

ORIGINAL

IN THE  
SUPREME COURT OF OHIO

:  
:  
**Norbert M. Doellman** :  
P.O. Box 475 :  
Hamilton, OH 45012 :  
Attorney Registration No. (0002122) :

Respondent

:  
:  
: **CASE NO. 2010-0805**

**Disciplinary Counsel** :  
250 Civic Center Drive, Suite 325 :  
Columbus, OH 43215-7411 :

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

Relator

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

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Respondent

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Columbus, OH 43215-7411	:	<b>REPORT AND RECOMMENDATIONS</b>
Relator	:	

Now comes relator, Disciplinary Counsel, and hereby submits objections to the Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline (Board) filed with this Court on May 6, 2010.

On October 2, 2009, relator filed an amended three count complaint against Respondent Norbert M. Doellman alleging that he accepted debtor payments on behalf of a former collections client after that client had terminated him, intentionally converted those funds, and failed to use an IOLTA account to hold funds belonging to six clients.

At the disciplinary hearing, relator recommended that respondent be suspended for two years with one year stayed. Respondent recommended a fully stayed suspension of six months or one year. The hearing panel declined to find that respondent violated DR 1-102(A)(4) and 1-102(A)(5) and recommended a 12 month stayed suspension. The Board adopted the hearing

panel's report and recommendation. For the reasons set forth herein, relator objects to the board's recommendation of a fully stayed suspension and requests respondent be suspended for 24 months with 12 months stayed.

### **FACTS**

Respondent was hired by First National Bank of Southwestern Ohio nka First Financial Bank in 1981 to provide collection-related legal services. [Report at 4; Tr. at 22; Stip. 2, 3] Respondent was paid a one-third contingency fee for his collections work. [Report at 6; Tr. at 22; Stip. 4] In March 2001, respondent's services were terminated by First Financial Bank. [Report at 9; Stip. 5] At this time, respondent held over 150 collection files for the bank. [Report at 9; Stip. 5] First Financial Bank requested that respondent provide the client collection files and an accounting to the bank. [Report at 9; Stip. 6] Despite repeated requests, respondent failed to promptly return files, provide an accounting or turn over all funds received on behalf of the bank. [Stip. 6]

Consequently, on June 22, 2001, First Financial Bank filed suit against respondent in the Butler County Common Pleas Court alleging breach of contract, unjust enrichment, conversion and an action for replevin. [Report at 14; Tr. at 32; Stip. Ex. 2; Stip. 7] During this litigation respondent engaged in "dilatatory" conduct, including failure to: respond to two discovery requests, appear for a court hearing on his motion for a protective order, comply with a trial court order compelling discovery, appear at a sanctions hearing, comply with a court order to provide collection files to the bank, appear for his deposition twice and appear for a damages trial. [Report at 17, 46-48; Stip. 9, 13, 18, 21, 22-23, 25]

Respondent explained his failure to participate in the bank litigation by testifying that he was not aware of various hearings and orders because he was suffering from depression and “left mail unopened at that point. I pretty well had shut down.” [Tr. at 47] However, the evidence shows respondent opened at least some of his mail in order to retrieve the 38 debtor checks he deposited into his Key Bank account between June 2001 and April 2002. [Tr. at 53] Further, during this same period, respondent participated in the bank’s lawsuit when it suited his purposes -- he filed an answer and counterclaim, a motion for a protective order, an affidavit of disqualification against Judge Michael Sage, a Civ.R. 60(b) motion, an affidavit of disqualification against Judge Charles Pater, and three appeals. [Report at 17; Tr. at 49; Stip. 8, 12, 24, 30-32, 35, 39]

Respondent’s Key Bank account records from June 2001 through April 2002 total over 800 pages and show a large amount of continuous banking activity by respondent that would be inconsistent with someone not opening their mail and/or unable to function due to depression. [Stip. Ex. 9] These records show that respondent frequently went to the bank more than once a day and normally multiple times each week. [Stip. Ex. 9] These same bank records show that after respondent was diagnosed with depression in April 2002, he still collected funds for his other clients and engaged in numerous banking transactions. [Stip. Ex. 9; Tr. at 54] In 2001 and 2002, respondent also was responsible for maintaining the bank account for the Fairfield Optimist Soccer Club, which included collecting checks from players, making deposits and paying bills. [Stip. Ex. 9; Tr. at 56] As such, respondent’s ability to function was apparently not compromised in all areas of his life.

## COUNT I

Between 1985 and March 2001, respondent failed to deposit proceeds from his collection efforts for First Financial Bank into an IOLTA account as required by the ethical rules. [Report at 7; Tr. at 22] Instead, respondent deposited these funds into a non-IOLTA bank account. [Report at 7; Stip. 43] This non-IOLTA bank account regularly held respondent's personal and/or business funds and was used by respondent to conduct personal and/or business transactions unrelated to the practice of law. [Tr. at 24; Stip. 44, 46; Stip. Ex. 9] As such, respondent engaged in commingling and failed to properly segregate funds belonging to client First Financial Bank for 16 years. [Tr. at 24; Stip. Ex. 9]

## COUNT II

After respondent's termination by First Financial Bank in March 2001, respondent continued to accept debt payment checks from debtor's and clerk's of court pursuant to several garnishment and/or collection actions respondent had previously undertaken on behalf of First Financial Bank. [Report at 11, 13; Tr. at 29; 33; Stip. 47] Respondent collected at least \$2,764.46 in 38 checks from debtors Leon Deck, Hilda Boyer, Jason Clements, Frederick Moore and Vida Langdon between June 2001 and April 2002. [Report at 13; Tr. at 33-34; Stip. 48-49] Respondent owed two-thirds of the \$2,764.46 in collected funds -- \$1,842.97 -- to First Financial Bank. [Report at 13; Stip. 52]

Despite the fact that respondent was no longer legal counsel for First Financial Bank when he received these 38 checks, respondent did not:

- Notify debtors and court clerks to no longer send payments and/or garnishments to him. [Report at 12; Tr. at 32-33; Stip. 50]
- Forward these 38 uncashed checks to First Financial Bank. [Report at 13; Tr. at 34; Stip. 50]
- Provide First Financial Bank with any notice that he had received these 38 checks. [Report at 13; Tr. at 34-35; Stip. 50]
- Provide First Financial Bank with a full accounting of the 38 checks he received after his termination. [Report at 13; Tr. at 35; Stip. 50]
- Deposit the 38 checks into an IOLTA account for safekeeping until any legal dispute over the division of these checks was resolved. [Tr. at 35; Stip. 50]

Instead, respondent deposited these 38 checks from the debtors of First Financial Bank into his non-IOLTA bank account at Key Bank. [Report at 13; Stip. 51, 53] Respondent then immediately expended all of these funds for personal expenses, such as payment of his four delinquent personal loan obligations with First Financial Bank. [Report at 13; Stip. 55; Tr. at 37] During this period, the balance of the Key Bank account was consistently well below the \$1,842.97 owed to the bank -- the account balance on August 24, 2001 was \$88.98, on September 27, 2001 it was \$193.78 and on November 28, 2001 it was \$290.11. [Stip. 54]

Respondent's concealment of his collection of these funds and expenditure of these funds was also in direct violation of a court order. On April 26, 2002, First Financial Bank filed a motion requesting the trial court order that all funds collected by respondent and/or the bank be

placed in an escrow account until the court determines how the funds should be divided. [Stip. 16] On June 6, 2002, the trial court granted the bank's escrow motion. [Stip. 20] After the court ordered the funds be escrowed, respondent did not notify First Financial Bank that he had received \$2,764.46 in bank collection funds or deposit these funds into the escrow account as ordered by the trial court. [Tr. at 34, 35]

### COUNT III

In 2001 and 2002, respondent engaged in collection efforts for MidFirst Credit Union, Augusta Properties, Hamilton Orthopaedic Associates, Mayor Jewelry and Oxforview Nursing Home. [Tr. at 25; Stip. 57] Respondent deposited the funds he collected on behalf of these five clients into his non-IOLTA bank account at Key Bank. [Report at 24; Stip. 58; Stip. Ex. 9] This non-IOLTA bank account regularly held respondent's personal and/or business funds and was used by respondent to conduct personal and/or business transactions unrelated to the practice of law. [Report at ; Stip. 59-60; Stip. Ex. 9] As such, respondent engaged in commingling and failed to properly segregate funds for these five clients.

## **OBJECTIONS**

### **I.**

#### **RESPONDENT'S INTENTIONAL CONVERSION OF CLIENT FUNDS CONSTITUTES DISHONEST CONDUCT**

The Board found that respondent's acceptance of 38 checks from First Financial Bank debtors totaling \$2,764.46 after his termination, failure to advise the bank of his receipt of these checks, subsequent concealment and conversion of the two-thirds owed to the bank and failure to comply with a court order to escrow these funds did not violate DR 1-102(A)(4). The Board's conclusion that respondent's conduct was not dishonest is in error.

Respondent's conduct violates DR 1-102(A)(4) for four reasons. First, after respondent was terminated, the bank put him on notice that he should cease collecting funds for the bank. The lawsuit filed by First Financial Bank on June 22, 2001, states the bank "has repeatedly requested that [respondent] cease his collection activities" on the bank's behalf. [Stip. Ex. 1, 2] Respondent knew he had been instructed to cease all collections work. As such, respondent's actions in continuing to accept funds on behalf of the bank and failing to advise the bank can only be described as deception of his former client.

Second, respondent purposefully and intentionally failed to notify the bank of his receipt of each of these 38 checks between June 2001 and April 2002. [Tr. at 34-35; Stip. 49-50] Third, respondent did not hold these funds for the court's decision on the bank's lawsuit, but instead immediately expended the funds for his own personal benefit. As such, respondent intentionally

converted funds owed to the bank, while litigation was pending to resolve the dispute between respondent and the bank over the proper division of these collection proceeds.

Fourth, on April 26, 2002, First Financial Bank filed a motion requesting the trial court order that all funds collected by respondent and the bank related to collection cases previously handled by respondent be placed in an escrow account until it can be determined how the funds should be divided and on June 6, 2002, the trial court granted the bank's escrow motion. [Stip. 16, 20] Despite the court order, respondent failed to notify First Financial Bank and the court that he had received \$2,764.46 in bank collection funds and failed to deposit these funds into the escrow account.<sup>1</sup> As such, respondent's calculated and intentional actions are clearly dishonest and in violation of DR 1-102(A)(4).

The Board report offers three reasons in support of its finding that the respondent did not engage in dishonest conduct. First, the Board report states that respondent "disclosed that he was holding funds as to which he claimed a lien in his answer to the bank's lawsuit." [Report at 42] In its entirety, respondent's August 27, 2001 answer [in relevant part] states "Norbert Doellman admits that he has files and money regarding cases in which he represented" First Financial Bank. On this basis, the Board report then asserts that respondent's conduct was not dishonest because he put the bank on notice that he was holding funds at the time that he filed his answer. However, this one sentence does not establish that respondent's acceptance, concealment and

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<sup>1</sup> Respondent testified that he was unable to promptly pay the funds due to the bank, because his records of the funds collected after his termination had been seized by the bank. [Tr. at 126] However, the trial court made the order to escrow on June 6, 2002 and did not issue an order allowing the bank access to respondent's office until June 18, 2002. [Stip. 20, 21] As such, respondent had sufficient records in his possession to determine the amount to be escrowed prior to the seizure of his files by the bank.

expenditure of client funds was not dishonest. Further, respondent was not actually “holding” the funds as the Board report suggests. Finally, respondent had a duty to disclose his possession of these checks to the bank at the time respondent received the checks.

The second point the Board report relies upon for finding respondent did not engage in dishonest conduct is the Board’s finding that respondent “intended that the amount owed by him to the bank and the amount that the bank owed to him would be sorted out as a part of the litigation.” [Report at 42] This conclusion is based in part on respondent’s testimony that he “took the position that ultimately this would be decided in the litigation, which was already pending” and that he “assumed that it would balance out at some point, or be reconciled by the court litigation.” [Tr. at 36-37]

Without conceding that respondent’s claimed “intentions” would excuse his actions, respondent’s own contemporaneous conduct during and subsequent to the litigation contradicts his after-the-fact assertion. From respondent’s termination in March 2001, until respondent sent the bank a letter in January 2010 [just prior to his disciplinary hearing] agreeing to pay the bank \$1,842.97, respondent never advised the bank or the trial court that he collected \$2,764.46 in 38 checks from five bank debtors. In fact, respondent’s July 2009 answer to the disciplinary complaint states “I did not keep any money, eventually the bank received all of the money due to them in all cases with an accounting.” [Tr. at 64-65] Clearly this assertion in respondent’s answer is not accurate and shows respondent denying responsibility for his actions and unwilling to pay the bank what was owed as recently as 2009. Because respondent took the bank funds in

2001 and 2002, held the funds after the litigation was concluded in the bank's favor in May 2007 and only agreed to pay the bank on the eve of his February 2010 disciplinary hearing, his claimed intentions are not persuasive.

Further, if it was respondent's actual intention to have the court divide the funds, respondent would have needed to advise the court and the bank of the funds existence while the litigation was pending. Respondent's actions make clear he was not merely relying on the court to decide the dispute, but to decide the dispute in his favor. For example, when asked to explain why he had not paid the bank the funds owed to them after the litigation was concluded in May 2007, respondent stated that he "felt that all along that [he] was owed money by the bank, and never had the opportunity to get that resolved directly." [Tr. at 119] However, the bank's lawsuit did resolve the dispute between respondent and the bank, just not in the manner that suited respondent. Respondent's conduct during and after the litigation clearly establish that respondent never had any intention to pay the bank anything prior to the court's decision. Further, when respondent lost the court case, he remained silent about the funds he collected on behalf of the bank. As such, respondent's expenditure of the funds prior to the conclusion of the litigation and failure to forward any of the funds to the bank after it prevailed in the litigation demonstrate that respondent's claim that he was relying on the court to sort all of this out is disingenuous and completely contrary to his fiduciary duty to his former client.

The Board report next attempts to excuse respondent's conversion and failure to account to the bank by pointing out that the bank had seized respondent's bank records from his office pursuant to a court order. As such, the hearing panel reasoned respondent was unable to

determine what he owed the bank and “never saw a calculation as to the amount of First Financial funds that he had deposited into the Key Bank non-IOLTA account until he was shown that by [relator] as a part of this disciplinary proceeding.”<sup>2</sup> [Report at 20] The Board’s reasoning is illogical. Respondent’s after-the-fact claimed intention to have the trial court divide the fees, is inconsistent with his claimed inability to advise the court the specific amount he collected. Further, if this was truly respondent’s intent, he could have requested a certainly willing First Financial Bank provide him with a copy of his bank statements to recreate an accounting and/or requested Key Bank provide him with a replacement copy of his bank records for the same purpose. Because respondent failed to take any steps to do what he claims was his intention, his after-the-fact assertions lack credibility.

As such, relator requests that this Court find that respondent’s acceptance, concealment and conversion of client funds violates DR 1-102(A)(4).

## II.

### **RESPONDENT’S FAILURE TO USE AN IOLTA AND COMMINGLING OF PERSONAL AND CLIENT FUNDS CONSTITUTES A VIOLATION OF DR 1-102(A)(5)**

In Count I and Count III, respondent failed to use an IOLTA account to hold funds for six clients over a period of 18 years. Further, by using a personal bank account instead of an IOLTA to hold client funds, respondent commingled personal funds with client funds. Despite these facts, the Board found that respondent’s conduct did not violate DR 1-102(A)(5) “because there was no proof of injury to the client and respondent did not interfere with the administration of

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<sup>2</sup> Relator’s calculations were included in a chart in the June 2009 disciplinary complaint filed against respondent. This same chart became Stipulation 49.

justice.” However, the Board’s finding of no violation is inconsistent with the prior case law of this Court.

In Count I of *Disciplinary Counsel v. Freeman*, 119 Ohio St. 3d 330, 2008-Ohio-3836, 894 N.E.2d 31 at ¶ 3-4, this Court found that Freeman violated DR 1-102(A)(5) when he used his IOLTA account as a personal bank account, commingled client and personal funds, had several IOLTA overdrafts and failed to maintain the required accounting of client funds. In Count VII of *Disciplinary Counsel v. Tyack*, 107 Ohio St. 3d 35, 2005-Ohio-5833, 836 N.E.2d 568 at ¶ 23-25, this Court found that Tyack, violated DR 1-102(A)(5) when she failed to deposit three unearned retainers into an IOLTA account, commingled those funds with her personal funds, had a \$28 check for filing fees dishonored and failed to respond to two attempts to collect the funds from the dishonored check. Like the present matter, in *Freeman* and *Tyack* there was no evidence of any client harm from the conduct that constituted a violation of DR 1-102(A)(5) and no specific finding that the underlying conduct “interfere[d] with the administration of justice.” See also, *Disciplinary Counsel v. McCauley*, 114 Ohio St. 3d 461, 2007-Ohio-4259, 873 N.E.2d 269 at ¶ 5-6 [McCauley violated DR 1-102(A)(5) when he used his IOLTA as a personal account, commingled client funds and experienced multiple overdrafts] and *Disciplinary Counsel v. Wise*, 108 Ohio St. 3d 381, 2006-Ohio-1194, 843 N.E.2d 1198 at ¶ 5-8 [Wise violated DR 1-102(A)(5) when he used his IOLTA as a personal account, commingled client funds and experienced multiple overdrafts].

As such, relator requests that this Court find that respondent's failure to use an IOLTA account to hold funds for six clients and resulting commingling of personal funds with client funds violates DR 1-102(A)(5).

### **III.**

#### **RESPONDENT'S ACTIONS ESTABLISH A PATTERN OF MISCONDUCT AND A SELFISH MOTIVE**

At the disciplinary hearing, relator argued that respondent's actions in purposefully failing to use an IOLTA account and converting client funds that respondent believed that he was owed instead of allowing the matter to be properly determined through the pending lawsuit, established a pattern of misconduct and a selfish motive. The failure of the hearing panel to find these aggravating factors is in error.

Respondent admits that he failed to use an IOLTA account to hold collection proceeds for six clients over a period of 18 years and as a result commingled client funds. Additionally, after he was terminated by First Financial Bank, respondent accepted \$2,764.46 in funds from five bank debtors over 11 months. Respondent then deposited and expended these funds without the knowledge of the bank and in violation of a court order to escrow those funds. As such, the evidence establishes that respondent engaged in a pattern of misconduct.

Next, respondent's testimony explaining why he took funds owed to the bank, establishes the aggravating factor that respondent acted with a selfish motive. When respondent was asked about his failure to advise the bank that he had received the 38 checks at issue, respondent

attempted to justify his misconduct by blaming the bank by stating “they were receiving checks that they weren’t telling me about, and I felt that I was entitled to my share of those funds.” [Tr. at 35] However, respondent admits he kept the funds despite the fact that he never established in court that the bank owed him any money. [Tr. at 100]

Respondent further attempted to justify his keeping bank funds because “we were dealing with this situation where they were beginning to enforce delinquencies on their loans, which were caused by the fact that they withdrew their business from me. It was 80 to 90 percent of my practice for 20 years.” [Tr. at 40] As such, respondent is asserting that his loss of the bank as a client, and his resulting need for the money, justified his dishonest extrajudicial conduct.

Next, respondent testified that “originally I was assuming that the litigation would come up with a fair and equitable distribution of what was the result of my work” and he “felt that all along that [he] was owed money by the bank, and never had the opportunity to get that resolved directly.” [Tr. at 101, 119] These statements by respondent show a calculated decision by respondent to keep bank funds because the trial court did not rule in his favor.

Finally, respondent’s actions in keeping the funds exhibited a selfish motive to the detriment of the five debtors who sent funds to him to satisfy a debt owed to the bank. By keeping the funds and not providing an accounting to the bank, respondent prevented these five debtors from getting prompt and proper credit for the payments they had made to him to for the bank. As such, relator requests that this Court find that respondent’s conduct establishes the aggravating factor that respondent acted with a selfish motive.

**IV.**  
**THE CASE LAW OF THIS COURT REQUIRES AN ACTUAL SUSPENSION  
FROM THE PRACTICE OF LAW**

The Board recommended respondent receive a 12 month stayed suspension from the practice of law. For five reasons, an actual suspension is required.

First, this Court's case law requires an actual suspension when an attorney engages in a pattern of dishonest conduct. "Respect for our profession is diminished with every deceitful act of a lawyer. We cannot expect citizens to trust that lawyers are honest if we have not yet sanctioned those who are not. \* \* \* When an attorney engages in a course of conduct resulting in a finding that the attorney has violated DR 1-102(A)(4), the attorney will be actually suspended from the practice of law for an appropriate period of time." *Disciplinary Counsel v. Fowerbaugh*, 74 Ohio St.3d 187, 1995-Ohio-261, 658 N.E.2d 237. "An actual suspension from the practice of law is the general sanction for an attorney that engages in a course of conduct that violates DR 1-102(A)(4)." *Disciplinary Counsel v. Brumbaugh*, 99 Ohio St.3d 65, 2003-Ohio-2470, 788 N.E.2d 1076 at ¶ 13.

Respondent accepted funds on behalf of First Financial Bank after he had been terminated. Respondent deposited these funds into a non-IOLTA account. Respondent expended all of the funds collected, including the portion owed to the bank. Respondent did not advise his former client of his receipt of these funds. Respondent did not deposit these funds into an escrow account, as ordered by the trial court. Respondent did not advise the court of his

receipt of these funds. Respondent did not forward any of these funds to the bank after the court decided the lawsuit in the bank's favor and dismissed respondents' counterclaim. Respondent's taking of client funds, concealing the fact that he held the funds and conversion of the funds constitutes a pattern of dishonest conduct that merits an actual suspension from the practice of law.

Second, this Court has adopted a zero-tolerance policy toward misappropriation. As such, the Court has held that the starting point for determining the appropriate sanction for misappropriation is disbarment. *Cuyahoga County Bar Assn. v. Churilla*, 78 Ohio St.3d 348, 1997-Ohio-580, 678 N.E.2d 515. "The continuing public confidence in the judicial system and the bar requires that the strictest discipline be imposed in misappropriation cases." *Cleveland Bar Assn. v. Belock*, 82 Ohio St.3d 98, 100, 1998-Ohio-261, 694 N.E.2d 897, 899. Disbarment is the presumptive sanction for misappropriation. *Cleveland Bar Assn. v. Dixon*, 95 Ohio St.3d 490, 2002-Ohio-2490, 769 N.E.2d 816. As such, because respondent converted client funds, a fully stayed suspension is not appropriate in this matter.

Third, this Court's prior case law supports an actual suspension. In *Disciplinary Counsel v. Clafin*, 107 Ohio St. 3d 31, 2005-Ohio-5827, 836 N.E.2d 564, Clafin received a \$10,000 settlement check, deposited the check into his IOLTA account and expended the entire amount on personal and/or business expenses. As a result, Clafin's client was not paid their two-thirds share of the settlement for 32 months. Based upon these facts, Clafin was found to have misappropriated \$6,666.67 in client settlement funds. Due to Clafin's conversion of client funds and a false statement to a bar association about the status of the settlement, this Court found that

Clafin violated DR 1-102(A)(4). After considering Clafin's absence of prior discipline, cooperative attitude and restitution prior to the disciplinary proceeding, this Court ordered a two year suspension with one year stayed.

In *Cuyahoga County Bar Assn. v. Maybaum*, 112 Ohio St. 3d 93, 2006-Ohio-6507, 858 N.E.2d 359, Maybaum was found to have violated DR 1-102(A)(4) when he took \$3359.48 left over from settlement that was owed to client. This Court found the aggravating factors of a pattern of misconduct, multiple offenses, a dishonest and selfish motive and prior discipline and the mitigating factors of cooperation and good character. After determining that Maybaum's conduct was not an isolated incident or a single mistake, but instead stretched over four years, an indefinite suspension was ordered.

In *Disciplinary Counsel v. Wolanin*, 121 Ohio St. 3d 390, 2009-Ohio-1393, 904 N.E.2d 879, Wolanin was found to have violated DR 1-102(A)(4) when he misappropriated approximately \$3,350 in funds from two clients, delaying payment to the first client for six months and the second client for 15 months. The Court found that Wolanin had failed to cooperate in the disciplinary process, failed to appear for the disciplinary hearing and had a dismissive attitude toward the disciplinary process. After finding the aggravating factors of a dishonest and selfish motive and a pattern of misconduct, this Court ordered an indefinite suspension.

The Board report found that these three disciplinary cases were not determinative of the proper sanction in this matter because the "attorney misconduct in each of these cases was more

egregious than respondent's misconduct . . . [because] in each of the cases there was a finding of dishonesty, fraud, deceit, or misrepresentation . . . and other serious violations or aggravating factors, including failure to fully participate in and demonstrating a dismissive attitude for the disciplinary process; lack of sincerity in the disciplinary hearing; client vulnerability; lack of remorse and/or a prior disciplinary record.”<sup>3</sup> [Report at 49] However, the Board’s analysis is flawed for two reasons. First, while relator acknowledges that the conduct and/or aggravating factors in *Wolanin* and *Maybaum* are more “serious” than respondent, we further point out that the sanction in both -- an indefinite suspension -- is greater than what is sought in the present matter. Second, a finding by this Court that respondent violated DR 1-102(A)(4) as argued by relator, provides further support for the actual suspension sought.

Fourth, respondent has not fully taken responsibility for his actions and spent a large portion of his disciplinary hearing making excuses for his misconduct and shifting blame to other parties for why his conduct fell below what is required by the ethical rules. For example:

- Respondent asserts that he initially kept the 38 debtor payments after he was fired by the bank because he thought that the bank owed him money and/or the bank was not informing him about or paying him his share of debtor payments that the bank had received post-termination. [Tr. at 35, 111]

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<sup>3</sup> The Board report noted that respondent “has promised to make restitution to First Financial” Bank and held that this was a mitigating factor. Relator is unaware of any prior disciplinary case in which an expressed intent to make restitution in the *future* is credited as mitigation. Further in *Cleveland Bar Assn. v. Dixon*, 95 Ohio St.3d 490, 2002-Ohio-2490, 769 N.E.2d 816, ¶ 21, this Court held that delayed [but complete] repayment of stolen funds significantly limits the mitigation value of such a payment.

- Respondent asserts that he did not place collection proceeds for his non-bank clients into his existing IOLTA account at First Financial Bank because he feared the bank would seize the funds to pay his four delinquent loans at the bank. [Tr. at 27, 91]
- Respondent asserts that he did not open a new IOLTA account at a different bank to hold collection proceeds after he was fired by First Financial Bank because he did not know that an attorney could have two IOLTA accounts. [Tr. at 70]
- Respondent asserts that he did not turn over the post-firing collection proceeds owed to the bank to the bank because an attorney advised him it was proper for him to hold the funds. [Tr. at 32]
- Respondent asserts that he did not deposit collection proceeds for his non-bank clients into an IOLTA account because he did not want to use the account at First Financial Bank and did not think of opening another account. [Tr. at 92]
- Respondent asserts that he used the bank's two-thirds of the 38 checks to pay respondent's personal loan obligations at the bank because he thought that what he owed the bank and what the bank owed him would "balance out at some point" in the future. [Tr. at 37]
- Respondent asserts that he did not appear for court hearings, respond to the bank's discovery requests or comply with various court orders because he was not opening his mail. [Tr. at 47]
- Respondent asserts that he did not pay the bank what it was owed until January 2010 because he did not know what he owed the bank until relator told him. [Tr. at 119]

Because respondent's own testimony shows that he still has failed to honestly take responsibility for: knowing and following the disciplinary rules, abiding by court orders, properly safeguarding disputed funds that are the subject of litigation, disclosing his possession of client funds to a client, an actual suspension is appropriate in this matter.

Fifth, while evidence of respondent's diagnosis of depression was not offered for the purpose of mitigation, a letter from his social worker offers further support for an actual suspension. [Report at 16] Licensed Social Worker Mary Hattemer provided the following observations to the hearing panel about respondent's current mental health status and work capabilities: respondent "demonstrates a lack of motivation and follow through," "finds it difficult to complete a task," "lacks the energy to accomplish the task," "ha[s] some trouble accomplishing . . . goals," and "at times does not maintain basic hygiene." [Stip. Ex. 11]

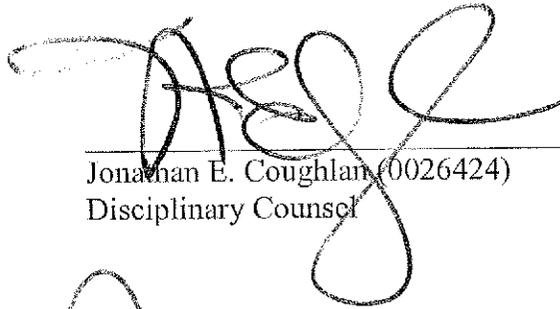
This Court previously held in *Disciplinary Counsel v. Freeman*, 119 Ohio St.3d 330, 2008-Ohio-3836, 894 N.E.2d 31 ¶ 22 that an actual suspension was appropriate for an attorney whose recovery from depression was "incomplete" and who was not capable of "providing legal services to clients beyond routine legal matters" to protect the public and allow "additional time to complete . . . treatment and recovery." Because respondent suffers from major depression recurrent and generalized anxiety disorder and his mental health treatment is incomplete, an actual suspension is appropriate to protect the public.

For these five reasons, relator requests that an actual suspension of 24 months, with 12 months stayed be ordered by this Court.

## CONCLUSION

Therefore, relator requests that this Court find that respondent's conduct violates DR 1-102(A)(4) and DR 1-102(A)(5), respondent engaged in a pattern of misconduct and acted with a selfish motive and order a two year suspension with 12 months stayed.

Respectfully submitted,



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Jonathan E. Coughlan (0026424)  
Disciplinary Counsel

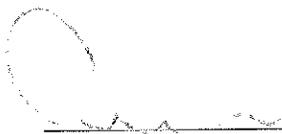


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Robert R. Berger (000064922)  
Senior Assistant Disciplinary Counsel  
Counsel of Record  
250 Civic Center Drive, Suite 325  
Columbus, Ohio 43215-7411  
614.461.0256

## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Relator's Objections has been served 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, and Respondent's Counsel George D. Jonson, Montgomery, Rennie & Jonson, 36 East Seventh Street, Suite 2100, Cincinnati, OH 45202-4452, via regular U.S. mail, postage prepaid, this 28<sup>th</sup> day of May, 2010.



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Robert R. Berger (0064922)

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

10-0805

In Re: :

Complaint against : Case No. 09-040

Norbert Mark Doellman : Findings of Fact,  
Attorney Reg. No. 0002122 : Conclusions of Law and  
: Recommendation of the  
Respondent, : Board of Commissioners on  
: Grievances and Discipline of  
Disciplinary Counsel : the Supreme Court of Ohio  
:  
Relator. :

1. This matter was heard on February 1, 2010, before a panel consisting of William J. Novak, Joseph L. Wittenberg, and Lawrence R. Elleman, Chair. None of the panel members was from the district from which the complaint arose or served on the probable cause panel in this matter. Relator was represented by Robert R. Berger and Karen Osmonds. Respondent was represented by George D. Jonson and Brian Spiess.

FINDINGS OF FACT

A. Background Facts

2. At the hearing, Relator offered the Stipulations appended hereto. The panel unanimously adopts Stipulated Facts 1 through 60 as part of the Findings of Fact in this matter. The stipulations were supplemented by thirteen (13) stipulated exhibits, one of which was a collection of four (4) character letters from Respondent's clients and friends attesting to his professional competence, honesty and trustworthiness.

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SUPREME COURT OF OHIO

APPENDIX A

3. At the time of the conduct leading to the allegations in the Amended Complaint, Respondent was subject to the Ohio Code of Professional Responsibility and the Rules for the Government of the Bar of Ohio.

4. Respondent was admitted to the practice of law in the State of Ohio on November 19, 1976. He practices as a sole practitioner in Butler County, with an emphasis on debt collections. Respondent was hired as the collections attorney for the First National Bank of Southwestern Ohio nka First Financial Bank (First Financial or the Bank) in 1981.

5. In 1981, IOLTA accounts, as such, were not formally required under the Ohio Code of Professional Responsibility. However, First Financial requested that Respondent establish a separate trust account to be used exclusively for the deposit of First Financial collections. From the beginning of Respondent's representation of the Bank through sometime in 2001, Respondent deposited collections from First Financial's debtors in a non-IOLTA business account at First Financial, which was denominated as the Norbert Doellman Trustee Account. Respondent controlled this account. Respondent regularly left his portion of the fees from collection work for First Financial in this account. This business account was also used by Respondent to pay some of his personal bills and expenses unrelated to the practice of law. (Stip. 43-46)

6. For many years, Respondent enjoyed a good relationship with First Financial. His work for the Bank constituted the majority of his legal income. Pursuant to their oral fee arrangement, Respondent was to receive 1/3 of all amounts collected for First Financial with respect to all cases assigned to Respondent. Respondent, provided biweekly reports to the Bank and remitted to the Bank 2/3 of the amounts that were paid to his office. Any amounts with respect to cases assigned to Respondent that were paid directly to First Financial rather than to

Respondent, were reported by First Financial to Respondent and the Bank paid 1/3 of those amounts to Respondent. (Tr. 12-14)

7. Beginning in approximately 1985, Respondent established an IOLTA account at First Financial as required by the Ohio Code of Professional Responsibility. Respondent deposited his clients' funds (other than First Financial) in that account as required. However, Respondent continued to use the First Financial non-IOLTA account with respect to his collection work for First Financial as before. First Financial was aware of the existence of this account at its bank, but First Financial never requested that Respondent utilize a non-IOLTA account for holding collection proceeds. Respondent continued to use this non-IOLTA account for First Financial business because he was not aware at the time that he could have two IOLTA accounts, one for First Financial funds and one for all other client funds. (Tr. 69-70; 115)

8. In mid-2000, a personnel change occurred at First Financial and James Deller was put in charge of the credit control department. First Financial started sending fewer collection cases to Respondent, allegedly because Respondent testified that Deller told him, "you are just not the persona (sic) I want out there representing me." (Tr. 80) According to Respondent's testimony at the hearing, First Financial began to make direct contact with judgment debtors in collection cases handled by Respondent and stopped reporting to Respondent the amounts collected by First Financial directly with respect to judgments or garnishments which Respondent had secured for First Financial. Respondent testified that this deprived him of his 1/3 fee that he felt he had earned and further, that he discussed this matter with Deller who asserted that he was the one in charge and that he could do whatever he wanted. (Tr. 75-80)

9. On March 1, 2001, Respondent's services for First Financial were completely terminated. At that time, Respondent had over 150 collection files for the Bank. The Bank

requested that Respondent provide the client collection files and an accounting to the Bank. Respondent began to work on preparing the files and summaries for the Bank. He included with each summary a statement as to the amount that he felt he had earned as a result of work performed on cases that had not yet been completely collected. Respondent testified that First Financial never gave him his 1/3 share on those collections subsequent to the termination. (Tr. 82) By June 22, 2001, he had produced copies of the files and his summaries with respect to approximately 65 of the 150 collection files.

10. During this same period of time, First Financial was aggressively pursuing collection of certain loans that it had made to Respondent, using collection efforts that Respondent felt was wrongful and unfair. For example, Respondent testified that the Bank repossessed his vehicle, leaving his wife and daughter at dance school at 9:00 p.m. (Tr. 39-40, Ex. 3)

11. In approximately June 2001, Respondent closed his non-IOLTA First Financial business account for debt collections for First Financial. At that time he opened a new account for that purpose at Key Bank. He continued to collect money on cases on which he had worked for First Financial prior to the termination of the First Financial attorney/client relationship. He testified that he changed this account from First Financial to Key Bank in order to prevent First Financial from setting off these funds against amounts that First Financial claimed from Respondent. (Tr. 27-28)

12. Respondent did not notify the various court clerks who were sending out garnishment checks to stop sending them to Respondent. He did not notify individual debtors to stop sending him money. He felt that he was entitled to a share of that money pursuant to his previous oral agreement with the Bank. He felt this was further justified because First Financial

was also receiving checks from debtors (and denying him his 1/3 fee) as to judgments he had obtained or work performed prior to termination of the attorney/client relationship. (Tr. 34-37)

13. From June 2001 through April 2002, Respondent deposited 38 checks for First Financial debt collections in the Key Bank non-IOLTA account. The total amount of these checks was \$2,764.46, of which Respondent was entitled to 1/3. He did not deposit his own personal funds into this account, but did not segregate Key Bank funds from his own 1/3 fee. He made withdrawals from this account from time to time for personal and business expenses. Also, during this period he received a large number of checks in envelopes which he did not even open. (Tr. 98-99) He did not immediately forward the uncashed checks to First Financial. He did not provide First Financial with any notice that he had received the 38 deposited checks or the checks in unopened envelopes, nor did he provide First Financial with an accounting or deposit the checks into an IOLTA account.

**B. The Litigation**

14. On June 22, 2001, First Financial filed suit against Respondent in the Butler County Court of Common Pleas alleging breach of contract, unjust enrichment, conversion and an action for replevin. Defendant filed an answer and counterclaim on August 27, 2001 (The Litigation). In his answer, Respondent admitted that he possessed files and money regarding cases in which he had represented First Financial, (Ex. 3, ¶ 4) but did not specify the amounts that he had collected or any other details about the money he was collecting. He asserted as an affirmative defense that he had a vested interest in the cases for collection and a lien on money that he had collected from such cases. (Ex. 3, ¶ 7)

15. Respondent relied on advice from another attorney that he had a lien on these funds. Respondent never denied that he was continuing to collect money from account debtors.

Rather, he always assumed that the amounts owed to him by the Bank and the amounts that he owed to the Bank would be sorted out as part of The Litigation. (Tr. 37, 101)

16. During at least the early stages of The Litigation, Respondent was suffering from clinical depression. Respondent sought and received psychiatric treatment beginning in April 2002. (Ex. 4) On March 17, 2003, his treating psychiatrist initiated a psychiatric hospitalization to address his severe depression. According to Respondent's testimony and a letter submitted by his psychiatrist in 2003, Respondent had essentially "shut down." (Ex. 5) He could not organize or motivate himself and often did not even open his correspondence. Evidence of his mental illness was not offered or received in this disciplinary proceeding for the purpose of mitigation, but for the purpose of placing his conduct in The Litigation in proper context.

17. First Financial aggressively pursued The Litigation against Respondent. Respondent's conduct with respect to this litigation was in many respects inadequate and dilatory. He failed to adequately respond to the Bank's written discovery; failed to attend scheduled court hearings; failed to comply with court orders; failed to produce documents and files to the Bank; and failed to appear at his scheduled depositions (Stip. 9-40). However, Relator's Amended Complaint does not assert that any of this conduct constitutes independent violations of the Code of Professional Responsibility.

18. On June 6, 2002, the trial court held a hearing on First Financial's motion for sanctions against Respondent for his failure to comply with the Bank's discovery requests. Respondent never filed a response, and did not attend the hearing. His reason given for the failure to attend was that the court's bailiff had told him "to stay with my family at the hospital where my father was taken into surgery." (Tr. 47)

19. As a result of the June 6, 2002 hearing, the trial court ordered Respondent to turn over all the Bank's files within two days and, among other things, dismissed Respondent's counterclaims, thus precluding Respondent from proving his damage claims against First Financial.

20. Respondent did not produce the files within two days. As a result on June 18, 2002, the trial court issued an order allowing First Financial access to Respondent's office to retrieve the files. Respondent's landlord granted the Bank access to his office without Respondent's knowledge or presence. First Financial seized every file or document that related to First Financial, including the bank statements and records with regard to the Key Bank account that had been established for First Financial's collections. (Tr. 89-90) Therefore, Respondent never saw a calculation as to the amount of First Financial funds that he had deposited into the Key Bank non-IOLTA account until he was shown that by Disciplinary Counsel as part of this disciplinary proceeding. (Tr. 119-120; 126)

21. On February 3, 2003, the trial court conducted a hearing to determine the amount of the monetary sanction to be imposed against Respondent. Respondent failed to appear at this trial. On February 11, 2003, the trial court granted a judgment against Respondent for \$279,292 as a sanction for Respondent's failure to comply with First Financial's discovery requests and prior discovery orders. The amount of this sanction was not an assessment of any misappropriation or violation of the Code of Professional Responsibility by Respondent. (Tr. 110-111; 131-135)

22. In 2006, the Twelfth District Court of Appeals held that the trial court erred in holding the June 6, 2002 hearing in Respondent's absence when the evidence indicated that the court bailiff had excused Respondent's attendance from the hearing. As a result, the matter was

remanded for a new hearing on the motion for sanctions. However, the appellate court held that because Respondent had received notice of the February 3, 2003 trial regarding the amount of the monetary sanction, the trial court need not revisit the monetary amount, should it ultimately determine that Respondent was liable for sanctions. (Ex. 7, page 6)

23. On remand, the trial court issued a judgment against Respondent on the issue of liability and dismissed his counterclaims. The court did not allow any evidence on the issue of the amount of the monetary sanction. On May 17, 2006, the court issued a final judgment against Respondent for \$279,292 and other relief. This judgment was affirmed on appeal. The net result of Respondent's inattention and dilatory conduct in The Litigation was that First Financial obtained a large judgment against Respondent and that he was precluded from proving his counterclaims against First Financial. This included his claims for a 1/3 fee on the debt collections that First Financial allegedly received directly on cases upon which Respondent had worked or obtained judgment or garnishment, and his 1/3 fee on checks contained in the unopened envelopes that he later turned over to the Bank. (Tr. 98-99; 111-112)

**C. Other Clients**

24. Also during 2001 and 2002, Respondent was engaged in collection efforts for certain other clients. According to Respondent, he chose to deposit the funds belonging to those clients in his Key Bank non-IOLTA account rather than his IOLTA account at First Financial so as to protect those funds from seizure by First Financial.

**D. Facts Specific to Count I of the Complaint**

25. Count I relates to Respondent's failure to deposit First Financial funds in an IOLTA account between 1985 and March 2001. The specific stipulated facts supporting Count I are set forth at Paragraphs 43 through 46 of the Stipulations.

26. No evidence was introduced suggesting that Respondent misappropriated client funds as a result of the violations set forth in Count I.

**E. Facts Specific to Count II of the Complaint**

27. Count II of the complaint relates to Respondent's misconduct regarding First Financial funds after First Financial's termination of the attorney-client relationship with him in March 2001. Respondent received 38 debt payment checks from debtors and clerks of court pursuant to several garnishment or collection actions that Respondent had undertaken on behalf of First Financial. These checks were deposited in the Key Bank non-IOLTA account from June 2001 through April 2002.

28. The specific stipulated facts supporting Count II of the Complaint are contained in Paragraphs 47 through 56 of the Stipulations.

29. Pursuant to their fee agreement, Respondent owes \$1,842.97 to the First Financial with respect to these 38 checks. Respondent has agreed to pay this amount to First Financial as restitution.

**F. Facts Specific to Count III of the Complaint**

30. Count III of the complaint relates to Respondent's deposit of funds collected for clients other than First Financial during 2001 and 2002 in his non-IOLTA Key Bank account. Specific stipulated facts supporting Count III are set forth in Paragraphs 57 to 60.

31. There is no evidence that any of these other clients were damaged as a result of the violations.

**G. Current Situation**

32. Respondent is currently receiving Social Security disability payments. He continues to practice law on a very limited basis. He does collection work, basic research and assists people in dealing with simple foreclosures.

33. Respondent remains under the care of a psychiatrist. His current diagnosis is Major Depression Recurrent and Generalized Anxiety Disorder. He continues to find it difficult to complete difficult tasks, but is able to carry out simple tasks and gains satisfaction from doing so. (Ex. 11)

34. On November 2, 2009, Respondent signed a four year contract with OLAP. (Ex. 10)

35. Since Respondent did not have possession of the records regarding the Key Bank account, he did not have actual knowledge of the amount of restitution required until Disciplinary Counsel supplied him with a calculation as part of this proceeding. On January 28, 2010, Respondent promised in writing to pay First Financial the sum of \$1,842.97 in twelve monthly payments as restitution. On that date, he paid the first installment of \$192.97. (Ex. 12)

36. On March 11, 2008, Respondent filed a Chapter 7 bankruptcy seeking to discharge various debts including the \$279,292 judgment for sanctions granted to First Financial. First Financial is currently contesting the dischargeability of that debt based on Respondent's alleged fraud. This matter is still pending. The discharge, if any, will not include the promise to make restitution referenced in paragraph 35 above.

## CONCLUSIONS OF LAW

### **A. Violations Resulting from Respondent's Conduct in Count I**

37. The panel concludes that Relator has proven by clear and convincing evidence that Respondent's conduct described in Count I violated DR 1-102(A)(6) (a lawyer shall not engage in conduct that adversely reflects upon his fitness to practice law; and DR 9-102(A) (all funds paid to a lawyer or a law firm, other than advances for costs and expenses, shall be deposited in one or more identifiable bank accounts and no funds belonging to the lawyer or law firm shall be deposited therein)), as stipulated by the parties in Paragraph 61 of the Stipulations.

38. However, the panel concludes that Relator has failed to prove by clear and convincing evidence the disputed claim that Relator's conduct set forth in Count I violated DR 1-102(A)(5) (a lawyer shall not engage in conduct that is prejudicial to the administration of justice) because there was no proof of injury to the client and Respondent did not interfere with the administration of justice with regard to the conduct described in Count I. The panel therefore recommends dismissal of this claimed violation.

### **B. Violations Resulting from Respondent's Conduct in Count II**

39. The panel concludes that Relator has proven by clear and convincing evidence that Respondent's conduct described in Count II violated DR 1-102(A)(6) (a lawyer shall not engage in conduct that adversely reflects upon the lawyer's fitness to practice law); DR 9-102(A) (all funds of clients paid to a lawyer or law firm, other than advances for costs and expenses, shall be deposited in one or more identifiable bank accounts and no funds belonging to the lawyer or law firm shall be deposited therein); DR 9-102(B)(3) (a lawyer shall maintain complete records of all funds, securities or other properties of a client coming into the possession of the lawyer and render appropriate accounting to his client regarding them); and DR 9-

102(B)(4) (a lawyer shall promptly pay or deliver to the client as requested by the client the funds, securities or other properties in possession of the lawyer which the client is entitled), as stipulated in Paragraph 62 of the Stipulations.

40. The panel concludes that Relator has also proven by clear and convincing evidence the disputed claim that Respondent's conduct described in Count II violated DR 1-102(A)(5) (a lawyer shall not engage in conduct that is prejudicial to the administration of justice) because of his failure to maintain complete records of all funds of First Financial that came into his possession, and because his conduct in The Litigation delayed the determination of the amount owed to the Bank and therefore interfered with the administration of justice.

41. The panel concludes that Relator has also proven by clear and convincing evidence the disputed claim that Respondent's conduct described in Count II violated DR 9-102(B)(1) (a lawyer shall promptly notify a client of the receipt of his funds) because he failed to provide First Financial with timely notice of the specific checks that he deposited in the Key Bank account or that remained in the unopened envelopes.

42. However, the panel concludes that Relator has failed to prove by clear and convincing evidence the disputed claim that Relator's conduct in Count II violated DR 1-102(A)(4) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation) because Respondent, pursuant to advice which he received from another attorney, in his answer filed in The Litigation, disclosed that he was holding funds as to which he claimed a lien. Respondent intended that the amount owed by him to the Bank and the amount that the Bank owed to him would be sorted out as part of The Litigation. The panel therefore recommends dismissal of this claimed violation.

C. Violations Resulting from Respondent's Conduct in Count III

43. The panel concludes that Relator has proven by clear and convincing evidence that Respondent's conduct described in Count III violated DR 1-102(A)(6) (a lawyer shall not engage in conduct that adversely reflects upon his fitness to practice law); and DR 9-102(A) (all funds of clients paid to a lawyer or law firm, other than advances and for costs and expenses, shall be deposited in one or more identifiable bank accounts and no funds belonging to a lawyer or the law firm shall be deposited therein), as stipulated by the parties in Paragraph 63 of the Stipulations.

44. However, the panel concludes that Relator has failed to prove by clear and convincing evidence the disputed claim that Relator's conduct set forth in Count III violated DR 1-102(A)(5) (a lawyer shall not engage in conduct that is prejudicial to the administration of justice) because there is no proof of injury to the other clients and Respondent did not interfere with the administration of justice with regard to the conduct described in Count III. The panel therefore recommends dismissal of this claimed violation.

#### **AGGRAVATING AND MITIGATING FACTORS**

45. The panel finds as an aggravating factor that Respondent committed multiple violations.

46. The panel finds the following mitigating factors set forth in BCGD Proc. Reg. 10(B)(2):

- a. Respondent has no prior disciplinary record;
- b. Respondent has made full and free disclosure of his conduct and has exhibited a cooperative attitude toward these proceedings;
- c. Respondent has a good reputation among friends and clients;

- d. Respondent has already been sanctioned for his conduct relating to The Litigation;
- e. Respondent has promised to make restitution to First Financial.

### RECOMMENDED SANCTION

47. Relator recommends a sanction of a 24 month suspension from the practice of law with 12 months stayed on condition that he pay the \$1,842.97 restitution obligation with interest; that during the stayed suspension he have a monitor to assist and oversee his legal practice; and that he be ordered to fulfill his four year OLAP contract and abide by the recommendations of OLAP and his current mental health professionals.

48. Respondent recommends a suspension from the practice of law for six months or 12 months with the entire suspension stayed on conditions similar to those proposed by Relator.

49. Relator cites *Disciplinary Counsel v. Wolanin*, 121 Ohio St.3d 390, 2009-Ohio-1393 (indefinite suspension); *Cuyahoga Cty. Bar Assn. v. Maybaum*, 112 Ohio St.3d 93, 2006-Ohio-6507 (indefinite suspension); and *Disciplinary Counsel v. Clafin*, 107 Ohio St.3d 31, 2005-Ohio-5827 (two year suspension with one year stayed). The panel finds these cases not to be persuasive for this matter. The attorney misconduct in each of these cases was more egregious than Respondent's misconduct. In each of the cases there was a finding of dishonesty, fraud, deceit, or misrepresentation (which is not present in the instant case) and other serious violations or aggravating factors, including failure to fully participate in and demonstrating a dismissive attitude for the disciplinary process; lack of sincerity in the disciplinary hearing; client vulnerability; lack of remorse and/or a prior disciplinary record.

50. Respondent cites as authority for a lesser sanction the cases of *Disciplinary Counsel v. Croushore*, 108 Ohio St.3d 156, 2006-Ohio-412 (one-year suspension all

conditionally stayed, and a two-year probation) and *Disciplinary Counsel v. Fletcher*, 122 Ohio St.3d 390, 2009-Ohio-3480 (six-month suspension all conditionally stayed, and a one-year probation). These cases involved mishandling of the attorney's IOLTA account in various respects. *Fletcher* also involved an attorney who gave financial aid to a client in violation of the Code of Professional Responsibility. In neither of the cases was there evidence of monetary harm to clients, whereas in the instant case, Respondent was found to owe \$1,842.97 to First Financial, which Respondent has agreed to pay as restitution.

51. Respondent made a deliberate decision to withhold client funds from the client in a non-IOLTA account controlled by him because he believed the client was also withholding funds from him. His decision was wrong. However, the panel recommends that his mindset at the time be taken into consideration, *i.e.* that he disclosed that he was holding funds and intended that the money he owed the Bank and the money the Bank owed him would be sorted out as part of The Litigation.

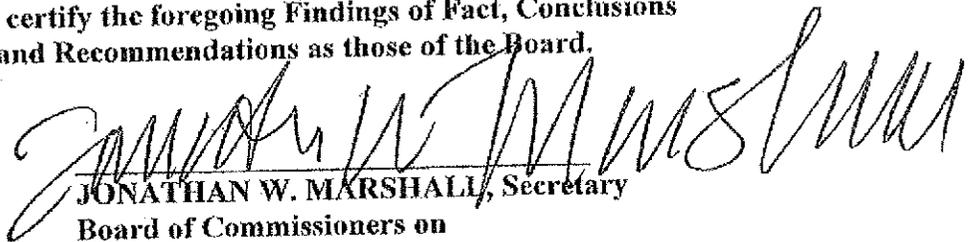
52. The primary purpose of disciplinary sanctions is not to punish the offender but to protect the public. See, e.g., *Disciplinary Counsel v. O'Neill*, 103 Ohio St.3d 204, 2004-Ohio-4704. The Supreme Court has in other cases taken into account that the Respondent is not likely to ever repeat his transgressions. See, e.g., *Stark County Bar Assn. v. Ake*, 111 Ohio St.3d 266, 2006-Ohio-5704. The panel in this case believes that Respondent will not repeat his transgressions. Given the mitigating factors in this case, including no prior disciplinary record, full and complete disclosure in the disciplinary process, cooperative attitude during the proceedings, and the promise to make restitution, the panel recommends that Respondent be sanctioned as follows: One year suspension from the practice of law, all of it stayed on the condition that Respondent make restitution to First Financial in the amount of \$1,842.97 in

twelve monthly payments plus 5% interest from January 28, 2010; that a monitor be appointed to oversee his legal practice and the management of his IOLTA account during the period of the stayed suspension; and that Respondent comply with the recommendations of OLAP pursuant to his current contract and the recommendations of his current mental health professionals.

**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 April 9, 2010. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Panel and recommends that Respondent, Norbert Mark Doellman, be suspended from the practice of law in the State of Ohio for 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 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

NORBERT MARK DOELLMAN  
P.O. Box 475  
Hamilton, OH 45012  
Atty. Reg. No.: (0002122)

FILED

JAN 25 2010

BOARD OF COMMISSIONERS  
ON GRIEVANCES & DISCIPLINE

AGREED  
STIPULATIONS  
BOARD NO. 09-040

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

AGREED STIPULATIONS

Relator, Disciplinary Counsel, and respondent, Norbert Mark Doellman, do hereby stipulate to the admission of the following facts, violations, mitigation and exhibits.

STIPULATED FACTS

1. Respondent, Norbert Mark Doellman, was admitted to the practice of law in the State of Ohio on November 19, 1976. Respondent is subject to the Rules of Professional Conduct, the Code of Professional Responsibility and the Rules for the Government of the Bar of Ohio.
2. Respondent was hired as the collections attorney for First National Bank of Southwestern Ohio nka First Financial Bank in 1981.

JOINT EXHIBIT 14

3. During the time that respondent represented First Financial Bank, he performed collection-related legal services.
4. Respondent and First Financial agreed that Respondent was to be paid a one-third contingency fee for his collections work.
5. In March 2001, respondent's services were terminated by First Financial Bank. At this time, respondent had over 150 collection files for the bank.
6. At the time of his termination, First Financial Bank requested that respondent provide the client collection files and an accounting to the bank. Despite repeated requests, respondent failed to return all files, provide a complete accounting or turn over all funds received on behalf of the bank.
7. On June 22, 2001, First Financial Bank filed suit against respondent in the Butler County Common Pleas Court alleging breach of contract, unjust enrichment, conversion and an action for replevin. *First National Bank of Southwestern Ohio v. Doellman*, Case No. CV 2001-06-1399 (Exhibit 2).
8. Respondent filed an answer and counterclaim on August 27, 2001. (Exhibit 3). In that counterclaim, Respondent alleged that he was owed in excess of \$100,000 for unpaid legal fees.

9. On September 26, 2001 First Financial Bank mailed respondent 10 interrogatories and 18 requests for the production of documents. Respondent failed to provide a response to these discovery requests.
10. On November 21, 2001 First Financial Bank mailed respondent the interrogatories and request for the production of documents a second time.
11. In response to the prior discovery requests, in January 2002, Respondent provided 40 files and some tax returns to First Financial Bank.
12. On February 21, 2002, respondent filed a motion for a protective order. In response, on March 11, 2002, First Financial Bank filed a motion to compel respondent to comply with their prior discovery requests.
13. The trial court held a hearing on First Financial Bank's motion to compel and respondent's motion for a protective order on April 18, 2002. Respondent did not attend this court hearing.
14. Respondent wrote a three-page letter to Judge Sage two days before the April 18, 2002, hearing. In the letter (Exhibit 4) he explains that he cannot attend the hearing because of an appointment to address his mental illness.

15. On April 22, 2002 the trial court granted First Financial Bank's motion to compel and ordered respondent to immediately produce the requested documents and respond to the bank's written discovery requests. The court further denied respondent's motion for a protective order.
16. On April 26, 2002, First Financial Bank filed a motion requesting the trial court order that all funds collected by respondent and the bank related to collection cases previously handled by respondent be placed in an escrow account until it could be determined how the funds should be divided.
17. Respondent failed to fully comply with the trial court's order compelling the production of discovery. On May 15, 2002, First Financial Bank filed a motion for sanctions against respondent. Respondent did not file a response to this motion.
18. The trial court held a hearing on the motion for sanctions on June 6, 2002. Respondent did not attend this hearing.
19. As a result of this hearing, the trial court:
  - Ordered respondent to turn over the bank's files within two days,
  - Issued a judgment against respondent on the issue of liability,
  - Dismissed respondent's counterclaims,
  - Ordered respondent to pay First Financial Banks' costs and attorney fees for the motion for sanctions, and

- Ordered the bank to submit a brief on damages.
20. On June 6, 2002, the trial court granted the bank's motion seeking escrow of all funds collected by respondent and First Financial Bank related to collection cases previously handled by respondent.
  21. Respondent failed to comply with the trial court's order to provide files to First Financial Bank within two days. As a result, on June 18, 2002, the trial court issued an order granting First Financial Bank access to respondent's office to retrieve the files.
  22. On July 12, 2002, First Financial Bank filed and mailed respondent a notice he was required to appear for a deposition on July 30, 2002. Respondent failed to appear for this deposition.
  23. On September 20, 2002, First Financial Bank mailed respondent a second notice of deposition requiring his appearance on October 1, 2002. Respondent failed to appear for this deposition.
  24. On January 21, 2003, respondent filed an affidavit of disqualification against trial court Judge Michael Sage claiming that Judge Sage was biased against him. On January 24, 2003, Judge Sage recused himself. A short time later, Judge Charles Pater was assigned to hear the lawsuit.

25. The trial to determine the bank's damages had been previously scheduled for February 3, 2003. On this date, respondent failed to appear for the trial.
26. On February 11, 2003, the trial court granted a judgment against respondent for \$279,292 as a sanction for respondent's failure to comply with First Financial Bank's discovery requests and the court's prior discovery orders.
27. The trial court further ordered respondent to provide an accounting to the bank, turn over files to First Financial Bank and to pay the bank's costs and attorney fees.
28. On March 17, 2003, Respondent's treating psychiatrist initiated a psychiatric hospitalization to address the severity of his severe depression (Exhibit 5).
29. In June 2003, respondent met on several occasions with representatives of First Financial, including Marla Wyant, to review the status of various collection files he had handled for the bank.
30. On February 2, 2004, respondent filed a Civ.R. 60(b) motion seeking relief from the June 6, 2002 and February 11, 2003 trial court orders. This motion was denied by the trial court on May 10, 2004.

31. On February 11, 2004, respondent filed an affidavit of disqualification against trial court Judge Charles Pater claiming that Judge Pater was biased against him. The Supreme Court of Ohio overruled respondent's request on February 18, 2004.
32. On June 7, 2004, respondent filed a notice of appeal of the denial of his Civ.R. 60(B) motion.
33. On February 22, 2005, the Twelfth District Court of Appeals affirmed the trial court decision. (Exhibit 6)
34. However, the court of appeals found that it appeared respondent had not been properly served with the February 11, 2003 judgment entry. As a result, the court of appeals suggested that, if this apparent service failure was correct, respondent's time for appeal of that order had not expired.
35. A short time later, the common pleas court clerk served respondent with the February 11, 2003 entry. Respondent then filed a second notice of appeal on May 25, 2005.
36. On April 3, 2006, the Twelfth District Court of Appeals held that the trial court erred in holding the June 6, 2002 hearing in respondent's absence, when the evidence indicated that the court bailiff had excused respondent's attendance from the hearing. As a result, the matter was remanded for a new hearing on the motion for sanctions. (Exhibit 7)

37. On May 9, 2006 the trial court held a second sanctions hearing. Respondent attended this hearing.
38. On May 17, 2006, the trial court issued a decision on the sanctions motion. The court issued a judgment against respondent on the issue of liability and dismissed respondent's counterclaims. On the same day the trial court issued a final judgment against respondent for \$272,292 and again ordered respondent to provide an accounting to First Financial Bank, turn over requested documents and pay the bank's costs.
39. Respondent filed a notice of appeal of the trial court's May 17, 2006 entries on June 16, 2006.
40. On May 14, 2007 the court of appeals affirmed the judgment of the trial court. (Exhibit 8)
41. On March 11, 2008, respondent filed a Chapter 7 bankruptcy petition seeking to discharge various debts, including but not limited to the \$279,292 judgment granted to First Financial Bank.
42. On June 12, 2008, First Financial Bank filed an adversary action contesting the dischargeability of their judgment based upon the assertion that the judgment was based upon respondent's fraud while acting in a fiduciary capacity. This matter is still pending.

COUNT I

43. Between 1981 and March 2001 when respondent represented First Financial Bank, respondent failed to deposit proceeds from collection efforts for the bank into an IOLTA account. Instead, respondent deposited these collections proceeds (involving monies owed to the bank and Respondent's collection fees) into a non-IOLTA business bank account, denominated Norbert Doellman Trustee Account.
44. Respondent regularly left his portion of the fees from collection work in this same business bank account.
45. First Financial Bank never requested that Respondent utilize a non-IOLTA account for holding bank collection proceeds.
46. This business bank account was used by respondent to conduct personal and/or business transactions unrelated to the practice of law.

#### COUNT II

47. After respondent's termination by First Financial Bank in March 2001, respondent continued to receive debt payment checks from debtor's and clerk's of court pursuant to several garnishment and/or collection actions respondent had undertaken on behalf of First Financial Bank.
48. The debtors from which Respondent continued to receive payment included Leon Deck, Hilda Boyer, Jason Clements, Frederick Moore and Vida Langdon.

49. As detailed in the chart below, respondent collected \$2,764.46 in 38 checks from these debtors after his termination:

Debtor	Payor	Payee	Date of Check	Date of Deposit	Amount of Check
Hilda Boyer	Hilda Boyer	Respondent	Illegible	June 14, 2001	\$50
Leon Deck	Butler County Clerk of Court	Respondent	July 19, 2001	July 23, 2001	\$102.73
Frederick Moore	Franklin Municipal Court	Respondent	July 26, 2001	July 31, 2001	\$66.76
Leon Deck	Butler County Clerk of Court	Respondent	August 2, 2001	August 3, 2001	\$85.92
Jason Clements	Fairfield Municipal Court	Respondent	August 6, 2001	August 7, 2001	\$135.24
Frederick Moore	Franklin Municipal Court	Respondent	August 2, 2001	August 7, 2001	\$33.38
Hilda Boyer	Hilda Boyer	Respondent	August 8, 2001	August 13, 2001	\$50
Frederick Moore	Franklin Municipal Court	Respondent	August 22, 2001	August 24, 2001	\$33.38
Vida Langdon	Christopher Calender	First National Bank	August 26, 2001	August 28, 2001	\$50
Leon Deck	Butler County Clerk of Court	Respondent	August 30, 2001	August 31, 2001	\$96.72
Jason Clements	Fairfield Municipal Court	Respondent	August 30, 2001	September 4, 2001	\$135.56
Vida Langdon	Christopher Calender	First National Bank	July 23, 2001	September 5, 2001	\$50
Leon Deck	Butler County Clerk of Court	Respondent	September 12, 2001	September 17, 2001	\$96.72
Vida Langdon	Christopher Calender	First National Bank	September 14, 2001	September 17, 2001	\$50

Jason Clements	Fairfield Municipal Court	Respondent	October 1, 2001	October 3, 2001	\$124.26
Frederick Moore	Franklin Municipal Court	Respondent	October 4, 2001	October 9, 2001	\$33.38
Hilda Boyer	Hilda Boyer	Respondent	October 12, 2001	October 15, 2001	\$50
Frederick Moore	Franklin Municipal Court	Respondent	October 15, 2001	October 17, 2001	\$33.38
Vida Langdon	Christopher Calender	First National Bank	Illegible	October 22, 2001	\$50
Frederick Moore	Franklin Municipal Court	Respondent	October 18, 2001	October 22, 2001	\$33.38
Leon Deck	Butler County Clerk of Court	Respondent	October 24, 2001	October 26, 2001	\$96.72
Jason Clements	Fairfield Municipal Court	Respondent	November 2, 2001	November 5, 2001	\$268.48
Frederick Moore	Franklin Municipal Court	Respondent	November 2, 2001	November 16, 2001	\$33.38
Jason Clements	Fairfield Municipal Court	Respondent	December 3, 2001	December 6, 2001	\$109.44
Frederick Moore	Franklin Municipal Court	Respondent	December 12, 2001	December 17, 2001	\$33.38
Frederick Moore	Franklin Municipal Court	Respondent	December 21, 2001	December 28, 2001	\$33.38
Jason Clements	Fairfield Municipal Court	Respondent	January 4, 2002	January 7, 2002	\$113.93
Hilda Boyer	Hilda Boyer	Respondent	January 11, 2002	January 14, 2002	\$50
Frederick Moore	Franklin Municipal Court	Respondent	January 16, 2002	January 23, 2002	\$33.38
Jason Clements	Fairfield Municipal Court	Respondent	February 4, 2002	February 6, 2002	\$192.50

Leon Deck	Butler County Clerk of Court	Respondent	February 14, 2002	February 15, 2002	\$78.67
Frederick Moore	Franklin Municipal Court	Respondent	February 20, 2002	February 22, 2002	\$33.38
Hilda Boyer	Hilda Boyer	Respondent	February 4, 2002	February 25, 2002	\$50
Jason Clements	Fairfield Municipal Court	Respondent	March 4, 2002	March 6, 2002	\$143.49
Frederick Moore	Franklin Municipal Court	Respondent	March 20, 2002	March 22, 2002	\$33.38
Frederick Moore	Franklin Municipal Court	Respondent	March 14, 2002	March 22, 2002	\$33.38
Frederick Moore	Franklin Municipal Court	Respondent	April 3, 2002	April 8, 2002	\$33.38
Frederick Moore	Franklin Municipal Court	Respondent	April 17, 2002	April 22, 2002	\$33.38

50. Despite the fact that respondent was no longer legal counsel for First Financial Bank, respondent did not:

- Forward the uncashed checks to First Financial Bank.
- Provide First Financial Bank with any notice that he had received these checks.
- Provide First Financial Bank with a full accounting of the checks he received after his termination.
- Deposit the checks into an IOLTA account for safekeeping until any potential dispute over the division of these checks was resolved.

51. Instead, respondent deposited these 38 checks from the debtors of First Financial Bank into the non-IOLTA account denominated Norbert Doellman Trustee Account that he maintained at Key Bank, account number XXXXXXXX0095.
52. Pursuant to their fee agreement, Respondent owed two-thirds of the \$2,764.46 in collected funds -- \$1,842.97 -- to First Financial Bank.
53. Respondent did not forward any of the funds from these checks to First Financial Bank.
54. Respondent's Key Bank account balance regularly fell below the \$1,842.97 owed to First Financial Bank. For example, the account balance on August 24, 2001 was \$88.98, on September 27, 2001 was \$193.78 and on November 28, 2001 was \$290.11.
55. Respondent expended the funds from these checks owed to First Financial Bank for his business and personal expenses.
56. Respondent has agreed to pay \$1,842.97 to First Financial Bank. (Exhibit 12)

### COUNT III

57. During 2001 and 2002, respondent represented several clients, including MidFirst Credit Union, Augusta Properties, Hamilton Orthopaedic Associates, Mayor Jewelry and Oxfordview Nursing Center. Respondent engaged in collection efforts for these clients.

58. Respondent deposited the funds he collected on behalf of these clients into the non-IOLTA Norbert Doellman Trustee Account.
59. The Norbert Doellman Trustee Account regularly held respondent's personal and/or business funds.
60. The Norbert Doellman Trustee Account was used by respondent to conduct personal and/or business transactions unrelated to the practice of law.

#### STIPULATED VIOLATIONS

61. Respondent's conduct as set forth in Count I violates the Code of Professional Responsibility: DR 1-102(A)(6) [a lawyer shall not engage in conduct that adversely reflects upon his fitness to practice law]; and DR 9-102(A) [all funds of clients paid to a lawyer or law firm, other than advances for costs and expenses, shall be deposited in one or more identifiable bank accounts and no funds belonging to the lawyer or law firm shall be deposited therein].
62. Respondent's conduct as set forth in Count II violates the Code of Professional Responsibility: 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 or law firm, other than advances for costs and expenses, shall be deposited in one or more identifiable bank accounts and no funds belonging to the lawyer or law firm shall be deposited therein]; 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 and

render appropriate accounts to his client regarding them]; and DR 9-102(B)(4) [a lawyer shall promptly pay or deliver to the client as requested by the client the funds, securities or other properties of in possession of the lawyer which the client is entitled to receive].

63. Respondent's conduct as set forth in Count III violates the Code of Professional Responsibility: DR 1-102(A)(6) [a lawyer shall not engage in conduct that adversely reflects upon his fitness to practice law]; and DR 9-102(A) [all funds of clients paid to a lawyer or law firm, other than advances for costs and expenses, shall be deposited in one or more identifiable bank accounts and no funds belonging to the lawyer or law firm shall be deposited therein].

#### **DISPUTED VIOLATIONS**

64. Relator contends that Respondent's conduct as set forth above violates these additional Code sections: In Count I, DR 1-102(A)(5) [a lawyer shall not engage in conduct that is prejudicial to the administration of justice]. In Count II violates the Code of Professional Responsibility, DR 1-102(A)(4) [a lawyer shall not engage in conduct involving fraud, deceit, dishonesty, or misrepresentation]; DR 1-102(A)(5) [a lawyer shall not engage in conduct that is prejudicial to the administration of justice]; and DR 9-102(B)(1) [a lawyer shall promptly notify a client of the receipt of his funds]. In Count III, DR 1-102(A)(5) [a lawyer shall not engage in conduct that is prejudicial to the administration of justice].

#### **STIPULATED MITIGATION**

65. Respondent has no prior disciplinary record.
66. Respondent has cooperated in the disciplinary process.

### STIPULATED EXHIBITS

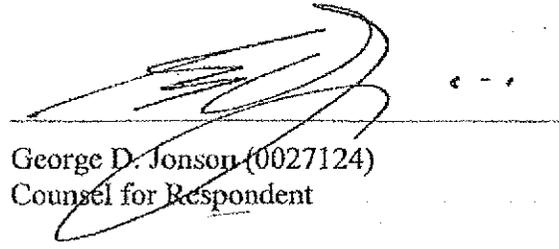
- Exhibit 1 Docket for *First National Bank of Southwestern Ohio v. Doellman*, Case No. CV 2001 1399
- Exhibit 2 First Financial Bank's Complaint.
- Exhibit 3 Respondent's Answer and Counterclaim.
- Exhibit 4 Respondent's April 16, 2002, letter to Judge Sage.
- Exhibit 5 March 17, 2003, Diagnosis letter from Michael E. Miller, M.D.
- Exhibit 6 Twelfth District Court of Appeals decision in *First National Bank of Southwestern Ohio v. Doellman*, 2005 WL 406212
- Exhibit 7 Twelfth District Court of Appeals decision in *First National Bank of Southwestern Ohio v. Doellman*, 2006 WL 846001
- Exhibit 8 Twelfth District Court of Appeals decision in *First National Bank of Southwestern Ohio v. Doellman*, 2007 WL 1394568
- Exhibit 9 Respondent's Key Bank bank account statements for account number XXXXXXXX0095 for June 2001 through April 2002
- Exhibit 10 Ohio Lawyers Assistance Program, Inc. Mental Health Contract and related documents
- Exhibit 11 Jan. 11, 2010, Diagnosis letter from Mary Hattemer, LISW
- Exhibit 12 Respondent's January 25, 2010 letter to First National Bank.
- Exhibit 13 Group Exhibit of Character letters

**CONCLUSION**

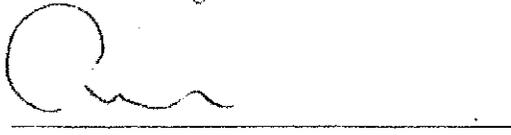
The above are stipulated to and entered into by agreement by the undersigned parties on this \_\_\_\_\_ day of January, 2010.



Jonathan E. Coughlan (0026424)  
Disciplinary Counsel



George D. Janson (0027124)  
Counsel for Respondent



Robert R. Berger (0064922)  
Senior Assistant Disciplinary Counsel



Norbert Mark Doellman, Esq. (0002122)  
Respondent

CONCLUSION

The above are stipulated to and entered into by agreement by the undersigned parties on this 25<sup>th</sup> day of January, 2010.

Jonathan E. Coughlan

Jonathan E. Coughlan (0026424) (by LB  
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