas for the incident of assault.

22. On or about July 10, 2007, Stump filed a grievance with Disciplinary Counsel against Respondent because of the alleged assaultive conduct. The grievance alleged that Respondent had assaulted Stump as a result of Stump being called to testify in a Juvenile Court matter involving Respondent's children. Stump had not actually testified at the Juvenile Court hearing, but he did appear as a potential witness.

23. Stump did not testify at the disciplinary hearing. Respondent, in his testimony, denied that he assaulted Stump. He admitted that they got into a fight, but claimed that it was not because of Stump appearing as a witness. Instead, he said Stump started the fight, and he was simply defending himself.

24. At any rate, Disciplinary Counsel sent a letter of inquiry to Respondent about this matter on September 17, 2007, and October 12, 2007, but Respondent did not respond.

25. On December 11, 2007, Disciplinary Counsel received a letter from Stump requesting that the grievance be withdrawn in order that Stump could pursue civil remedies against Respondent.

26. On December 28, 2007, Disciplinary Counsel received another letter from Stump advising that he refused to settle any of his claims with Respondent. Attached to this letter was a copy of correspondence dated December 11, 2007, from Respondent to Stump's attorney in the civil matter.

27. Respondent advised Stump's attorney that in order to settle the matter "Mr. Stump must immediately dismiss the pending complaint he filed with the Disciplinary Counsel of the Supreme Court of Ohio and agree not to file any additional grievances against me (I have attached a letter of

withdrawal for your approval)."

28. Respondent also enclosed a proposed settlement/release which stated:

> The plaintiff will immediately send the attached correspondence to Carol A. Costa, Assistant Disciplinary Counsel of the Ohio Supreme Court, and withdraw grievance number A7-1825. In [sic] the Ohio Supreme Court imposes any discipline against defendant John Chambers due to the allegations set forth in grievance number A7-1825, or considers the allegations set forth in plaintiff's grievance in any way as an aggravating factor in any future disciplinary proceedings against Defendant John Chambers, the plaintiff agrees to be subject to a lawsuit for defamation, and specifically waives the applicable statute of limitations. In lieu of filing a separate suit alleging defamation, however, defendant John Chambers, at his sole option, may compel liquidated damages from the plaintiff in the amount of $15,000.

29. On January 17, 2008, the civil lawsuit between Stump and Respondent was scheduled for trial. Before trial, the parties met with the trial judge to discuss settlement and ultimately agreed to a settlement in which both sides would dismiss their claims against each other. The "Settlement and Mutual Release of Claims" agreement was prepared by Respondent and submitted to the trial judge. The agreement included the language contained in paragraph 28 above. During the course of the settlement discussions, the trial judge crossed out several of the provisions of the settlement agreement including the above paragraph except for the first sentence.

30. Stump sent a letter to Disciplinary Counsel by facsimile from the Court of Common Pleas on January 17, 2008, requesting to withdraw his grievance against Respondent.

31. Disciplinary Counsel sent a letter of inquiry to Respondent on January 29, 2008, but he did not reply.

## CONCLUSIONS OF LAW

32. The parties stipulated, and the Panel finds by clear and convincing evidence, that Respondent's conduct violated the following:

a. Count One: DR 6-101(A)(3) (A lawyer shall not neglect a legal matter entrusted to him);

DR 7-101(A)(2) (A lawyer shall not intentionally fail to carry out a contact of employment of a client); DR 9-102(B)(4) (A lawyer shall promptly pay or deliver to the client all funds which the client is entitled to receive); and Gov. Bar R. V(4)(G) (No lawyer shall neglect or refuse to assist or testify in disciplinary investigation or hearing).

b. Count Two: Gov.Bar R. V(4)(G).

33. Although the following violations were not stipulated, the Panel finds, by clear and convincing evidence, that Respondent violated the following:

Count One: DR 1-102(A)(5) (A lawyer shall not engage in conduct prejudicial to the administration of justice); DR 1-102(A)(6) (A lawyer shall not engage in conduct that adversely reflects on the lawyer's fitness to practice law); and DR 7-101(A)(1) (A lawyer shall not intentionally fail to seek the lawful objectives of a client).

Count Two: Prof. Cond. R. 8.4(d) (No lawyer shall engage in conduct that is prejudicial to the administration of justice); and Prof. Cond. R. 8.4(h) (No lawyer shall engage in any other conduct that adversely reflects on the lawyer's fitness to practice to law). There have only been a few cases that are helpful in determining whether there has been a violation of these rules as they relate to trying to have a grievance dismissed. The leading case is probably *Cuyahoga Cty. Bar Assn. v. Berger* (1992), 64 Ohio St.3d 454.

In that case two lawyers settled a case with a former client. The settlement agreement required strict confidentiality as to the terms of the settlement and, in the event of inquiries by any bar association, an agreement that the response would be limited to: "the matters have been resolved." The hearing panel, asserting that respondents' conduct struck at the heart of the disciplinary system and ethical rules established by the Ohio Supreme Court, found a violation of

DR 1-102(A)(5) (A lawyer shall not engage in conduct that is prejudicial to the administration of justice), and DR 1-102(A)(6) (A lawyer shall not engage in any other conduct that adversely reflects on the lawyer's fitness to practice to law). The Supreme Court agreed and found a violation of these rules. Here, in the instant case, Respondent did not seek to limit his liability for misconduct with a client or former client but with a person with whom he had no attorney-client relationship. Even so, the panel finds a violation of these disciplinary rules (now Professional Conduct Rules 8.4(d) and (h)), because to attempt to limit any attorney misconduct would strike at the heart of the disciplinary system and ethical rules of conduct. In addition, by failing to cooperate in the disciplinary process by not responding to Disciplinary Counsel's inquiries, Respondent violated these rules.

34. The Panel unanimously dismissed the alleged violation of DR 1-102(A)(4) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation) in Count One of the complaint by a separate entry.

36. Disciplinary Counsel dismissed the alleged violation of Prof. Cond. R. 8.4(a) before the hearing began.

## AGGRAVATION

37. The following aggravating factors found in BCGD Proc. Reg. 10(B)(1) are present: multiple offenses and lack of cooperation in the disciplinary process.

## MITIGATION

38. The parties stipulated that the following mitigating factors found in BCGD Proc. Reg. 10(B)(2) are present:

a. Absence of prior disciplinary record;

b. Restitution in the Wilmore case as to Count One. Respondent has made restitution, but he did not do so for a substantial period of time. Restitution was made on November 3, 2008, over three years after accepting the fee;

c. Imposition of other sanctions in the Stump matter.

39. The Panel finds, by clear and convincing evidence, that other mitigating factors are present as follows:

- Absence of dishonest or selfish motive.
- Chemical dependency or mental disability. Respondent has been diagnosed with Bipolar Affective Disorder and Alcohol Dependency which significantly contributed to his misconduct. He has successfully completed a treatment program at Cleveland Clinic. He is fully compliant with treatment from Dr. Gintautas Sabataitis, a licensed psychologist. He is fully compliant with a two year OLAP contract that began on November 5, 2008. He is active in AA, and he has been sober since April 20, 2008. His treatment providers agree that his prognosis is that he can return to the competent, ethical professional practice of law.
- Other interim rehabilitation. Respondent has been practicing with a monitoring attorney since the Supreme Court remanded this case in February 2009. The monitor is satisfied with his progress.

40. Respondent is a sole practitioner. He has shared space and one secretary with two other attorneys since 1997. Ninety percent of his practice is criminal defense. He married his first

wife in May 1994 and together they had three children. They divorced in June 1999 and Respondent remarried in 2002. He visited with his children on a regular basis until June 2005 when his ex-wife moved with the children to California. The move was a surprise to him; he found out about it when he went to pick up the children for his regular visit. This act began extended litigation over child custody and visitation. He became more and more depressed. In August 2006, Respondent learned that his daughter had been molested. As a result, he began drinking again. Prior to August 2006 he had been sober since 1997. In October 2006, he suffered a stroke and then underwent heart surgery in January 2007 to repair a hole in his heart. He ignored the Wilmore case and the letters he was getting from Disciplinary Counsel. When Respondent finally sought treatment in 2008, he began to turn around.

## SANCTION

41. At the time of the original board action, Disciplinary Counsel was seeking an indefinite suspension for Respondent's misconduct. Since Respondent retained counsel and began cooperating, however, Disciplinary Counsel now recommends a two year suspension with both years stayed on the condition that Respondent complete his OLAP contract, that he continue to be monitored by his monitoring attorney, that he have no further misconduct, and that he pay the costs of the proceedings.

42. Respondent acknowledged that he did not object to Disciplinary Counsel's proposed sanction, but argued in favor of a one year suspension all stayed on the same conditions.

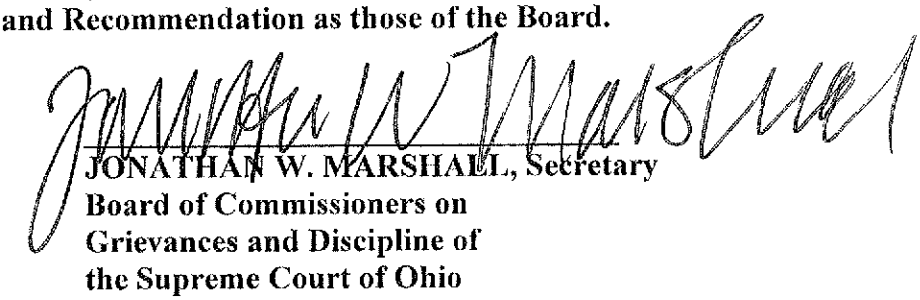
43. The panel recommends that Respondent be suspended from the practice of law for one year, all stayed on the following conditions. Respondent shall complete a probationary period of three years during which he remains subject to, and complies with his OLAP contract, and continues to be monitored by his monitoring attorney. Further he shall actively participate in AA

meetings, have no further misconduct, and pay the costs of these proceedings. If Respondent violates any of the conditions, then he would serve the one year suspension.

## 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 October 9, 2009. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Panel and recommends that the Respondent, John Joseph Chambers, be suspended for a period of one year with the entire year stayed upon the conditions contained in the panel report. The Board further recommends that the cost of these proceedings be taxed to the 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 Recommendation 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: | : | |
| John Joseph Chambers | : | Case No. 07-098 |
| **RESPONDENT,** | : | |
| Disciplinary Counsel, | : | |
| **RELATOR** | : | **JOURNAL ENTRY** |

At the close of all the evidence, because of a failure of proof by clear and convincing evidence, the panel unanimously dismisses the alleged violation of DR 1-102(A)(4) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation) contained in Count One of the Complaint.

**It is so ordered.**

John B. Street, Chairman

Jana E. Emerick

Roger S. Gates

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

**John Joseph Chambers**
22649 Lorain Road
Fairview Park, OH 44126

Attorney Reg. No. 0064627

Respondent,

**AGREED STIPULATIONS**

FILED
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BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

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

Relator.

**BOARD NO. 07-098**

## AGREED STIPULATIONS

Relator, Disciplinary Counsel, and respondent, John Joseph Chambers, do hereby stipulate to the admission of the following facts and exhibits.

## STIPULATED FACTS

1. Respondent, John Joseph Chambers, was admitted to the practice of law in the state of Ohio on May 15, 1995. Respondent is subject to the Code of Professional Responsibility, the Ohio Rules of Professional Conduct, and the Supreme Court Rules for the Government of the Bar of Ohio.

## COUNT ONE

2. On June 12, 2006, relator received a grievance against respondent filed by Michael David Wilmore.
3. In June or July 2005 Michael David Wilmore contacted respondent to represent him with respect to obtaining an early release from prison.
4. On or about August 18, 2005 Wilmore received a letter from respondent saying that he had not received the full $2,500 fee, and that he would not pursue the matter further without full payment.
5. Respondent also stated in the foregoing letter "if you elect to pay my fees, I will promptly file the motion for judicial release we discussed, and request that Judge Hastings bring you back for a full hearing."
6. In September 2005, Mr. and Mrs. James Smith forwarded respondent the full fee of $2,500 for Wilmore's representation.
7. Respondent accepted and retained the $2,500 fee.
8. Respondent did not file a motion for judicial release on behalf of Wilmore.
9. A letter of inquiry was forwarded to respondent at his business address listed in attorney registration records on July 5, 2006.
10. The certified mail return receipt was signed by a Donna M. Babinec on July 7, 2006.
11. Respondent did not reply to the letter of inquiry.
12. On August 3, 2006 relator sent a second letter of inquiry to respondent at his business address listed in attorney registration records.
13. The certified mail return receipt was signed by a Cathy (last name unclear) on August 7, 2006.

14. Respondent never replied to the second letter of inquiry.

15. On March 1, 2007, a third letter of inquiry was sent to respondent at both his business address listed in attorney registration records, as well as his home address listed in attorney registration records.

16. Both certified mail return receipts were signed. Although the signatures are unintelligible, the printed name reflects that both were received by John Chambers on March 12, 2007.

17. Respondent never replied to either of the foregoing letters of inquiry.

18. On April 11, 2007, relator served a subpoena upon respondent by leaving it with an employee at respondent's business address listed in attorney registration records. The subpoena required respondent to appear at a deposition at relator's office on May 4, 2007, and to bring his complete file regarding the Wilmore matter.

19. On or about May 1, 2007, respondent called relator's office, requesting an extension of time by which to respond to the letters of inquiry. Based upon respondent's telephone call, respondent's deposition was cancelled, and he was given until May 30, 2007 to respond to the letters of inquiry.

20. Relator received no response from respondent on or before May 30, 2007.

21. On June 20, 2007, relator forwarded a letter to respondent at his business address listed in attorney registration records, advising that relator's investigation was completed, and that relator determined that sufficient evidence existed to establish probable cause that respondent committed ethical violations.

22. Again, relator received no response.

## COUNT TWO

23. On December 7, 2006, respondent pled no contest to a charge of misdemeanor attempted aggravated disorderly conduct in the Cleveland Municipal Court, arising out of an altercation with Thomas G. Stump.
24. Respondent was sentenced to one year of probation.
25. On May 15, 2007, Stump filed a civil lawsuit against respondent in the Cuyahoga County Court of Common Pleas.
26. On or about July 10, 2007, relator received a grievance against respondent from Stump.
27. The grievance alleged respondent assaulted Stump as a result of Stump being called to testify in a juvenile court matter involving respondent's children.
28. On September 17, 2007, relator sent a letter of inquiry to respondent at his business address listed in attorney registration records.
29. The certified mail return receipt was signed on September 20, 2007 by Donna M. Babinec.
30. The letter of inquiry requested a response to Stump's grievance by October 1, 2007, but respondent did not reply.
31. On October 12, 2007 a second letter of inquiry was sent to respondent's business address listed in attorney registration records, as well as to his home address listed in attorney registration records.
32. The certified mail return receipt for the second letter of inquiry sent to respondent's business address was signed on October 20, 2007 by Lee Anne Chambers.
33. The certified mail sent to respondent's home address was returned as "unclaimed."
34. The second letter of inquiry requested a response to Stump's grievance by November 2, 2007, but respondent did not reply.

35. On December 11, 2007, relator received a letter from Stump requesting that his grievance be withdrawn in order that Stump could pursue civil remedies against respondent.

36. On December 28, 2007 relator received a letter from Stump advising that Stump refused to settle any of his claims with respondent. Attached to grievant's December 28, 2007 correspondence was a copy of correspondence dated December 11, 2007 from respondent to Stump's attorney in the civil matter.

37. Respondent advised Stump's attorney that in order to settle the matter, Stump must agree that:

> Mr. Stump must immediately dismiss the pending complaint he filed with the Disciplinary Counsel of the Supreme Court of Ohio and agree not to file any additional grievances against me (I have attached a letter of withdrawal for your approval).

38. Respondent enclosed a proposed settlement/release which stated:

> The plaintiff will immediately send the attached correspondence to Carol A. Costa, Assistant Disciplinary Counsel of the Ohio Supreme Court, and withdraw grievance number A7-1825. In [sic] the Ohio Supreme Court imposes any discipline against defendant John Chambers due to the allegations set forth in grievance number A7-1825, or considers the allegations set forth in plaintiff's grievance in any way as an aggravating factor in any future disciplinary proceedings against Defendant John Chambers, the plaintiff agrees to be subject to a lawsuit for defamation, and specifically waives the applicable statute of limitations. In lieu of filing a separate suit alleging defamation, however, defendant John Chambers, at his sole option, may compel liquidated damages from the plaintiff in the amount of $15,000.

39. On January 17, 2008, relator received a letter from Stump again requesting to withdraw his grievance stating that Stump's claim against respondent was "purely civil in nature." Stump's January 17, 2008 letter was sent by facsimile from the Court of Common Pleas.

40. On January 18, 2008 Stump's civil lawsuit against respondent and respondent's counterclaim were settled and dismissed.

41. On January 29, 2008, relator sent a letter to respondent at his business address listed in attorney registration records.

42. The certified mail return receipt was signed on February 2, 2008 by John J. Chambers.

43. Relator's January 29, 2008 correspondence advised respondent that relator could investigate any matters which come to its attention, regardless of a grievant's desire to withdraw a grievance. The foregoing letter also advised that an attorney should not require a client to forego filing, dismiss, or resolve a grievance outside of Rule V of the Supreme Court Rules of the Government of the Bar of Ohio.

44. Relator requested respondent's comments to the foregoing letter by February 12, 2008, but respondent did not reply.

## VIOLATIONS

45. Relator and respondent stipulate that respondent's conduct violates the following:

    a. Count One: DR 6-101(A)(3) (A lawyer shall not neglect a legal matter entrusted to him); DR 7-101(A)(2) (A lawyer shall not fail to carry out a contract of employment of a client); DR 9-102(B)(4) (A lawyer shall promptly pay or deliver to the client all funds which the client is entitled to receive); and Gov. Bar R. V (4)(G), (No lawyer shall neglect or refuse to assist or testify in a disciplinary investigation or hearing).

    b. Count Two: Gov. Bar R. V(4)(G) (No lawyer shall neglect or refuse to testify in a disciplinary investigation or hearing).

46. Respondent does not stipulate to and relator does not dismiss the allegations of violations of:

    a. Count One: DR 1-102(A)(4) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); DR 1-102(A)(5) (A lawyer shall not engage in conduct prejudicial to the administration of justice); DR 1-102(A)(6) (A lawyer shall not engage in conduct that adversely reflects on the lawyer's fitness to practice law); DR 7-101(A)(1) (A lawyer shall not intentionally fail to seek out the lawful objectives of a client).

b. Count Two: Prof. Cond. R. 8.4(d) (No lawyer shall engage in conduct that is prejudicial to the administration of justice); and Prof. Cond. R. 8.4(h) (No lawyer shall engage in any other conduct that adversely reflects on the lawyer's fitness to practice law).

47. Relator and respondent stipulate to the following mitigating factor pursuant to BCGD Proc. Reg. Sec. 10(B)(2):

(a) absence of a prior disciplinary record

(b) restitution in the Wilmore case

(c) imposition of other sanctions in the Stump matter

## STIPULATED EXHIBITS

Relator and respondent stipulate to the authenticity and admissibility of the following joint exhibits.

1. Grievance of Michael David Wilmore
2. July 5, 2006 Letter of Inquiry
3. July 7, 2006 Certified mail return receipt
4. August 3, 2006 letter of inquiry and certified mail return receipt
5. March 1, 2007 letters of inquiry and certified mail return receipts
6. April 11, 2007 subpoena
7. June 20, 2007 correspondence to respondent
8. Cleveland Municipal Court conviction entry
9. Stump grievance
10. September 17, 2007 Letter of Inquiry with return receipt
11. October 12, 2007 Letter of Inquiry with return receipt

12. December 11, 2007 letter from Stump

13. December 28, 2007 letter from Stump with correspondence from respondent

14. January 17, 2008 letter from Stump and fax cover page from Court of Common Pleas

15. January 29, 2008 letter to respondent with return receipt

16. Settlement and Release in *Stump v. Chambers*

17. Stipulation of dismissal and Judgment entry in *Stump v. Chambers*

18. Respondent's check to James Smith for restitution in the Wilmore case

19. Records of Dr. David J. Muzina

20. October 31, 2008 Affidavit and Report of Dr. Sabataitis

21. July 8, 2009 update Report of Dr. Sabataitis

22. CV of Dr. Sabataitis

23. November 4, 2008 Affidavit and Report of Dr. Muzina

24. June 23, 2009 update Report of Dr. Muzina

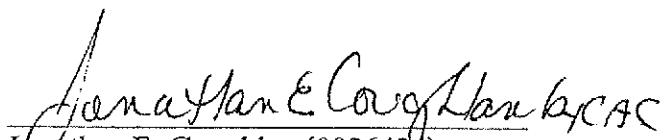
25. Affidavit and Report of Dr. Seikel

26. July 10, 2009 Report of Dr. Faust

## CONCLUSION

The above are stipulated to and entered into by agreement by the undersigned parties on

_____, 2009.



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Disciplinary Counsel

Per telephone authorization on 9-10-09

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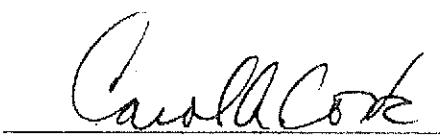
Counsel for Respondent



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Respondent