

IN THE SUPREME COURT OF OHIO

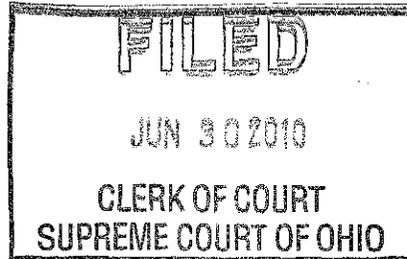
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Case No. 2010-0805

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Relator



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**RESPONDENT'S ANSWER TO RELATOR'S OBJECTION  
TO THE BOARD'S FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND RECOMMENDATION**

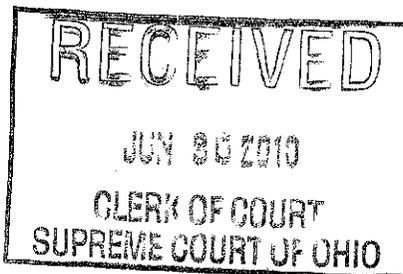
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## **I. INTRODUCTION**

The Hearing Panel (the “Panel”) and the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio (the “Board”) carefully weighed the live testimony, exhibits, and stipulated facts before recommending a 12-month stayed suspension of Respondent Norbert M. Doellman. (Findings of Fact, Conclusions of Law, Report, and Recommendations of the Board, “Report,” attached at Appendix A.) Now, Relator takes issue with the Board’s Report, based on its argument that—notwithstanding the findings of the Board—Respondent’s intentions must have been deceitful.

Because the Board appropriately weighed the evidence, the aggravating and mitigating factors, and Ohio case law, Respondent accepts the Board’s Report and its recommended discipline of him in this matter. Further, Respondent opposes Relator’s objections.

### **A. Facts**

Relator and Respondent stipulated to the material facts before the hearing, and the Board provided a succinct and accurate summary of the facts in its Report. Taken together, these recitations of the facts obviate the need for Respondent to offer his own version of the facts here. Instead, Respondent incorporates the Agreed Stipulations and Findings of Fact contained in the Report by reference. (Agreed Stipulations, “Stipulations,” attached at Appendix B.)

As is indicated in the Stipulations and the Report, at the time of the hearing herein, First Financial Bank had a pending adversary action in Respondent’s bankruptcy case. (Stipulations, ¶ 42; Report, ¶¶ 36.) In that adversary action, the United States Bankruptcy Court for the Southern District of Ohio was asked to determine whether the conduct of Respondent that led to a \$279,292 judgment assessed against him in favor of his former client, First Financial Bank, was the result of fraud. (Stipulations, ¶ 41; Report, ¶¶ 21, 23, 36.) That adversary action has

now been resolved in Respondent's favor: On March 30, 2010, the Bankruptcy Court held the judgment was dischargeable because there was no evidence Respondent acted with an improper or fraudulent purpose in performing his collection work for First Financial Bank. (Decision, attached at Appendix C, at p. 9.<sup>1</sup>) Rather, the Bankruptcy Court found Respondent's actions were merely negligent. *Id.* In addition, the Bankruptcy Court held there was no reliable basis for the method employed by the trial court to arrive at the amount of the judgment: \$279,292. *Id.*, pp. 10-13 (“[First Financial’s] proposed damage amount is rife with inconsistencies and a lack of logic. It has no basis in the actual relationship between plaintiff and defendant.”). Because those facts involved the same circumstances that led to the grievance against Respondent, it is appropriate for this Court to take judicial notice of the Bankruptcy Court’s Decision.

**B. Argument**

**1. The facts of this case are not in dispute.**

Respondent performed collection work for a bank and a number of other clients. His conduct, stipulated herein, violated the Code of Professional Responsibility. Respondent did not dispute that his conduct violated the Code. Weeks before the hearing took place, Relator and Respondent reached 60 factual stipulations that detailed Respondent’s conduct and eight violations of the Code. The Panel accepted these stipulated facts, and the Board repeated many of them in its Report. Now, in its objections to that Report, Relator restates these same facts, but characterizes Respondent’s testimony about his actions as excuses. Respondent, however, did not seek to have his conduct excused, as evidenced by his willingness to stipulate to eight

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<sup>1</sup> This Court must judicially notice the Decision of the Bankruptcy Court, as it is derived from “a source whose accuracy cannot reasonably be questioned,” *Disciplinary Counsel v. Sargeant*, 118 Ohio St. 3d 322, 2008-Ohio-2330, 889 N.E.2d 96, at ¶ 24, citing Evid. R. 201 (B); see also Evid. R. 201(D) (“When Mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.”).

violations. Respondent testified about his work as a collections attorney to allow the Board to consider his misconduct in the appropriate context.

While Relator challenges the conclusions of the Board, he does not allege that the Board misperceived any facts. Relator argues the Board did not afford certain facts sufficient weight in reaching its recommended sanction. Obviously, the Panel had the opportunity to observe Respondent's demeanor while testifying and thereby assess his credibility and truthfulness. This Court should adopt the Board's recommendation because it was based on an appropriate consideration of the evidence.

2. **The Board reached its recommended sanction after carefully reviewing the evidence, most of which was stipulated to by the parties.**

The Board has recommended Respondent be suspended from the practice of law for one year. However, in light of the factual circumstances and the aggravating and mitigating factors, the Board recommended the suspension be stayed on conditions. This recommended sanction is not a finding that the Respondent's conduct did not violate the Code, nor is it a finding that no sanction is appropriate. In fact, much of what the Board concluded about Respondent in its recommendations was extremely critical. For example, they referred to his conduct in the previous litigation as "dilatory." (Report, ¶ 17.) Later, the Board described Respondent's decision to withhold the funds from a client in a non-IOLTA account he controlled as "wrong." (Report, ¶ 51.)

The Board found the Relator proved by clear and convincing evidence that Respondent committed 10 violations of the Rules of Professional Conduct—eight that had been previously stipulated, and two that were disputed. Relator incorrectly states that the Board failed to find that Respondent violated DR 1-102(A)(5); in actuality, the Board determined Respondent *did* violate DR 1-102(A)(5) in Count II, but not in Counts I and III.

Therefore, the Court should adopt the Board's recommendation because it is clear the Board fully appreciated Respondent's misconduct and the context of that misconduct when it arrived at the recommended sanction.

3. **Respondent's conduct has repeatedly been shown to lack a deceitful motive.**

Many of Relator's objections to the Board's recommendation are based on the contention that Respondent's actions were deceitful or executed with a selfish motive. But Respondent's conduct—both in the midst of his misconduct and throughout the disciplinary process—belies Relator's theory about Respondent's state of mind. For example, during the underlying litigation with First Financial, Respondent did not hide the fact that he was withholding client funds. This was a violation of the Rules of Professional Conduct, but it was not deceitful. The Board agreed.

The Board, Respondent, and Relator all agree Respondent's actions were wrong, yet the Board agreed with Respondent's view—and not Relator's view—that Respondent's conduct was not deceitful nor executed with a selfish motive. Now, a Bankruptcy Court decision demonstrates that yet another finder of fact determined that Respondent's actions were not deceitful. And while the bankruptcy decision is certainly not binding on this Court, it demonstrates that the evidence reasonably supported the Board's conclusion that Respondent's misconduct was not deceitful.

Therefore, the Court should uphold the Board's finding that Respondent's conduct was not deceitful or selfishly motivated.

4. **The Board appropriately weighed aggravating and mitigating factors and compared Respondent's violations with those from case law in recommending the appropriate sanction for Respondent.**

The Board found that Respondent committed 10 violations of the Code of Professional Responsibility. However, the Board also found five mitigating factors and one aggravating

factor: The Board noted Respondent had no prior disciplinary record; made full and free disclosure of his conduct; exhibited a cooperative attitude; had a good reputation among friends and clients; had already been sanctioned for his conduct related to the litigation; and had promised to make restitution to First Financial.

In its recommendation, the Board noted that the case law Relator cited in support of imposing harsher discipline involved a finding of dishonesty, fraud, deceit, or misrepresentation not present here, as well as other aggravating factors, including a failure to participate in the disciplinary process. (Report, ¶ 49.) Because Respondent was cooperative and had no prior history of discipline, it was not out of line with Ohio case law to recommend a lesser sanction than that requested by Relator.

The vast majority of cases in which discipline is sought for an attorney's improper handling of client funds involve theft, intentional misappropriation, or deceit; in those instances, it is appropriate to impose a harsher penalty than the one recommended here. See e.g., *Akron Bar Ass'n. v. Dietz*, 108 Ohio St. 3d 343, 2006-Ohio-1067, 843 N.E.2d 786 (indefinite suspension); *Disciplinary Counsel v. Hunter*, 106 Ohio St. 3d 418, 2005-Ohio-5411, 835 N.E.2d 707 (disbarment); *Disciplinary Counsel v. Kurtz*, 82 Ohio St. 3d 55, 1998-Ohio-278, 693 N.E.2d 1080 (indefinite suspension); *Columbus Bar Ass'n. v. Kostelac*, 80 Ohio St. 3d 432, 1997-Ohio-285, 687 N.E.2d 408 (24 month suspension, 18 months stayed).

However, in cases where the attorney showed no improper motive or deceit, this Court has imposed sanctions similar to the one here. See, e.g., *Disciplinary Counsel v. Vivyan*, 125 Ohio St. 3d 12, 2010-Ohio-650, 925 N.E.2d 947, at ¶¶ 7-12. *Vivyan* cited other cases where lawyers misused client trust accounts—all ranged from a one-year suspension, all stayed on conditions; to a six-month conditionally stayed suspension; to a public reprimand: *Disciplinary*

*Counsel v. Fletcher*, 122 Ohio St. 3d 390, 2009-Ohio-3480, 911 N.E.2d 897 (respondent did not have an operating account for five years; paid his personal and business expenses from the IOLTA account; wrote at least 150 checks from this account; and received a 6 month stayed suspension); *Disciplinary Counsel v. Johnston*, 121 Ohio St. 3d 403, 2009-Ohio-1432, 904 N.E.2d 892 (one year suspension, all stayed, for respondent using IOLTA account for operating and personal expenses for two years, commingling his own funds with his clients’); *Cuyahoga Cty. Bar Assn. v. Nance*, 119 Ohio St. 3d 55, 2008-Ohio-3333, 891 N.E.2d 746 (respondent failed to maintain client funds in an identifiable bank account separate from his own, misusing his client trust account; he received a six month stayed suspension with conditions); *Columbus Bar Assn. v. Peden*, 118 Ohio St. 3d 244, 2008-Ohio-2237, 887 N.E.2d 1183 (six month suspension, all stayed, where respondent had no IOLTA account and also violated Gov. Bar V(4)(G)); *Disciplinary Counsel v. Newcomer*, 119 Ohio St. 3d 351, 2008-Ohio-4492, 894 N.E.2d 50 (six month suspension, stayed, when respondent’s personal account was closed by his bank, and he then used the IOLTA account for personal expenses).

This Court has “consistently recognized that in determining the appropriate length of the suspension and any attendant conditions, [it] must recognize that the primary purpose of disciplinary sanctions is not to punish the offender, but to protect the public.” *Disciplinary Counsel v. Fumich*, 116 Ohio St. 3d 257, 2007 Ohio 6040, 878 N.E.2d 6, at ¶ 17. Here, as in *Disciplinary Counsel v. Croushore*, 108 Ohio St. 3d 156, 2006-Ohio-412; 841 N.E.2d 781, at ¶¶9-10, “with the probationary supervision recommended by the board, . . . respondent’s misconduct will not be repeated.” *Id.* (imposing 12 month suspension, entirely stayed on the condition that he commit no further misconduct during that term. If respondent violated the

condition, the stay would be lifted, and respondent would serve the entire term as a period of actual suspension.).

Here, the Board determined that Respondent did not commit the violations with a deceitful motive. Therefore, this Court should adopt the Board's recommendation because it is in line with Ohio case law when the specific violations are viewed in light of the appropriate aggravating and mitigating factors.

## II. CONCLUSION

For the foregoing reasons, Respondent asks this Court to accept the Findings of Fact, Conclusions of Law, and Recommendation of the Board of Commissioners on Grievance and Discipline, and suspend Respondent, Norbert Mark Doellman, 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.

Respectfully submitted,



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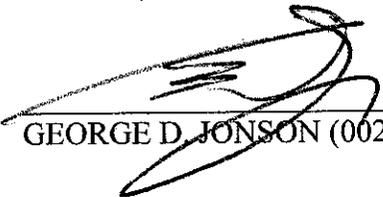
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CERTIFICATE OF SERVICE

I served a copy of the foregoing by First-Class U.S. Mail, postage prepaid, upon the following on this 29<sup>th</sup> day of June, 2010:

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GEORGE D. JONSON (0027124)

# Appendix A

ORIGINAL

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 Attorney Reg. No. 0002122	:	Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio
<u>Respondent,</u>	:	
Disciplinary Counsel	:	
<u>Relator.</u>	:	

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.

FILED  
MAY 06 2010  
CLERK OF COURT  
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. Claflin*, 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.

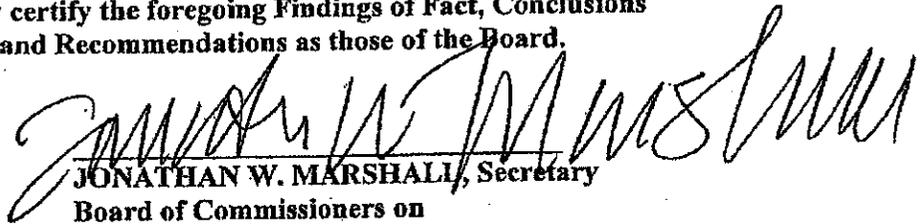
52. The primary purpose of disciplinary sanctions is not to punish the offender but to protect the public. See, e.g., *Disciplinary Counsel v. O'Neill*, 103 Ohio St.3d 204, 2004-Ohio-4704. The Supreme Court has in other cases taken into account that the Respondent is not likely to ever repeat his transgressions. 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**

# Appendix B

**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)

**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.

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].

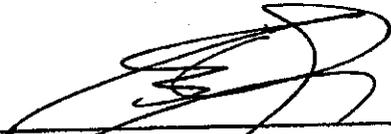
#### **STIPULATED MITIGATION**

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

**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. Jonson (0027124)  
Counsel for Respondent

\_\_\_\_\_  
Robert R. Berger (0064922)  
Senior Assistant Disciplinary Counsel

  
\_\_\_\_\_  
Norbert Mark Doellman, Esq. (0002122)  
Respondent

# Appendix C

This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.

IT IS SO ORDERED.



*Burton Perlman*  
Burton Perlman  
United States Bankruptcy Judge

Dated: March 30, 2010

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

In Re:	)	
	)	
Norbert M. Doellman, Jr.	)	Case No. 08-11129
	)	
	)	Adversary No. 08-1099
Debtor	)	Chapter 7
	)	
-----	)	
First Financial Bank	)	
	)	Judge Burton Perlman
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Norbert M. Doellman, Jr.	)	
	)	
	)	
Defendant.	)	

**DECISION**

This adversary proceeding arises in the Chapter 7 bankruptcy case of debtor Norbert

M. Doellman, Jr., debtor in the bankruptcy case, defendant in this adversary proceeding. Plaintiff First National Bank, NA, is a bank for whom defendant used to do collection work. Defendant is an attorney. The nature of the complaint in the adversary proceeding is to seek relief pursuant to 11 U.S.C. § 523(a)(4), to deny discharge of the debt allegedly owed plaintiff by defendant because of "fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny."

Defendant's bankruptcy case was preceded by extensive litigation in the Common Pleas Court for Butler County, Ohio. The outcome in the state court was a holding of liability and fixing of a damage amount. Plaintiff sought summary judgment in this court on the basis of the record in the state court, but that motion was denied.

The proceeding came on for trial in this court. After the trial, plaintiff made a Motion to Reopen the Trial which defendant opposed. The Court denied the motion. Plaintiff presented the Court with a complaint filed by the Ohio Bar Association's Disciplinary Counsel alleging professional misconduct on defendant's part while acting as plaintiff's collection attorney. The complaint alleges that defendant misappropriated \$1,842.97 that should have been forwarded to plaintiff.

At the trial the only witness to testify in court was defendant. James Deller was the officer of plaintiff to whom defendant reported at the time of the of the events with which this litigation is concerned. Deller could not appear at the trial, but the parties stipulated that defendant could take Deller's deposition prior to the trial, and defendant did so. Deller had also testified in the state court matter on February 3, 2003. The parties then presented a stipulation for the trial here "that if called to testify at the trial, Mr. Deller would testify consistently with the transcripts" of the testimony by Deller in the state court, and the

testimony of Deller at the deposition by defendant. The parties further stipulated that these two transcripts were admissible in evidence.

The findings of fact of the court follow. Defendant is an attorney who was admitted to practice in 1976, and began work as a collection attorney for plaintiff in 1979. That defendant was a fiduciary with respect to plaintiff is not disputed by defendant. Defendant was not the only collection attorney retained by plaintiff. For most of the defendant's representation of plaintiff, the bank officer of plaintiff who was defendant's contact was Mr. Lackey, and his assistant, Ms. Sorrell. Defendant customarily talked by phone with both Lackey and Sorrell every day and defendant had a friendly relationship with them. But Lackey died, and was succeeded by Deller. Defendant testified that Deller began about June 1, 2000.

Deller was vice president and director of collections for plaintiff, in which capacity he oversaw collections for plaintiff and their subsidiaries. He oversaw the processes at the bank prior to the time that accounts were sent out to collection attorneys. An open account, that which had not been paid by the debtor, would, before being charged off by the plaintiff, would stay on plaintiff's open books for approximately 120 days. At the end of 120 days, if uncollected, the account would be charged off and moved from the open collection group of plaintiff to plaintiff's recovery group. The recovery group would work the account for thirty days to determine if there was any likelihood of readily available cash that they could attach. If the recovery group was unable to liquidate the account at the end of thirty days, then it was assigned out for collection to collection firms. Collection firms are utilized because after the bank processes, the likelihood of recovery is very low, and plaintiff would not then wish to devote further resources to the account. Plaintiff employed other attorneys

in addition to defendant to collect accounts for it. Collectors were only paid if there was collection on the account. Different accounts were sent to different collectors.

Defendant's testimony at trial was undisputed regarding his accounting practices. Plaintiff would forward delinquent account files to defendant; who would attempt to collect on these delinquent account files. When defendant received a payment from a file defendant was collecting on, whether the payment was a check, money order or cash, defendant would photocopy the payment and place that photocopy in the respective account's file kept in defendant's office.

Debtor would then take the original payment, attach a deposit ticket to the payment with the account's name printed on the deposit ticket, and place these into an envelope. Defendant would then take the envelope and deposit the payments. After defendant made the deposits, defendant would keep each deposit's ticket which had the printed name of the account on the deposit ticket. This served as a record of the payment on that account. Defendant kept these labeled deposit tickets in an envelope.

Twice a month, on the fifteenth and the last day of the month, defendant would prepare and send plaintiff a letter providing an accounting of the different files the defendant was collecting. This letter provided the amount collected on files, defendant's one third fee, plaintiff's two thirds, and the amount remaining to be collected on the files. Defendant generated this letter using only the labeled deposit tickets defendant had collected for that 15 day period, after which the labeled deposit tickets were discarded. A check for plaintiff's two thirds was included with the letter. Defendant would write himself a check for his one third upon depositing the collected payments and making sure that any payment in the form of a check, had cleared.

As a result of the above accounting system, the only retained proof that a payment had been made on a file was the photocopy of the payment that had been placed into each respective account's file. Primarily defendant did all of the accounting, however, his wife on occasion assisted. All payments were deposited into either an account with First Financial, Key Bank or Fifth Third Bank. Defendant testified that he used three accounts to maintain a business relationship with all three banks. Defendant would always transfer the deposited amounts from the Key Bank and Fifth Third Bank accounts into the First Financial account before writing plaintiff the check for the two thirds collected on its behalf. None of these accounts were IOLTA (interest on lawyer trust account) accounts. The foregoing had been defendant's practice through his many years representing plaintiff.

The court cannot find in the record any evidence throughout the twenty two year period, of defendant's work for plaintiff that plaintiff had any reason to believe that there had been misconduct on the part of defendant, nor had plaintiff raised any question as to how defendant conducted his practice.

Deller terminated defendant's relationship with plaintiff in March 2001. The precipitating factor for the termination was a call by one Michael Murray to plaintiff. Murray was a debtor of plaintiff, whose account had been sent to defendant for collection. Plaintiff held a lien on Murray's property obtained by defendant. Murray had sent a check in payment of the debt owed plaintiff to defendant, but the lien was not released. Thereupon, Murray called plaintiff to complain. An exhibit in the trial record is a check dated March 8, 2001 written by Attorneys Abstract Funding Acct in the amount of \$6,531.66, on its face saying it is for Michael Murray. The reverse side of the check shows an endorsement by defendant and a deposit date of March 9, 2001. The check did not clear until March 15,

2001. Attached to the reproduction of the check is a memorandum from Attorneys Abstract Title to defendant. The memorandum says that the check is "in full satisfaction of its [Attorneys Abstract Title] judgment against Michael Murray. Kindly send us a copy of the filed release." At the state court trial, Deller testified that this payment was never turned over to plaintiff. It should be stated that at the time Deller testified before the state court, an order had been entered finding the question of liability had been resolved against defendant, and when Deller testified, it was limited to the question of damages. At his deposition taken just prior to the trial in this court, Deller testified, however, that he did not know whether plaintiff ever received the money that had been paid to Doellman on the Murray account.

Plaintiff's Deller terminated defendant's services on March 15, 2001. Defendant stated that Deller did not inform him about the possible Murray discrepancy at that time; defendant did not learn about this incident until a much later date. Under defendant's normal practices, he always waited for funds paid by check to clear before forwarding proceeds to plaintiff.

Subsequent to his termination, defendant received a number of payments on plaintiff's account files in envelopes which the defendant did not open or account for. Defendant testified that his mental illness caused him to not care, and to be unable to promptly forward these payments to plaintiff. Sometime in 2004, defendant located these enveloped payments, gave them to his then counsel, Mr. Stich, who in turn gave them to plaintiff's counsel.

Defendant testified that in April 2002, he was diagnosed with severe clinical depression. Defendant was exempted from Ohio's CLE (continuing legal education)

requirements for defendant's law license due to his mental illness. Defendant testified that his mental illness caused defendant to "not care" about properly maintaining his law practice or personal life. Defendant's income is currently derived from social security disability due to his severe clinical depression.

In this case, Plaintiff seeks relief under 11 U.S.C. § 523(a)(4). The statute there provides:

§ 523. Exceptions to discharge.

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

\* \* \*

(4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny;

\* \* \*

The applicable law relative to this statutory provision has been recently stated by the Sixth Circuit:

This does not end the case, however, because there remains the question whether Patel breached his duty via defalcation of money owed to Shamrock. This Court has defined defalcation "to encompass embezzlement and misappropriation by a fiduciary, as well as the failure to properly account for such funds" In re Blaszak, 397 F.3d [386, 390 (6<sup>th</sup> Cir. 2005)]. Shamrock latches on to this latter phrase to claim that the debt is non-dischargeable as "defalcation per se." Yet no such doctrine exists—this Circuit has never countenanced "innocent" or merely "negligent" defalcation.

The most influential early definition of defalcation came from Judge Learned Hand's "carefully equivocal opinion" <sup>FN3</sup> in Central Hanover Bank & Trust Co. v. Herbst, where he stated that because defalcation" ought not to be redundant with

"fraud" and "embezzlement" (also prohibited by the statute), subjective, deliberate wrongdoing was not an element required to establish defalcation. 93 F.2d 510, 512 (2d Cir. 1937). Yet Judge Hand went on to point out that the party in Herbst "had not been entirely innocent," id., thus implying that purely innocent mistakes were not sufficient, and in any event expressly reserving that question. Id.

Contra Herbst, however, some circuits have held that "defalcation" might include "innocent" or merely negligent conduct. See Republic of Rwanda v. Uwimana (In re Uwimana), 274 F.3d 806, 811 (4<sup>th</sup> Cir. 2001); Lewis v. Scott (In re Lewis), 97 F.3d 1182, 1186 (9<sup>th</sup> Cir. 1996).

FN3. In re Baylis, 313 F.3d 9, 18 (1<sup>st</sup> Cir. 2002)

But not so in the Sixth Circuit. In Johnson, we carefully explained that defalcation in the MBTFA context occurs when evidence supports "the objective fact that monies paid into the building contract fund were used for purposes other than to pay laborers, subcontractors or materialmen first is sufficient to constitute a defalcation under section [523](a)(4) so long as the use was not the result of mere negligence or a mistake of fact." In re Johnson, 691 F.2d [249, 257 (6<sup>th</sup> Cir. 1982)]. Thus, there is no such thing as "defalcation per se" and instead the debtor must have been objectively reckless in failing to properly account for or allocate funds. Johnson, 691 F.2d at 257.

In re Patel, 565 F. 3d 963, 970 (6<sup>th</sup> Cir., 2009)

There is no question that there existed a fiduciary relationship between plaintiff and defendant during the period that defendant acted as a collection attorney for plaintiff. The question, then, is whether defendant committed a defalcation while in that fiduciary capacity. The evidence in this case from the record before the court establishes that from the period between 1979 and March 2001 defendant acted faithfully in his capacity as a collection lawyer for plaintiff. Plaintiff then terminated defendant after this twenty-two year period. It did so because of the Murray incident. Murray was an account that had been

sent to defendant for collection. Defendant had obtained a judgment and a lien on the Murray residence. On March 8, 2001, a check was sent to defendant to pay the Murray debt in full. Defendant deposited the check on March 9, 2001. The check did not clear until March 15, 2001. Until the check cleared, defendant would neither forward to plaintiff its entitlement on the account nor would he cancel the lien on the Murray property. At sometime between March 8, 2001 and March 15, 2001, Murray called plaintiff, complaining that the lien had not been removed from his residence, though the debt had been paid. On the basis of that telephone complaint, plaintiff terminated its relationship with defendant. The termination occurred even though the Murray check had not yet cleared the bank so that the lien had not been cancelled. This action by the plaintiff caused a termination of defendant's main source of income. It sent him into a depression which caused him not to process payments made to him for debts owed the bank. He had some payments after the termination, and in 2004 forwarded them to plaintiff.

As we have stated, defendant, after his termination by plaintiff, did not process payments intended for plaintiff. It is plaintiff's position that this retention, in and of itself, makes out a defalcation on the part of its fiduciary. Plaintiff thus is urging that we should find the facts to be defalcation per se. As the Patel case, from which we have quoted above, establishes, defalcation per se is not the law in the Sixth Circuit. Where the failure to turn funds over to a principal is caused by "mere negligence" the Sixth Circuit standard for defalcation is not met. This we find to be the case here. There is no evidence that defendant utilized funds paid on plaintiff's accounts for any improper purpose. He simply failed to pay them over to plaintiff because his illness caused a failure to function on his part. This was a negligent act.

We hold, therefore, that plaintiff's claim against defendant is dischargeable and its Complaint will be dismissed.

We cannot conclude this Decision without reference to the damage award granted plaintiff by the state court, which plaintiff also seeks in this court, in the amount of \$279,292.00. This number resulted from the testimony by Deller. Even if damages were indicated, the amount awarded by the state court cannot be supported. How Deller arrived at this amount as damages is depicted in plaintiff's Exhibit 4. (Exhibit 4 was introduced and submitted in evidence in the state court, and is in evidence in this Court by reason of the stipulation of the parties.) Exhibit 4 is reproduced below:

NORBERT DOELLMAN  
ACCOUNT RECONCILIATION

FIRST FINANCIAL HISTORICAL AVERAGES				
	2002	2001	2000	1999
CHARGED OFF	\$ 2,875,823	\$ 2,223,675	\$ 1,983,147	\$ 2,070,142
BANKRUPT	\$ 1,200,000	\$ 1,086,969	\$ 779,716	\$ 641,173
GROSS AVAILABLE	\$ 1,675,823	\$ 1,136,706	\$ 1,203,431	\$ 1,428,964
RECOVERIES	\$ 1,071,157	\$ 805,356	\$ 950,702	\$ 836,025
RECOVERY RATE	63.92%	79.65%	79.00%	58.51%
FOUR YEAR AVERAGE RECOVERY RATE				70.27%

1995 →  
\$20,000  
↓  
\$100M  
↓

DOELLMAN ACCOUNT RECONCILIATION	
GROSS AVAILABLE / ASSIGNED TO DOELLMAN	\$ 2,462,316
FOUR YEAR AVERAGE RECOVERY RATE	70.27%
EXPECTED RECOVERIES BY DOELLMAN	\$ 1,730,269
ACTUAL RECOVERIES BY DOELLMAN (1990 - 2001)	\$ 1,090,977
ESTIMATION OF FUNDS COLLECTED PRIOR TO 1990	\$ 360,000
AMOUNT OWING TO FIRST FINANCIAL	\$ 279,292

1999  
↙  
← could

PLAINTIFF'S  
EXHIBIT  
4

(The markings other than the typed letters and numbers are not explained, and are ignored by the Court.)

Deller said that what "Charged Off" meant was that "It left the bank's open books as an asset, so it was no longer an asset of the bank's that was income producing." (Dep. p. 38.). Debtor then proceeded to explain the second line in Exhibit 4, entitled "Bankrupt." Deller then subtracted the "bankrupt" line from the "charged off" line, and the result was the "gross available" line, the third line in Exhibit 4. This is not, however, the amount that was sent out to collectors. It included also the amount recovered by the bank itself during the thirty day recovery period following charge off. (Dep. p. 40-41.) The amount recovered by the bank during the thirty day recovery period is nowhere stated in the record. If it were deducted from the Recoveries, the percentage derived would be lower. After the recovery period for the bank, the accounts are parceled out the among the collectors such as defendant.

The fourth line of Exhibit 4 is entitled "Recoveries." This represents the amount received by plaintiff from all of its collectors (as well as the indeterminate amount recovered by the bank's recovery section). The amount received from the collectors is not, however, only the collections from the accounts included in the "Charged Off" line in Exhibit 4, the first line. Instead, included in the payments by collectors are amounts derived by the collectors without regard to when the account was received by the collector. That is, if a collector received payment on an account which had been assigned to it in 1999 and 2002, that would be included in the recoveries for 2002. There is no relationship between the amounts recovered reported in line 4 of Exhibit 4, and the "Charged Off" line which is the first line in Exhibit 4.

Based on the first four lines of Exhibit 4, Deller derived the "Recovery Rate" in the fifth line of Exhibit 4. He then derived the total amount which had ever been assigned to defendant, applied the average percentage rate he had derived, and subtracted from that the amount actually received from defendant. After making an allowance for the period prior to 1990 for which plaintiff has no records, Deller arrived at the damages claimed of \$279,292.00.

The record, as we have recounted it, shows that the Recovery Rate applied by Deller to defendant's accounts is insupportable. The Gross Available line is invalid because it includes recoveries during the recovery period by the bank, as well as recoveries from collectors. It is not fair to apply a recovery rate to defendant which is not based on collectors' recovery rates. The Recovery Rate derived by Deller is further invalid because it assumes that there is a relationship between the fourth and the first line in Exhibit 4, but there is no relationship. While the charge offs for a given year may be as stated, the recoveries are not just for that year, but include recoveries on accounts assigned in prior years as well.

One's first impression of a 70.27% recovery by collection attorneys is inexplicably high, particularly when as stated by Deller "...the likelihood of recovery is very low..." by collection firms (Dep. p.11). The foregoing remarks make it clear that, indeed, the percentage for recovery rate derived by Deller is too high. In addition to the foregoing, the record shows that prior to 1990, defendant began working for plaintiff in 1979, and the amount allowed for the period prior to 1990, for which plaintiff has no records, is based on a five year period, rather than a twelve year period.

This court finds that the damage amount urged by plaintiff is not proved by a

preponderance of the evidence, and could not be allowed. A damage award must not be based on "mere speculation, guess, or conjecture." John E. Green Plumbing & Heating Co., Inc. v. Turner Constr. Co., 742 F.2d 965, 968 (6<sup>th</sup> Cir. 1984). Plaintiff's proposed damage amount is rife with inconsistencies and a lack of logic. It has no basis in the actual relationship between plaintiff and defendant.

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