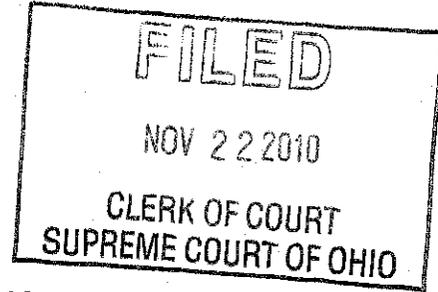


10-2021

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



In Re:	:	
Complaint against	:	Case No. 09-023
Percy Squire	:	Findings of Fact,
Attorney Reg. No. 0022010	:	Conclusions of Law and
	:	Recommendation of the
Respondent	:	Board of Commissioners on
	:	Grievances and Discipline of
Disciplinary Counsel	:	the Supreme Court of Ohio
	:	
Relator	:	

INTRODUCTION

This matter was heard on May 6 and 7, 2010 in Columbus, Ohio, before a hearing panel consisting of members attorneys Charles E. Coulson, John H. Siegenthaler and Judge Arlene Singer, Chair. None of the panel members resides in the appellate district from which the complaint arose or served as a member of the probable cause panel that reviewed the complaint. Respondent appeared pro se and Jonathan E. Coughlan, Disciplinary Counsel, and Karen H. Osmond, staff attorney for Disciplinary Counsel, represented Relator.

Respondent was charged in a five-count complaint with violating the Ohio Rules of Professional Conduct. The parties submitted certain stipulations of fact and conclusions of law, as well as admission of certain exhibits.

Based upon the stipulations of fact submitted by the parties and the testimony and exhibits presented at trial, the panel finds by clear and convincing evidence that Respondent was

admitted to the practice of law in Ohio on November 16, 1981; that he is subject to the Code of Professional Responsibility, the Rules of Professional Conduct and the Rules for the Government of the Bar; and at all relevant times to the misconduct alleged Respondent practiced law as “Percy Squire Co., LLC” and is the sole member of the same. Based on the evidence, the panel makes the following findings of fact and conclusions of law.

Findings of Fact and Conclusions of Law

Count 1

George “Mike” Riley and his father, Anthony Riley, retained Respondent on Friday, December 7, 2007 after meeting with him that day and discussing various pending legal matters. The engagement letter signed by the Rileys contained an agreement for a “flat fee” of \$100,000; \$25,000 acknowledged to have been paid that day, and the balance of \$75,000 to be paid in installments by February 2008. In addition, Mike Riley gave Respondent \$5,000 so that Respondent would begin work immediately. Respondent, in exchange, wrote a \$5,000 check to Mike Riley’s son from his business account. (Respondent testified that Riley originally was going to give the cash to Riley’s son at college.) The \$5,000 in cash was not deposited into Respondent’s business or IOLTA account. (Tr. 48-50)

Also on December 7, the \$25,000 fee payment was deposited into Respondent’s business account via wire transfer from an account in Florida. The \$5000 in cash was given to Respondent so he would begin working on the legal matters for the Rileys that weekend. The parties did not expect that the \$25,000 wired to Respondent’s account would be credited to his account until the following Monday morning.

During this same meeting, apart from the issues of legal representation, Respondent and Mike Riley discussed Riley's help in brokering financing for the acquisition of a local radio station by Respondent.

The following Monday, December 10, 2007, Riley informed Respondent that he no longer needed his legal services and asked him to deduct his earned expenses from the December 7 meeting and return the balance of the \$25,000. (Tr. 54-55) Respondent testified that he and his staff worked approximately 14 hours that weekend on the Riley matter. Respondent stated that his hourly rate at that time was \$250. On December 10, by the close of the day, a balance in excess of \$5000 was in Respondent's business account. (Res. Ex. 1 and Stip. Ex. 2) However, Respondent informed Riley he had spent the funds and was unable to return the \$25,000. (Tr. 55-56) Respondent then gave Riley a promissory note from Percy Squire., LLC to return the entire \$25,000 by January 10, 2008. (Tr. 61) The terms of note included that overdue payments of interest and principal will bear an "interest rate of 12% per annum payable immediately" and that "overdue penalties will accrue at a rate of 18% commencing January 11, 2008." On the same day, Respondent provided Riley with a copy of the letter of intent drafted for Respondent to purchase the radio station for \$3,000,000. (Tr. 60) Respondent did not discuss any conflict of interest with Riley prior to execution of the note, or advise him to seek independent counsel regarding the note and any participation in the radio station purchase. Respondent failed to timely repay the note, and on March 11, 2008, Mike Riley paid a visit to Respondent's office. Respondent at that time, at Riley's request, issued a post-dated, March 12, 2008 check from his business account payable to Mike Riley for \$25,000. Riley attempted to cash the check that day, but there were insufficient funds in the account. (Tr. 63-64) Respondent then gave him a cashier's check for \$25,000.

Respondent was charged in this count with violating the following disciplinary rules:

- Prof. Cond. R. 1.7(a)(2) - A lawyer's representation of a client creates a conflict of interest if the lawyer's ability to consider, recommend, or carry out an appropriate course of action for that client will be materially limited by the lawyer's responsibilities to another;
- 1.7(b)(2) - A lawyer shall not accept or continue the representation of a client if there is a conflict of interest without informed consent;
- 1.8(a) - A lawyer shall not enter into a business transaction with a client unless the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel and the client gives informed consent;
- 1.15(a) - A lawyer shall hold property of clients separate from the lawyer's own property;
- 1.15(c) - A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred;
- 1.16(e) - A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned;
- 8.4(c) - Conduct involving dishonesty, fraud, deceit, or misrepresentation; and
- 8.4(h) - Conduct that adversely reflects on the lawyer's fitness to practice law.

Respondent argues that the promissory note was not a business transaction with Riley, that the \$25,000 was a portion of the \$100,000 agreed upon, and that it was a flat fee that he could place in his business account. He argues further that, by issuing the promissory note, he fulfilled his obligation to promptly refund the fees.

The panel finds that the Relator has failed to prove by clear and convincing evidence a violation of Prof. Cond. R 1.7(a) and (b) and 1.8(a). Mike Riley terminated Respondent's representation before Respondent issued a promissory note to Riley. Further, Respondent gave Riley the letter of intent to purchase the radio station in order for Riley to assist Respondent in obtaining financing after or at the same time that Riley terminated Respondent's representation.

The panel also finds that Relator has failed to prove by clear and convincing evidence a violation of Prof. Cond. R. 8.4(c). Relator argues that Respondent had approximately \$5000 in his operating account on Monday December 10 when he told Mike Riley that he did not have the \$25,000, but would write a promissory note for that amount. The panel finds this evidence is insufficient to find a violation.

The panel therefore recommends the dismissal of the Prof. Cond. R 1.7(a) and (b), 1.8(a) and 8.4(c).

Respondent stipulated to violating Prof. Cond. R. 1.15(a) and (c.). However, at the hearing Respondent disputed a violation of Prof. Cond. R. 1.15(c.) Respondent relies on Board Op. 96-4 for justification for putting the \$25,000 “flat fee” into his operating account. Relator argues that reliance on the Board Opinion is not dispositive of the issue. Prof. Cond. R. 1.15(c) directs that a lawyer “shall deposit ...legal fees... that have been paid in advance, to be withdrawn by the lawyer only as fees are earned...” The Board’s Advisory Opinion 96-4, adopted prior to the adoption of the Ohio Rules of Professional Conduct, has not been withdrawn and may still offer guidance to similar Professional Conduct Rules. However, Comment [6A] following Prof. Cond. R. 1.5, which addresses fees and expenses, discusses “flat fees” and explains: “A flat fee is a fee of a set amount for performance of agreed work, which may or may not be paid in advance but is not deemed earned until the work is performed When a fee is earned affects whether it must be placed in the attorney’s trust account, see Rule 1.15”

Respondent immediately wrote checks from his operating account upon receipt of the \$25,000 from Riley to the extent that he could not refund any unearned fees just three days later. Respondent spent nearly all of the partial “flat fee” before he did substantial work for the client and kept no records as required.

A majority of the panel found a violation of Prof. Cond. R. 1.15(a) and (c). Therefore the panel finds a violation of Prof. Cond. R. 1.15(a) and (c).

Two of the panel members also found a violation of Prof. Cond. R. 8.4(h). Respondent wrote a check with insufficient funds to repay the note to Riley. Therefore, the panel finds a violation of Prof. Cond. R. 8.4(h).

The panel finds by clear and convincing evidence a violation of Prof. Cond. R. 1.16(e).

Count 2

To pay Mike Riley the \$25,000 referenced in Count 1, on March 12, 2008, Respondent borrowed \$30,000 from a current client, Curtis Jewell, whom Respondent was representing in a lawsuit in the Franklin County Common Pleas Court during the period of May 2006 until May 2009. Respondent executed a promissory note stating that the entire amount was “due and owing if the payment of the \$30,000 was not made before March 18, 2008 and overdue installations of interest and principal shall bear interest at the rate of 12% per annum payable immediately.” It further stated that “In addition, overdue penalties will accrue at a rate of 18% commencing on March 19, 2008.” Respondent did not advise Jewell in writing regarding obtaining the advice of independent counsel or obtain Jewell’s written consent to the essential terms of the transaction, including whether Respondent was representing Jewell. (Stip. 27)

Respondent transferred \$31,000 from his trust account to Jewell on March 17, 2008. In March 2009, in answer to an interrogatory from Relator regarding the source of the \$25,000 provided to Mike Riley, Respondent stated that the \$25,000 was loaned by Jewell and repaid to him the following week from funds borrowed from Bishop Norman L. Wagner. When asked to identify the terms of the loan “as they were explained” to Jewell, Respondent stated that “Percy Squire Co, LLC, would borrow \$25,000 for one or two days.” (Stip. 30, 31) Respondent did not

refer to the promissory note or its terms. In October 2009, Respondent stated to Relator that he had borrowed \$28,500 from Jewell and the remaining \$3000 was an interest payment.

Respondent was charged with violating the following disciplinary rules:

- Prof. Cond. R. 1.8(a) - A lawyer shall not enter into a business transaction with a client unless the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel and the client gives informed consent; and
- 8.4(h) - Conduct that adversely reflects on the lawyer's fitness to practice law.

The panel finds that Respondent violated Prof. Cond. R. 1.8(a).¹ The panel recommends dismissal of Prof. Cond. R. 8.4(h).

Count 3

Respondent received \$100,000 by wire transfer on March 17, 2008 and arranged for the funds to be deposited into his IOLTA account. The funds were money borrowed from Bishop Norman L. Wagner, who had borrowed \$100,000 from Huntington National Bank that same date. (Wagner's loan to Respondent was used to pay Curtis Jewell as referenced in Count 2.)

Also on March 17, Respondent signed a promissory note, an indemnification agreement and a security agreement as sole member of Squire LLC, which promised to repay Wagner \$75,000 on or before March 19, 2009. Respondent, again on behalf of Squire LLC, agreed to pay Wagner for all of the interest payments to Huntington National Bank that Wagner paid in connection with the \$100,000 loan. If Respondent failed to pay the amounts owed by March 19, 2009, Wagner was authorized to obtain a judgment against Squire LLC without notice and that Squire LLC would hold Wagner harmless if there was a default on the \$100,000 loan from Huntington National Bank. The collateral included:

¹ Respondent argues that he did not violate Prof. Cond. R. 1.8(e); Respondent was not charged with violating Prof. Cond. R. 1.8(e), rather the charge cited Prof. Cond. R. 1.8(a).

“1. All accounts, contract rights, instruments, documents, chattel paper, and all obligations in any form arising out of the sale or lease of goods or the rendition of services by [Squire LLC];

2. All general intangibles, chooses in action. Causes of action. Obligations or indebtedness owed to [Squire LLC] from any source whatsoever, and all other intangible personal property of every id and nature...”

The security agreement also provided:

“1. Any officer, employee or agent of [Wagner] shall have the right, at any time or times hereafter, in the name of [Wagner] or its nominee to verify the validity, amount or any other matter relating to any Accounts by mail, telephone, or otherwise. [Wagner] or its designee may at any time notice Account Debtors that Accounts have been assigned to [Wagner] or on [Wagner’s] security interest therein, and after default by [Squire LLC] collect the same directly...”

2. [Squire LLC] appoints [Wagner] or [Wagner’s] designee as its attorney-in-fact to endorse [Squire LLC] name on any checks, notes acceptances, money orders, drafts or other forms of payment or security that may come into [Wagner’s] possession...to notify post office authorities to change the address for delivery of [Squire LLC’s] mail to an address designated by [Wagner]. To receive and open all mail addressed to [Squire LLC] and to retain all mail relating to Collateral and forward all other mail to [Squire LLC], to send requests for verification of Account to customers or Account Debtors, and to do all things necessary to carry out this Agreement. [Squire] ratifies and a[proves all acts of [Wagner] as attorney-in-act. ...Any person dealing with [Wagner] shall be entitled to conclusively rely on any written or oral statement of [Wagner] or his designee that this power of attorney is in effect.”

As of the date of the hearing, Respondent had not repaid Wagner any of the principal due on the note.

In response to August 10, 2009 inquiries from Relator, Respondent stated that he had received \$75,000, not \$100,000, from Wagner. When questioned again by Disciplinary Counsel, Respondent admitted that he received \$100,000, but asserted that the \$25,000 not documented in the promissory note was payment for his work in the case *Brian Wallace, Administrator of the Estate of Norman E. Wallace v. Case Western Reserve University, et al.* However, when Relator reminded Respondent that he took the case on a contingent fee basis, and therefore the \$25,000 would be clearly excessive, Respondent “gave this further thought.” (Tr. 83)

Respondent testified he made a mistake and he left the extra \$25,000 out of the promissory note

because it was actually to repay a personal debt owed to Mike Riley. (Tr. 80) Respondent has claimed his responses were based on honest mistaken memories rather than stating his inaccuracies were misrepresentations, compounded by inaccurate record keeping. The panel does not find this credible.

When Respondent received the \$100,000 from Wagner, Respondent's IOLTA account contained \$50. On March 17, 2008, Respondent transferred \$25,000 to his Huntington Bank account, paid Curtis Jewell the \$31,500 and used almost \$28,000 for personal or business expenses. From March 17, 2008 after the \$100,000 was deposited, through April 21, 2008, 19 withdrawals and two deposits were made. All payments made during this period were personal or business expenses of Respondent, including repayments of personal loans. The two deposits were Respondent's earned legal fees.

On April 24, 2008, the balance in Respondent's IOLTA account was \$6479.06 when Shearman & Sterling LLP wired \$113,228.18 that belonged to his client Mark Lay. His IOLTA account then contained \$119,707.24.

From April 24, 2008 to June 10, 2008, activity in Respondent's IOLTA account included a \$7500 deposit of Respondent's earned fees, a payment of \$10,000 to DJM Capital to obtain investment banking services for Squire LLC, that was unrelated to Respondent's law practice, a payment to Huntington Bank for interest on the Wagner loan, and payment of personal loans, including a loan from the Prout group. Respondent testified that \$20,000 of the \$113, 228.18 that he had transferred into his operating account was for payment to him for legal work on five separate matters for Lay. One of the legal matters was his representation of Lay in the criminal matter of *United States of America v. Mark D. Lay*. However, Respondent testified that he had

been paid-in-full for the trial by the end of 2007. (Tr. 97-98) Further, Respondent has not produced any billing records or agreements evidencing the earnings for these matters.

Respondent testified that the use of these funds was pursuant to permission given to him by either Lay or Antoine Smalls, as trustee for the "Indenture for the Mark D. Lay Legal Defense and Welfare Fund." Smalls was a vice president of MDL Capital Management, Mark Lay's company, and a friend of Mark Lay. Lay has no recollection of the original money (\$113,228.18) and Smalls testified that he did not become involved with such an indenture fund until June, 2008. (Tr. 114) No documentation supporting use of these funds was produced, including trust account records.²

On June 10, 2008 the balance in Respondent's IOLTA account was \$193.61.

On June 20, 2008 the Mark D. Lay Defense and Welfare Fund was created by Antoine Smalls for acceptance of contributions towards Lay's legal defense and welfare. Smalls sent Respondent a check for \$280,000 representing contributions he had received. Respondent deposited the check into his IOLTA account. (Stip. 61)

From the receipt of this check on June 20 to October 14, 2008 Respondent's IOLTA account activity included payments to Huntington Bank, deposits of client's funds, personal funds or earned legal fees, a loan from Charles Freiburger to Respondent and funds for expenses in another legal matter. An example of the activities in this account explaining the problems with Respondent's use of his IOLTA account is a September 19, 2008 deposit of \$4,466.28 from McCarthy, Lebit, Crystal, and Liffman for expenses related to the *Wallace v Halder* matter, however, there is no record of payment from these funds. As a result of all this activity, the balance in Respondent's IOLTA account on October 14, 2008 was \$289.32.

² Smalls's video deposition was played during the hearing and Lay's deposition, taken at Fort Dix Prison in Fort Dix, New Jersey, on April 21, 2010 was offered as Stipulated Exhibit 76 and received into evidence.

Woven throughout Respondent's bank records are approximately 60 checks made payable to a Wesley Walker. (Tr. 304) Respondent testified that Walker was a "courier" and that Walker would "follow whatever instructions [Respondent] gave him." (Tr. 304) Respondent would write checks to Walker, who would cash the check and return the money to Respondent. Walker appears to be unknown by Respondent's clients, but was involved in the disposition of their IOLTA funds; sometimes a client was noted on the memo portion of the IOLTA check, other times not. According to Respondent, the cash was then used to pay client expenses, Respondent's creditors, Respondent's legal fees, or converted into bank checks by Walker. Walker did not testify before the panel. (Tr. 304)

Also woven throughout the explanation for withdrawals of IOLTA funds for his use, is Respondent's explanation of "borrowing" funds only in an amount that he determined was representing what he considered earned fees for his legal work for Mark Lay and the Trust Fund. Unfortunately, Respondent had no records of billing or agreements with his clients for this practice. Respondent testified that he only took what he could justify in legal work. Monies were repaid with money borrowed from others, such as Wagner, or from Columbus attorney Charles Freiburger.³ Other than the \$150,000 he and another attorney charged Lay for representing him in his criminal case, there was no written or verbal agreement of how he was going to be paid. He would determine what a fair charge was at a later date. (Tr. 308) Lay's understanding was that they would work it out and Respondent would be paid at a later date. Respondent did not send any billing or accounting for his time to Lay. Respondent also testified that he made transfers from the IOLTA account on instructions from either Lay or Smalls. Lay does not recall any specific instructions, and testified that any money from the Trust was not his

³ Respondent testified that by the time of the hearing, he had borrowed \$250,000 from Charles Freiburger, securing the loans by an agreement dated February 26, 2007 in which Respondent assigned his fees from enumerated cases to Freiburger.

and he did not direct any of its use, other than knowing it was to be used for defense expenses and to support his children. Smalls remembers some discussions. Complicating the matter are two MDL trust instruments- one dated June 20, 2008 appointing Respondent as the sole trustee of the Mark D. Lay Defense and Welfare Fund signed by Smalls, and a document dated October 6, 2008 appointing Smalls as the sole trustee of the Mark Lay Legal and Defense Fund (MDL) that was signed by Respondent. These documents are not dispositive of the allegations against Respondent. Smalls and Respondent communicated with each other from June through October of 2008; however, it is not clear what Smalls's understanding of the communications were.

What is clear is that Respondent has not maintained a general ledger for his IOLTA account or individual ledgers for his clients, or all bank statements, deposit slips and cancelled checks for his IOLTA account; Respondent has not done a monthly reconciliation of his IOLTA account and records.

What is also clear is that Respondent floated loans to himself and payments on behalf of himself or others with the MDL funds in his IOLTA account. Smalls acknowledged that he knew about these loans.

Respondent was charged in Count 3 with violating the following disciplinary rules:

- Prof. Cond. R. 8.1(a) - Knowingly making a false statement of material fact;
- 8.4(c) - Conduct involving dishonesty, fraud, deceit, or misrepresentation;
- 1.15(a) - A lawyer shall hold property of clients separate from the lawyer's own property;
- 1.15(c) - A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred;
- 1.5(b) - The nature and scope of the representation and the basis or rate of the fee and expenses shall be communicated to the client, within a reasonable time after commencing the representation;

- 1.6(a) - A lawyer shall not reveal information relating to the representation of a client;
- 1.7(a) and (b) - A substantial risk that the lawyer's ability to consider, recommend, or carry out an appropriate course of action for that client will be materially limited by the lawyer's own personal interests; and
- 8.4(h) - Conduct that adversely reflects on the lawyer's fitness to practice law.

Respondent stipulated to violating Prof. Cond. R. 1.15(c.) The panel finds by clear and convincing evidence that Respondent violated Prof. Cond. R. 8.1(a); 8.4(c); 1.15(a) and (c); 1.5(b) and 8.4(h.)

Prof. Cond. R. 1.6(a) charge relates to the assignment of client fees and records in the security agreement Respondent gave to Wagner (and Freiburger) in exchange for loans, which have not yet been paid. Prof. Cond. R. 1.7(a) and (b) charges relate to the inherent conflicts of interest in these assignments. While there is no evidence of what, if any, client information has been revealed, Relator offers *Disciplinary Counsel v. Shaver*, 121 Ohio St. 3d 393, 2009-Ohio-1385, as argument that actual revelation of client information is not necessary for a violation. In *Shaver*, a violation of Prof. Cond. R. 1.6(a) as well as 1.9(c)(2) was found. Shaver was moving his law office and placed client files in storage. Later the respondent put boxes of client files in a dumpster. The files contained confidential client material.

Only one panel member finds a violation of Prof. Cond. R. 1.6(a) and 1.7(a) and (b). A majority of the panel recommends dismissal of Prof. Cond. R. 1.6(a) and 1.7(a) and (b).

Count 4

On May 9, 2003 Biswanath Halder shot and killed Norman Wallace at the Case Western Reserve University ("CWRU") business school. Norman Wallace was Bishop Norman L. Wagner's nephew. In May 2006, Respondent filed a wrongful death action against Halder, CWRU and others on behalf of the administrator of Norman Wallace's estate, his brother Brian

Wallace. Respondent and attorneys Christian Patno and Robert Glickman performed legal work on behalf of the plaintiff in this case. The docket for this case lists Respondent, Glickman, Patno and attorney Barry Murner as counsel of record, none of whom practices in Respondent's law firm. Their representation was on a contingent fee basis.

Respondent also represented Brian Wallace in Cuyahoga County Probate Court for Norman Wallace's estate, which was opened in April 2005. In December 2008, the probate court removed Brian Wallace as fiduciary of the estate for failing to file an account (first and second partial account were filed previously) and sua sponte dismissed the estate on December 12, 2008.

Local Rule 71.1(D) of the Cuyahoga County Probate Court required the fiduciary to obtain court approval prior to entering into a contingency fee agreement for services with an attorney. No such application was filed in the probate court in the Wallace estate matter.

The Cuyahoga County Probate Court limits under Local Rule 71.2 contingency fees pursuant to a wrongful death case to 33.3% for the first \$100,000 and 30% for any amount over \$100,000. However, upon written application extraordinary fees may be granted. No written application for extraordinary fees was filed in the Wallace wrongful death case.

On March 17, 2008, Bishop Wagner borrowed \$100,000 from Huntington Bank on Respondent's behalf. As explained in Count 3, Respondent received \$100,000, but issued a promissory note to Bishop Wagner for \$75,000. During the investigation, Respondent initially said the \$25,000 discrepancy was for attorney's fees in this probate matter. However, the only plaintiff against whom Respondent secured a judgment in this wrongful death action was the campus gunman, who was judgment-proof and unable to pay. Case Western Reserve University,

a second defendant, was granted summary judgment, which was upheld on appeal and denied rehearing by both the Ohio Supreme Court and the United States Supreme Court.

Upon notification by Disciplinary Counsel that it is clearly excessive to charge an additional flat-fee in a contingent fee case, Respondent changed his story, testifying that the \$25,000 was part of the loan from Bishop Wagner and thus not a fee for his services.

Respondent was charged with violating the following disciplinary rules:

- Prof. Cond. R. 1.5(a) - A lawyer shall not make an agreement for, charge, or collect an illegal or clearly excessive fee;
- 1.5(e) - Dividing fees with lawyers from another firm without the client giving written consent after full disclosure;
- 8.4(c) - Conduct involving dishonesty, fraud, deceit, or misrepresentation; and
- 8.4(h) - Conduct that adversely reflects on the lawyer's fitness to practice law.

Two panel members find that Respondent violated 8.4(h) for "flip-flopping" on his statements, thus casting doubt on his credibility. Respondent also failed to apply to the local probate court prior to entering into a contingency fee agreement.

Therefore, the panel finds that Respondent violated Prof. Cond. R. 8.4(h).

The panel finds that Relator failed to prove violations of Prof. Cond. R. 1.5(a); 1.5(e) and 8.4(c) by clear and convincing evidence. While there is no written agreement to divide attorney fees with attorneys Christian Patno, Robert Glickman or Barry Murner, because this case was to be paid on a contingency fee basis and no fees were collected (other than the \$25,000 that Respondent discussed above) there is no violation. Further the Wallace family was generally aware of the additional legal representation and fee arrangements with these other lawyers. (Tr. 255- 270 and Stip. Ex. 78)

Count 5

Respondent filed an action in the Franklin County Municipal Court on behalf of Patrick Prout in January 2007. A judgment was issued in Prout's favor in June 2007, and when the defendant failed to pay the judgment a motion to show cause was filed. The case was continued to March 2008, at which time the court ordered sanctions against the defendant.

Patrick Prout is the President and CEO of the Prout Group. Respondent borrowed money from the Prout Group seven times during the period of time he represented Patrick Prout. On each occasion, Respondent executed a promissory note to the Prout Group for the amount borrowed each with interest at 12% and overdue penalties at a rate of 18%. On March 17, 2008, Respondent wired \$6000 from his IOLTA account to the Prout Group. (Stip. 91) Respondent did not advise Prout in writing to seek the advice of independent counsel or obtain a written consent from Prout to the essential terms of the transaction or Respondent's role in the transaction. Respondent only dealt with Patrick Prout in regard to these loans, and Prout's assistant who wired the funds to Respondent and kept track of the notes was the only other person at the Prout Group who was aware of the loans.

Relator charged Respondent with violations of these disciplinary rules:

- Prof. Cond. R. 1.8(a) - A lawyer shall not enter into a business transaction with a client unless the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel and the client gives informed consent; and
- 8.4(h) - Conduct that adversely reflects on the lawyer's fitness to practice law.

The question posed is whether representing an individual in a civil case while accepting a loan from that client's business violates this rule.

Here, Respondent stipulated that Patrick Prout is the president and CEO of the Prout Group with whom Respondent dealt with to obtain these loans. Further, Respondent only dealt

with Prout when arranging the terms of the loans. The only other person at the Prout Group involved or who had knowledge of the loans was Prout's assistant, who wired the money to Respondent and kept track of the promissory notes. (Stip. 92) Respondent's Exhibit F describes the Prout Group and lists five individuals on the Prout "team" besides Mr. Prout. No other evidence was presented as to the ownership interests of the Prout group.

The panel finds that the ownership interests of the Prout Group and Patrick Prout are not aligned enough to constitute a violation of Prof. Cond. R. 1.8(a).

Therefore, the panel recommends dismissal of Prof. Cond. R. 1.8(a).

One member of the panel would find a violation of Prof. Cond. R. 8.4(h) because there still exists a conflict of interest under all the circumstances in this transaction.

A majority of the panel recommends dismissal of a violation of Prof. Cond. R. 8.4(h).

MITIGATION AND AGGRAVATION

The panel finds the following mitigating factors pursuant to BCGD Proc. Reg. 10(B)(2):

- (a) no prior disciplinary record;
- (b) good character or reputation. (Witnesses Brian Wallace, the executor of the estate of Norman Wallace and his sister, Kim Wallace testified they had no complaints about the way Respondent handled the estate or wrongful death cases of Norman Wallace. Curtis Jewell volunteered that Respondent was one of the most respected people he knew. (Tr. 283) Respondent at one time served for two years as a law clerk for retired federal Judge Thomas D. Lambros. Judge Lambros testified on Respondent's behalf, with obvious affection and high praise. However, the judge was not familiar with the specifics of this grievance. Respondent also is a graduate of West Point and is a retired army officer.)

The panel finds the following aggravating factors pursuant to BCGD Proc. Reg. 10(B)(1):

(b) a dishonest or selfish motive;

(c) a pattern of misconduct;

(d) multiple offenses;

(f) submission of false evidence, false statements or other deceptive practices during the disciplinary process. (As explained above in Count 3, in response to inquiries from Relator, Respondent stated that he had received \$75,000 not \$100,000, from Bishop Wagner. Later in the hearing Respondent admitted to receiving the entire \$100,000 but asserted that the extra \$25,000 above the \$75,000 in the promissory note, was a flat fee payment for a case in which he was also charging a contingency fee, but when reminded of that issue by Relator he “gave this further thought” (Tr. 83));

(g) refusal to acknowledge wrongful nature of conduct. (Respondent admits and characterizes his misconduct as solely record keeping in nature. He does not recognize the extent of possible harm to his clients when he engages in an extensive scheme of commingling, borrowing of client funds for himself and for other clients, borrowing against expected billing, lack of full disclosure to clients about use of their funds and of conflict of interests and his other actions described in this report. He claims that he has received no complaints from his clients. Indeed, his clients, even when advised of his use of their funds, do not seem upset and even support him, not perceiving that they have been hurt in any way. However, the panel is concerned that Respondent’s lack of record keeping and other professional misconduct may have concealed actual harm, even if unintended harm. Respondent does not recognize this possibility);

(h) vulnerability of and resulting harm to the victims of misconduct. (Respondent’s clients have given him their utmost trust, which he has violated); and

(i) failure to make restitution. (It is impossible to tell if Mark Lay and other clients are owed money because of a lack of proper record keeping).

SANCTION

Relator asks that the Respondent be indefinitely suspended from the practice of law. Respondent requests that any sanction that is imposed be stayed pending no further violations of the disciplinary rules.

Relator cited a case in which an actual suspension from the practice of law is deemed required under circumstances of dishonesty, fraud, deceit or misrepresentation. Respondent was found to have violated Prof. Cond. R. 8.4(c) in Count 3. See *Disciplinary Counsel v. Rooney*, 110 Ohio St.3d 349, 2006-Ohio-4576.

Relator also characterizes Count 3 as demonstrating that Respondent converted clients' funds for his own use. The amounts deposited for Mark Lay and the Mark Lay Defense Fund were used to pay Respondent's personal expenses and for other clients. While Respondent claims that he only took money that he earned and could have charged as fees, his lack of documentation and poor record-keeping taint this argument. Relator cites *Cuyahoga Cty. Bar Assn. v. Churilla* (1997), 78 Ohio St.3d 348, and *Disciplinary Counsel v. Connaughton* (1996), 75 Ohio St.3d 644, as standing for disbarment as the presumptive sanction for misappropriation. Also cited were *Akron Bar Assn. v. Smithern*, 125 Ohio St.3d 72, 2010-Ohio 652; *Cleveland Bar Assn. v. Harris*, 96 Ohio St.3d 138, 2002-Ohio-2988; and *Disciplinary Counsel v. Brown* (1996), 74 Ohio St.3d 594. Smithern, who was given an indefinite suspension, was convicted of grand theft, had no prior disciplinary record, and had a gambling and alcohol addiction problem. Harris's mitigating evidence resulted in the Supreme Court indefinitely suspending him. Brown was given an indefinite suspension and was convicted of a felony.

Respondent's clients are not seeking reimbursement, and due to Respondent's pattern of borrowing money, may not have lost any funds. (Again, Respondent's poor records may obfuscate any outright theft.) The panel did not find rule violations proven to the extent that Relator charged in its complaint.

The panel notes that Respondent's clients who testified were all satisfied with his representation and seem to continue to hold him in high esteem. If not for Mike Riley, a very short-term client, these matters might not have been brought before the Board.

The panel recommends that Respondent be suspended from the practice of law for 2 years, with 12 months stayed, on condition that Respondent:

(1) provide a full accounting to Mark Lay and any related party in interest for all funds contributed to the Mark Lay Defense Fund during Respondent's involvement, showing all payments to Respondent or to him through an intermediary, with supporting documentation as to all fees, loans and expenses;

(2) pay restitution to the Mark Lay Defense Fund of any unverified fees, loans or expenses, with interest at the statutory rate;

(3) serve probation during the stay period in which Respondent shall meet the requirements of Gov. Bar R. V(9) and establish an office accounting system to accurately track receipts and disbursements of clients' funds and monies advanced or paid for fees, loans and expenses; and

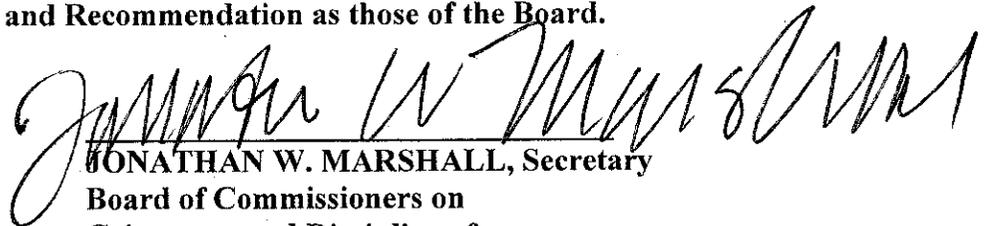
(4) pay the costs of this proceeding.

BOARD RECOMMENDATION

Pursuant to Gov. Bar Rule V(6)(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on October 8, 2010. The Board

adopted the Findings of Fact, Conclusions of Law and Recommendation of the Panel and recommends that Respondent, Percy Squire, be suspended for a period of two years with one year of the suspension 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 Recommendation as those of the Board.

A handwritten signature in black ink, appearing to read "Jonathan W. Marshall", is written over a horizontal line. The signature is cursive and somewhat stylized.

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