

ORIGINAL

IN

THE SUPREME COURT OF OHIO

Disciplinary Counsel,

Relator

CASE NO. 2010-2021

Percy Squire,

Respondent

**RELATOR'S OBJECTIONS TO THE BOARD OF COMMISSIONERS'
FINDINGS OF FACT AND CONCLUSIONS OF LAW AND
BRIEF IN SUPPORT**

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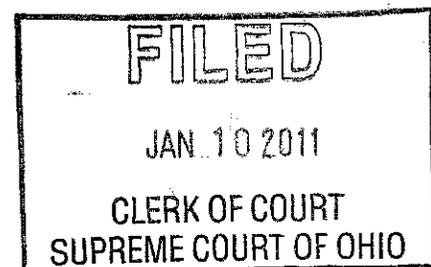


TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS	i
TABLE OF CASES, AUTHORITIES AND STATUTES	ii
INTRODUCTION	1
FACTS-COUNT THREE-Loan from Bishop Wagner	3
Mark Lay's Funds	5
Funds Held for the Mark Lay Legal Defense Fund	8
ARGUMENT	11
1. Respondent's Withdrawals Were Not Legal Fees	12
2. Respondent Did Not Borrow Funds From His IOLTA	14
3. Sanction	20
CONCLUSION	28
CERTIFICATE OF SERVICE	29
APPENDIX A	
Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio	

TABLE OF CASES, AUTHORITIES AND STATUTES

<u>CASES</u>	<u>PAGE</u>
<i>Akron Bar Assn. v. Smithern</i> , 125 Ohio St.3d 72 2010-Ohio-652, 926 N.E.2d 274	27
<i>Cleveland Bar Assn. v. Belock</i> , 82 Ohio St. 3d 98, 100, 1998-Ohio-261, 694 N.E.2d 897	26
<i>Cleveland BAR Assn. v. Harris</i> , 96 Ohio St. 3d 138, 2002-Ohio-2988, 772 N.E.2d 621	27
<i>Cuyahoga County Bar Assn. v. Churilla</i> , 78 Ohio St.3d 348, 1997-Ohio-580, 678 N.E.2d 515	26
<i>Disciplinary Counsel v. Brown</i> , 74 Ohio St. 3d 594, 1996-Ohio-123660 N.E.2d 1147	27
<i>Disciplinary Counsel v. Connaughton</i> , 75 Ohio St. 3d 644, 645 1996-Ohio-441, 665 N.E.2d 675	26
<i>Disciplinary Counsel v. Wise</i> , 108 Ohio St. 3d 381, ¶10; 2006-Ohio-1194, 843 N.E.2d 1198	12

<u>AUTHORITIES AND STATUTES</u>	<u>PAGE</u>
Prof. Cond. Rule 1.5(a)	3
Prof. Cond. Rule 1.5(b)	2, 16
Prof. Cond. Rule 1.5(e)	3
Prof. Cond. Rule 1.6(a)	3
Prof. Cond. Rule 1.7(a)	3
Prof. Cond. Rule 1.7(b)	3
Prof. Cond. Rule 1.8(a)	2, 20
Prof. Cond. Rule 1.15	7, 8, 11, 20, 22

	<u>PAGE</u>
Prof. Cond. Rule 1.15(a)	1, 2, 7
Prof. Cond. Rule 1.15(c)	1, 2, 7
Prof. Cond. Rule 1.16(e)	2
Prof. Cond. Rule 8.1(a)	2, 5
Prof. Cond. Rule 8.4(c)	2, 5, 11, 14
Prof. Cond. Rule 8.4(h)	2, 3
Prof. Cond. Rule 8.49(c)	3

IN THE SUPREME COURT OF OHIO

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CASE NO. 2010-2021

**Relator's Objections
to the Board of
Commissioners
Findings of Fact and
Conclusions of Law
and Brief in Support**

INTRODUCTION

Now comes relator, Disciplinary Counsel, and submits objections to the report of the Board of Commissioners on Grievances and Discipline (the board) filed with this Court on November 22, 2010. The report is attached as Appendix A.

Respondent, Percy Squire, was charged in a second amended complaint alleging numerous violations in five separate counts. After a two day hearing, the board found clear and convincing evidence of violations in counts one, two, three and four.

In Count One, the board found four rule violations: Prof. Cond. Rule 1.15(a) [A lawyer shall hold property of clients separate from the lawyer's own property]; Prof. Cond. Rule 1.15(c) [A lawyer shall deposit in a client 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]; Prof. Cond. Rule 1.16(e) [A lawyer who withdraws from employment shall refund any part of a fee paid in advance that has not been earned]; and Prof. Cond. Rule 8.4(h) [A lawyer shall not engage in any other conduct that adversely reflects on the lawyer's fitness to practice law]. The board dismissed three alleged violations: Prof. Cond. Rule 1.7(a) & (b); Prof. Cond. Rule 1.8(a); and Prof. Cond. Rule 8.4(c).

In Count Two, the board found a violation of Prof. Cond. Rule 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]. The board dismissed the alleged violation of Prof. Cond. Rule 8.4(h).

In Count Three, the board found six violations: Prof. Cond. Rule 8.1(a) [A lawyer shall not knowingly make a false statement of material fact]; Prof. Cond. Rule 8.4(c) [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation]; Prof. Cond. Rule 1.15(a) [A lawyer shall hold property of clients separate from the lawyer's own property]; Prof. Cond. Rule 1.15(c) [A lawyer shall deposit in a client 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]; Prof. Cond. Rule 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 the lawyer commences the representation]; and Prof. Cond. Rule 8.4(h) [A lawyer shall not engage in any other conduct that adversely reflects on the lawyer's fitness to practice

law]. The board dismissed two alleged violations: Prof. Cond. Rule 1.6(a) and Prof. Cond. Rule 1.7(a) and (b).

In Count Four, the board found one violation: Prof. Cond. Rule 8.4 (h) [A lawyer shall not engage in any other conduct that adversely reflects on the lawyer's fitness to practice law]. The board dismissed three alleged violations: Prof. Cond. Rule 1.5(a); Prof. Cond. Rule 1.5(e); and Prof. Cond. Rule 8.49(c).

The board dismissed Count Five.

The board affirmed the hearing panel's findings and recommended respondent be suspended for 24 months with 12 months stayed on condition that respondent provide a full accounting for all funds contributed to the Mark Lay Defense Fund, pay restitution to the Mark Lay Defense Fund of any unverified fees, loans and expenses, with statutory interest, establish an office accounting system and pay costs of these proceedings.

Relator objects to a portion of the board's findings in Count Three and to the recommended sanction. Based on relator's arguments and the board's recommendations this Court should conclude that respondent's misconduct necessitates the imposition of an indefinite suspension.

FACTS – COUNT THREE -Loan from Bishop Wagner

In his attempt to repay a loan from his client, Curtis Jewell, and to obtain other funds, respondent borrowed \$100,000 from his friend, Bishop Norman Wagner. (Stip. 33-36) Respondent arranged for Huntington National Bank to loan the \$100,000 to Bishop Wagner. The Huntington National Bank loan to Bishop Wagner was completed on March 17, 2008, and the bank wired the funds directly to respondent's IOLTA.

(Stip. 33, 35 & 36) Respondent immediately repaid Curtis Jewell \$31,500, transferred \$25,000 to his operating account and paid \$16,000 on his other obligations. (Stip. 48 & Stip. Exh. 72)

Respondent prepared and executed a promissory note, an indemnification agreement, and a security agreement in connection with his loan from Bishop Wagner. While the promissory note and the indemnification agreement acknowledge that Bishop Wagner borrowed \$100,000 from Huntington National Bank, both state that respondent agreed to repay Bishop Wagner only \$75,000. (Stip. Exh. 15)

In correspondence dated August 10, 2009, relator asked respondent to "explain the total amount he received from Bishop Wagner" (Stip. Exh. 13, quest. 3(b)). On August 21, 2009, respondent falsely replied to this inquiry by saying he received \$75,000. (Stip. Exh. 14)

Upon learning that respondent had actually received \$100,000 yet had only signed a promissory note for \$75,000, relator asked respondent to explain "why all the paperwork concerning the loan indicates the amount was for \$75,000.00 yet you actually received \$100,000." (Stip. Exh. 18) In response, respondent claimed that the \$75,000 was a loan and the "remaining \$25,000 was payment for work performed on Brian Wallace, Administrator of the Estate of Norman E. Wallace, v. Case Western Reserve University, Cuyahoga County, Case No. 92046, a wrongful death action which I filed on behalf of Bishop Wagner's nephew and his siblings." (Stip. Exh. 19)

Respondent has stipulated that he was handling the *Wallace* case on a contingency fee basis. (Stip. 72 & Stip. Exh. 31) Upon evaluating respondent's assertion that he received the \$25,000.00 as part of the fee in an unresolved

contingency fee case, relator charged respondent with charging a clearly excessive fee. After respondent was notified that he faced new allegations of misconduct concerning the \$25,000, he changed his story yet again. Respondent now claims that he was wrong to say that the \$25,000 was part of a fee on the wrongful death case. (T. 75 - 89)

In toto, respondent engaged in several misrepresentations regarding the loan from Bishop Wagner. First, he falsely stated to relator that he borrowed only \$75,000 from the Bishop. When confronted with the true amount he had received, respondent falsely claimed that the \$25,000 difference was part of a fee in the wrongful death case. Finally, respondent now implausibly claims he listed \$75,000 on the loan document because Bishop Wagner knew respondent was giving \$25,000 to Riley.¹(T. 75 – 89) This misconduct formed the basis for the board’s finding that respondent violated Prof. Cond. Rule 8.1(a) [knowingly making a false statement of material fact in connection with a disciplinary matter] and Prof. Cond. Rule 8.4(c) [dishonesty, fraud, deceit or misrepresentation].

Mark Lay’s Funds

On April 24, 2008, respondent deposited \$113,228.18 of his client, Mark Lay’s funds from a settlement into his IOLTA. (Stip. 54, 56 and Stip. Exh. 21) By June 10, 2008, respondent had \$193.61 left in his IOLTA. During those six weeks, respondent:

1. Wired \$10,000 to DJM Capital, solely for his own benefit;
2. Wired \$20,000 to his attorney operating account solely for his own benefit;

and,

¹ Respondent paid Riley with money he borrowed from Curtis Jewell, so this assertion is also false.

3. Obtained \$17,800 in cash by providing nine different checks to his employee, Wesley Walker. (Stip. 56 & Stip. Exh. 21, pg. 60 – 107)²

When asked to explain the \$20,000 transferred to his operating account, respondent claimed that the \$20,000 constituted fees for work performed for Mark Lay on five matters (the initial criminal case, the criminal appeal and three civil matters). (Stip. Exh. 16 & 17) Respondent has never provided any billing records or bills to substantiate that he earned this \$20,000 in legal fees. Further, respondent has since produced a fee agreement for the work on the criminal case that called for a flat fee of \$75,000.00 which respondent testified and the board found was paid in full by the end of 2007. (Stip. Exh. 50; T. 97, Bd. Rpt. pg 9-10)

Respondent also acknowledged that he did not prepare a settlement statement or an accounting upon receipt and subsequent disbursement of the \$113,228.18. (T. 108) Respondent attempted to claim that his use of the \$113,228.18 was pursuant to an "Indenture for the Mark D. Lay Legal Defense and Welfare Fund" and that all his actions were authorized by the trustee, Antoine Smalls or by Mark Lay. (T. 117) However, Smalls testified that he did not become involved with any type of "indenture" fund for Lay until June 2008 (Stip. Exh. 75 pg 40) and Lay testified that he did not recall anything about the \$113,228.18. (Stip. Exh. 76 pg 22) Moreover, there is no "Indenture" document covering funds in respondent's possession between April 24 and June 23,

² Between the balance of loan proceeds in his IOLTA and additional deposits, respondent added \$19,980.00 during this time period. Respondent would write checks to Wesley Walker, Walker would cash those checks and provide the cash to respondent. (Bd. Rpt. pg11)

2008. The board found that there was no document supporting respondent's disbursement of \$113,228.18. (Bd. Rpt. pg 10)

Likewise, respondent has no documentation that substantiates even one of the multiple disbursements he made from his IOLTA between April 24, 2008, and June 10, 2008. Additionally, respondent failed to prepare and preserve any of the requisite trust account records necessary to fulfill his fiduciary duties and thereby comply with Prof. Cond. Rule 1.15 during that time period.

As the board found, respondent's use of Lay's funds (\$113,228.18) violated Prof. Cond. Rule 1.15(a) and Prof. Cond. Rule 1.15(c). Respondent's violations of these rules are numerous:

1. Respondent deposited \$100,000 of his own funds into his IOLTA by having his loan from Bishop Wagner wired into to his IOLTA;
2. Respondent deposited \$25,000 of his own funds into his IOLTA when he had his loan from attorney Charles Freiburger wired into his IOLTA;
3. Respondent failed to create and maintain a record for each client on whose behalf funds were being held that set forth all of the following:
 - a. the name of the client;
 - b. the date, amount, and source of all funds received on behalf of such client; the date, amount, payee, and purpose of each disbursement made on behalf of such client;
 - c. the date, amount, and source of all funds received on behalf of such client;

- d. the date, amount, payee, and purpose of each disbursement made on behalf of such client; and
 - e. the current balance for such client.
4. Respondent failed to create and maintain a record for each bank account that sets forth all of the following: the name of such account; the date, amount, and client affected by each credit and debit;
 5. Respondent failed to create and maintain a record of the balance in his IOLTA;
 6. Respondent failed to maintain all bank statements, deposit slips, and cancelled checks for his trust account;
 7. Respondent failed to prepare and maintain a monthly reconciliation of the items contained in Prof. Cond. Rule 1.15.
 8. Respondent repeatedly deposited cash into his attorney trust account without preparing and maintaining records showing the source of the funds. (Stip. Exh. 72 & Stip. Exh. 21 pg. 103-104 & 194-195)

Funds Held for the Mark Lay Legal Defense Fund

On June 23, 2008, respondent deposited \$280,000 into his IOLTA. These funds were received from Antoine Smalls and were to be held by respondent pursuant to the "Indenture for the Mark D. Lay Legal Defense and Welfare Fund" agreement executed by Smalls on June 23, 2008. By July 2, 2008, nine days later, respondent had used \$50,730.46 of these funds for his own benefit. According to the bank records, respondent

1. Transferred \$5,000 to his operating account on June 23, 2008;

2. Transferred \$15,000 to his operating account on June 24, 2008;
3. Utilized \$7,500 on June 27, 2008, to satisfy his debt to the Blank, Rome law firm (T. 153);
4. Obtained \$2,000 in cash on June 27, 2008, to pay an interest obligation on a loan from Attorney Freiburger (T. 155);
5. Wrote himself a check for \$4,000 on June 30, 2008;
6. Paid Huntington National Bank \$530.46 on June 30, 2008, for interest on Bishop Wagner's loan (T. 157);
7. Obtained \$1,500 in cash on June 30, 2008, by having Wesley Walker cash a check for him;
8. Obtained \$1,500 in cash on July 1, 2008, by having Wesley Walker cash a check for him;
9. Obtained \$1,200 in cash on July 2, 2008, by having Wesley Walker cash a check for him; and
10. Withdrew \$12,500 in cash on July 2, 2008.

(Stip. 62 & Stip. Exh. 21 pg. 111- 126)

Respondent testified that he may have used some of the funds for the benefit of Mark Lay, but he failed to produce a single document substantiating this claim.

Between July 7, 2008 and August 29, 2008, respondent withdrew an additional \$44,366.81 from the \$280,000. Some of these withdrawals were by way of checks made out to Wesley Walker which had a memo line suggesting that they were connected to Mark Lay. Again, respondent failed to produce a single document demonstrating that he actually used these cash amounts for the benefit of Mark Lay -- not one expense bill, not one receipt, not one itemized record. Some of the memo line

references indicate respondent spent these funds for his own personal obligations or for his other cases. (T.187)³

As of August 28, 2008, respondent had \$3,698.10 remaining in his IOLTA. On September 3, respondent deposited \$25,000 into his IOLTA, which was another loan from Attorney Freiburger. That same day, he disbursed \$15,000 on behalf of Mark Lay. Without the deposit of the \$25,000 loan from Freiburger into his IOLTA, respondent would not have been able to make the \$15,000 disbursement. In short, respondent had to borrow money to be able to make a disbursement of funds he was supposed to be holding in trust.

Between August 29, 2008 and October 14, 2008, respondent withdrew an additional \$27,290 in cash from his IOLTA, leaving a balance of \$289.32.⁴ It is during this time period that respondent also deposited a check for \$4,466.28 from the McCarthy, Lebit, Crystal and Liffman law firm (Stip. Exh. 21 pg. 193; Stip. Exh. 58). These funds represented the remaining balance from a \$10,000 advance payment provided by Bishop Wagner for costs in the *Wallace* wrongful death case. (T. 201) Respondent deposited these funds in his IOLTA and then used them but has no record of having used them for costs in the *Wallace* case. (T. 201)

At his discipline hearing, respondent testified, for the first time, that perhaps the funds he spent after July 11, 2008, were actually loans. (T.159 – 170, 217) He further testified that he returned all the money due Mark Lay by April of 2009. (T. 207, 217-220)

³The memo line on check no. 448 written on July 21, 2008, indicates “10 Hours” of legal work. Respondent failed to produce records to substantiate these 10 hours of legal work and even testified that he wasn’t billing on an hourly basis (T. 99 & 179).

Respondent has no contemporaneous records of having taken any "loans" from the Lay Defense Fund. (T. 159-160) According to respondent, the "checks" are his "records." (T. 159) The checks were produced by the bank pursuant to relator's subpoena and make no mention of "loans." Respondent's records do not include any reference to "loans." (Stip. Exh. 22, 23, 24, 25) Finally, respondent's only record of having repaid the moneys he claims he borrowed from the defense fund is documentation showing that in April of 2009, he wired \$25,000 to the Blank Rome law firm purportedly on behalf of Mark Lay. (Stip. Exh. 79)

ARGUMENT

Although the board found the foregoing facts and a violation of Prof. Cond. Rule 8.4(c), there is no express finding that respondent converted or misappropriated funds in his IOLTA. Relator submits the evidence can lead to but one conclusion: respondent's misconduct includes conversion of funds from his IOLTA. In the first two objections, relator asks the Court to find that respondent converted client funds to his own use.

The use of an attorney trust account includes significant fiduciary responsibilities. The Rules of Professional Conduct impose specific record-keeping requirements to ensure that lawyers adhere to their fiduciary responsibilities. By requiring lawyers to maintain written records of each disbursement from the lawyer's IOLTA, Prof. Cond. Rule 1.15 protects both the lawyer and the client. Respondent failed to comply with these requirements and sought to have the board accept his verbal representations

⁴ During this time period, respondent also deposited an additional \$17,811.44 in what appear to be funds from other clients. Respondent produced no IOLTA records showing the source/origin of these funds.

concerning the use of the funds. In this circumstance, respondent bears the burden of establishing his claims concerning the use of these funds. *Disciplinary Counsel v. Wise*, 108 Ohio St.3d 381¶ 10, 2006-Ohio-1194, 843 N.E.2d 1198.

1. Respondent's Withdrawals Were Not Legal Fees

On April 24, 2008, respondent received a wire transfer of \$113,228.18. These funds belonged to his client, Mark Lay. (Bd. Rpt. pg 9) Respondent acknowledged that he did not prepare a settlement statement upon receipt and subsequent disbursement of the \$113,228.18.(T. 108) As the board found, respondent's testimony that his use of the \$113,228.18 was pursuant to an "Indenture for the Mark D. Lay Legal Defense and Welfare Fund" was not supported any documentation. (Bd. Rpt. pg 10) This portion of respondent's conduct violates the requirements of Rule 1.15 and 8.4(c).

Equally egregious is respondent's actual use of Lay's funds. For example:

1. Respondent withdrew cash on three separate occasions totaling \$7,200 by writing checks to Wesley Walker, without any notation on the check or any other documentation to establish the use of these funds (Stip. Exh. 21 pg. 62, 67, 92, 94; T. 187);
2. Respondent wrote a check to his law firm for \$20,000 without any documentation establishing that these funds were earned fees or how these funds were used (Stip. Exh. Pg. 65; T. 117);
3. Respondent obtained cash totaling \$6,500 by writing checks to Wesley Walker with notations indicating the funds were used for the benefit of respondent's other clients; yet there are no records substantiating that these

funds were earned fees or substantiating the purported use (Stip. Exh. 21 pg. 81, 82, 90; T, 187);

4. Respondent spent \$10,000 on his obligation to DJM Capital without any documentation establishing that these were earned fees or that he had client approval to do so (Stip. Exh. 21 pg. 63-64; T.111);
5. Respondent obtained and spent \$6,000 in cash by writing checks payable to Wesley Walker with notations suggesting that the funds were for the benefit of Mark Lay. Respondent has no documentation showing how he actually used these cash disbursements (Stip. Exh. 21 pg. 83, 93, 95); and,
6. Respondent spent \$879.10 to make an interest payment on Bishop Wagner's loan from Huntington National Bank. There is no documentation establishing that these are earned fees or that respondent had client approval to use these funds (Stip. Exh. 21 pg. 105).

Respondent's single page accounting for the \$113,228.18 indicates he disbursed \$25,000 of these funds to himself. (Stip. Exh. 22) Respondent testified that the \$25,000 was an earned fee. (T.136) There are three flaws with respondent's explanation: first, respondent testified he had no fee agreement with Lay about any of his legal work on the civil cases (T. 98);⁵ second, respondent produced no records showing he actually performed legal work entitling him to \$25,000 (T. 141),⁶ and third, he actually used

⁵ Amazingly, respondent even testified there may not be any legal fee due if Lay is not released from prison as a result of his criminal appeal. Such appears to be the case as Lay's conviction was affirmed on appeal. *United States v. Lay* (C.A.6, 2010), 612 F.2d 440

⁶ Respondent testified that he performed legal work for Lay. Relator acknowledges that respondent engaged in some legal work on behalf of Lay. Respondent failed to provide any records establishing the value of that legal work.

\$50,579.10 of the money in his IOLTA for which there is no documentation -- see above numbered paragraphs. Finally, respondent's accounting states his IOLTA had a balance of \$5,303.65 on June 22, 2008 when there was actually less than \$200 in respondent's IOLTA between June 10 and June 23, 2008. (Stip. 56, Stip. Exh. 22 & 72) Respondent's misuse of these funds can only be described as conversion of his client's funds in violation of Prof. Cond. Rule 8.4(c).

2. Respondent Did Not Borrow Funds From His IOLTA

The board appears to have accepted respondent's claim that he "borrowed" funds from the \$280,000 in his IOLTA. Not only did respondent fail to establish that any of his withdrawals from his IOLTA were loans, the evidence is to the contrary. The board's suggestion that respondent "borrowed" funds is erroneous and should be rejected.

On June 23, 2008, respondent received a deposit into his IOLTA of \$280,000. These funds represented a collection of contributions by friends of Mark Lay to fund what was known as "The Mark D. Lay Legal Defense and Welfare Fund" (hereinafter "Fund"). That same day, Antoine Smalls executed an "Indenture for the Mark D. Lay Legal Defense and Welfare Fund". Although that document designated respondent as the trustee of the "Fund," both respondent and Smalls testified that Smalls approved the disbursements. (T. 146; Stip. Exh.76 pg 41)

As with Lay's \$113,228.18, respondent immediately began disbursing funds from the \$280,000 to himself or for his own benefit:

1. On June 23, he transferred \$5,000 to his operating account;
2. On June 24, he transferred \$15,000 to his operating account;

3. On June 27, he paid \$7,500 to the Blank, Rome law firm to satisfy his personal debt to the firm;
4. On June 27, he obtained \$2,000 in cash to pay interest on his loan from Attorney Freiburger;
5. On June 30, he wrote himself a check for \$4,000;
6. On June 30, he paid \$530.46 to Huntington National Bank as an interest payment on Bishop Wagner's loan;
7. On June 30, he obtained \$1,500 in cash by having Wesley Walker cash a check;
8. On July 1, he obtained \$1,500 in cash by having Wesley Walker cash a check;
9. On July 2, he obtained \$1,200 in cash by having Wesley Walker cash a check; and,
10. On July 2, he withdrew \$12,500 in cash.

(Stip. 62 & Stip. Exh. 21 pg. 111- 126)

Some of the checks to Wesley Walker are without any notation (\$2,700); some purport that the funds were for the benefit of Lay (\$1,500) and some are purportedly for respondent's personal obligations (\$6,530). Respondent testified he was unaware of how he used the \$5,000 he distributed to his law firm the same day he received the \$280,000. Respondent was equally unsure of what he did with the \$15,000 he transferred to his operating account the very next day.(T. 151) He acknowledged that four days after he received the \$280,000, he wired \$7,500 to the Blank, Rome law firm to pay off his own debt.(T.153)

During the hearing, respondent admitted his deposition testimony characterized a significant portion of the disbursements as payment of attorney's fees. (T. 215) Not only are there no records establishing that respondent performed legal work justifying

these amounts as attorney fees, his testimony that he had no agreement with Lay concerning the charging and payment of legal fees led the board to conclude he violated Prof. Cond. Rule 1.5(b). Respondent repeatedly testified that Mark Lay approved the disbursements. Unfortunately, Mark Lay was not the owner of the money in the "Fund." Those funds were being held for the benefit of Mark Lay not on his behalf. (T. 144-146; Stip. 60 & 61)

At his discipline hearing, respondent changed his deposition testimony to say that the majority of funds he took were "loans" from the "Fund." (T. 159 & 218) Smalls testified that although he didn't have any records concerning "loans" from the "Fund," he was aware that respondent mentioned "borrowing" money on four or five occasions. (Stip. Exh. 57 pg 57 & 63)

Between June 23, 2008 and August 29, 2008, respondent made 24 separate disbursements from his IOLTA totaling \$84,390.35. As previously explained, some the disbursements to respondent were for cash, some were deposited into his firm operating account, and some were in the form of cash obtained by Walker negotiating checks containing a reference to another client.⁷ There is not a single document substantiating any expenses or characterizing any of these disbursements as "loans."

Respondent produced three one-page documents that purport to be accountings for the \$280,000. (Stip. Exh. 23, 24 & 25) The first appears to be an accounting for the time period of June 23, 2008 through July 11, 2008. The second appears to be an accounting for the time period July 11, 2008 through September 11, 2008. And the third

⁷Stip. Exh. 21 pp. 111, 112, 113, 114, 116, 122, 123, 126, 132, 133, 139, 144, 145, 148, 149, 160, 162, 164, 165, 166, 167, 169, 172, & 173.

appears to be an accounting from July 11, 2008 through February 9, 2009. None of these documents proves that respondent took a single loan much less 24 separate loans totaling \$84,390.35 before August 29, 2008. (Stip. Exh. 23, 24 & 25)

Moreover, only the first of respondent's accounts lists any funds being disbursed to respondent: \$10,000 on July 11, 2008.⁸ Yet, by August 29, 2008, respondent actually utilized, for his own purposes, \$84,390.35 of the \$280,000. Respondent's first accounting states he had a balance of \$159,681 of "Fund" moneys on July 11, 2008. (Stip. Exh. 23) In reality, respondent only had \$113,296.15 in his IOLTA on July 11, 2008. (Stip. 62) Respondent's second accounting shows a balance of \$60,744.45 on September 19, 2008, but in reality his IOLTA contained only \$3,678.60 on that date. (Stip. Exh. 24 & Stip. 62)

Between August 29, 2008 and October 31, 2008, respondent deposited into his IOLTA personal funds and what appear to be funds from other clients totaling \$47,811.44. By the end of October, 2008, respondent had \$289.32 left in his trust account. Even though some of the funds deposited after August 28, 2008, may have been client funds and even though some of the disbursements after that date may have been appropriate, there is no way to tell because respondent failed to keep any records substantiating his use of the money he was holding in trust.

Respondent's accounting for the time period July 31 through September 19, 2008, shows disbursements for Lay's benefit but not a single distribution to respondent. (Stip. Exh. 24) The actual bank records establish that in addition to disbursements for

⁸ According to respondent's bank records, he did not withdraw \$10,000 at any time in July of 2008.

Lay's benefit, respondent took \$27,500 from the "Fund" after July 31 and before he deposited \$5000 from another client and the \$25,000 loan from Attorney Freiburger on August 29 and September 3 respectively.⁹ On September 3, 2008, respondent used the loan from Freiburger to make a \$15,000 disbursement to Lay's friend, Kelly Settles.

Respondent's final accounting covers the time period of September 19, 2008 until February 12, 2009. (Stip. Exh. 25) Respondent's account lists numerous distributions for Lay's benefit but not a single amount is shown as distributed to respondent. Nevertheless, the bank records show respondent withdrew a total of \$17,750 from his IOLTA, apparently for his own benefit, between September 19 and October 31.¹⁰ None of these withdrawals appear on respondent's accounting. Respondent's accounting does show two deposits to the "Fund" totaling \$11,000 but there are no dates on respondent's document associated with these deposits, nor are there any corresponding deposits in respondent's IOLTA bank records - at least before October 31, 2008. Finally, respondent's accounting states he held a balance of \$33,452.63 of "Fund" moneys on February 12, 2009, but in reality, respondent's IOLTA contained only \$289.32 on October 31, 2008 (Stip. 62; Stip. Exh. 21 pg. 208).

At the hearing, respondent testified that all the disbursements which he made to himself or for the benefit of his other clients and which he failed to list on any of his accountings, were in fact loans. (T.159 & 218) Respondent further asserted that he repaid all the amounts he borrowed from the "Fund." (T. 170 & 211) There are, however, several problems with respondent's most recent attempt to explain his actions:

⁹ Stip. 62 & Stip. Exh. 21 pg. 160, 161, 162, 164, 165, 166, 167, 169, 171, 172, & 173.

¹⁰ Respondent did deposit \$9,811.44 of what appears to be other clients' funds during this time period.

1. There is not a single document that substantiates that respondent was taking loans from the "Fund" or the purported terms for those loans (T. 159, 195, 212);
2. At best, respondent only advised Smalls of his taking loans on four or five occasions, without any specifics and likely only after he had taken the money (Stip. Exh. 75 pg 57 & 63);
3. None of respondent's accountings mentions any loans (Stip. Exh. 22, 23, 24, 25) ; and,
4. None of respondent's accountings accurately reflects the amount of funds respondent was holding for the "Fund" (T. 198 & 207).

Respondent's lack of records for these "loans" from the "Fund" is entirely inconsistent with respondent's normal practice. When respondent borrowed money from his client, Mike Riley, he provided Riley with a promissory note. (Stip. Exh. 3) When respondent borrowed money from his client, Curtis Jewell, he provided Jewell with a promissory note. (Stip. Exh. 11) When respondent borrowed money from Bishop Wagner, he provided Wagner with a promissory note, an indemnification agreement, and a security agreement. (Stip. Exh. 15) When respondent borrowed money from Attorney Freiburger he provided Freiburger with an agreement for assignment of proceeds, a promissory note, and a security agreement. (Stip. Exh. 57) When respondent borrowed money from Patrick Prout, he provided Prout with a promissory note as to each of the seven loans. Respondent's most recent testimony that he borrowed money from the \$280,000.00 in his IOLTA, but did not create any written records is simply not credible.

Respondent produced no records substantiating what he did with "Fund" moneys in his possession after February 12, 2009. Respondent claims he repaid all money owed to the "Fund" by making a \$25,000 payment on behalf of Lay to the Blank Rome

law firm in April of 2009. (T. 207; Stip. Exh. 79) While this payment does appear to have been made, there is no showing by respondent as to the source of the \$25,000 or, even more importantly, exactly how much respondent owed the "Fund" when he made this payment. (T. 218-220) Respondent has no records even establishing the amount of his debt for all the money he claims he borrowed from the "Fund."

Respondent repeatedly testified that Smalls and/or Lay "approved" of each disbursement from his trust account. Smalls had no recollection of any specific disbursement and Lay testified he had nothing to do with the disbursements from the "Fund." Neither Lay nor Smalls provided support for respondent's version of "approved" disbursements.

For all the foregoing reasons, the board's finding that respondent "borrowed" funds from the "Fund" is without support in the record. As a fiduciary, respondent has the burden of establishing that he borrowed funds, the amount of the loans, the terms of the loans, the documentation required by Prof. Cond. Rule 1.15 as well as the documentation and waivers required by Prof. Cond. Rule 1.8(a). Respondent completely failed to do so. The record is clear: Respondent simply helped himself to the money in his trust account and that leads to but one conclusion: respondent converted funds in his IOLTA to his own use.

3. Sanction

Respondent's misconduct in Count Three is clearly the most serious of all the violations. Respondent violated the attorney trust account rules, converted client funds and made intentional misrepresentations during the disciplinary case. Respondent's

misconduct is extensive and requires this Court's careful analysis to determine the appropriate sanction.

Respondent's misconduct is directly tied to his personal financial difficulties. Without exception, respondent's misconduct in every count is a product of his decision to place his own financial interests above those of his clients and above his fiduciary duties to his clients. As a result, there are serious aggravating factors present.

In Count One, the board determined that respondent used client's funds to pay his own obligations. Respondent did so knowing that he had yet to earn the funds and respondent chose to continue using Mike Riley's money to pay his own obligations during and after his termination as Riley's counsel. Respondent failed to meet his own deadline for refunding Mike Riley's money. Respondent repeatedly put his own interests over those of his client. The aggravating factors present in this count include respondent's selfish motive and the resulting harm to his client.

In Count Two, respondent solicited and accepted a loan from an existing client, Curtis Jewell. Respondent did this because he was unable to comply with the terms of the promissory note he prepared to repay his client Mike Riley in Count One. At the disciplinary hearing, respondent revealed that the loan he took to repay Riley was not the only outstanding loan he had with Jewell. Respondent had at least one other loan from Jewell during the time he represented Jewell. (T. 67) Again, respondent's actions were based on his own financial interests and his attempts to ameliorate his misconduct in Count One.

Count Three encompasses the most pervasive and serious evidence of misconduct. Respondent engaged in numerous IOLTA accounting errors:

1. He failed to create and maintain a record for each client on whose behalf funds were being held that set forth all of the following:
 - a. the name of the client;
 - b. the date, amount, and source of all funds received on behalf of such client; the date, amount, payee, and purpose of each disbursement made on behalf of such client;
 - c. the date, amount, and source of all funds received on behalf of such client;
 - d. the date, amount, payee, and purpose of each disbursement made on behalf of such client; and
 - e. the current balance for such client.
2. He failed to generate and maintain a record for each bank account that sets forth all of the following: the name of such account; the date, amount, and client affected by each credit and debit;
3. He failed to create and maintain a record of the balance in his attorney trust account;
4. He failed to maintain all bank statements, deposit slips, and cancelled checks for his trust account; and
5. He failed to perform and maintain a monthly reconciliation of the items contained in Prof. Cond. Rule 1.15.

Respondent engaged in commingling on two separate occasions: when he wired his \$100,000 loan from Bishop Wagner into to his IOLTA and again when he wired the \$25,000 loan from Attorney Freiburger into his IOLTA. (Stip. Exh. 21 pg. 30-31 & 180) Not only is it a violation for respondent to have placed his own funds into his IOLTA, he engaged in commingling because funds from these loans were held concurrently with client funds.

Respondent made cash deposits into his IOLTA without creating or maintaining any documentation to establish the source or purpose of these deposits. (Stip. Exh. 21 pg. 103-104, 194-195) Solely because of respondent's failure to keep the requisite records (a violation of Prof. Cond. Rule 1.15), it is completely unknown whether by depositing these funds respondent has engaged in additional misconduct.

Respondent's most serious misconduct concerns his conversion of funds belonging to his client Mark Lay and to the "Fund." Immediately upon receipt of the \$113,228.18 settlement belonging to Lay, respondent spent those funds for his own benefit. He did so without generating and maintaining appropriate records to document his use of the funds and, contrary to respondent's testimony; he did so without the approval of his client. As one example, respondent acknowledged that the day after he received Lay's \$113,228.18 he used \$10,000 to pay his obligation to DJM Capital and he transferred \$20,000.00 into his firm's operating account. (T. 111- 118; Stip. Exh. 21 pg. 63-65) Respondent testified he had Lay's permission to do so. (T. 112, 114-118) Contrary to respondent's testimony, Lay testified that he had no recollection of respondent receiving \$113,228.18 on his behalf and no recall of instructing respondent as to what he should do with those funds. (Stip. Exh. 76 pg 21-24) When asked about respondent's use of the funds to pay the \$10,000 obligation to DJM Capital and a transfer of \$20,000 to respondent's operating account, Lay testified he had no knowledge why those disbursements were made. (Stip. Exh. 76 pg. 27-28) Not only did respondent falsely claim he had Lay's approval, he also testified he had no recollection of how he used the \$20,000 he transferred to his operating account. (T. 117)

Respondent claimed that the \$25,000 he listed under his name on his one page accounting for the \$113,228.28 was an earned legal fee. (Stip. Exh., 22; T. 140) There are three problems with respondent's testimony about having earned this amount as legal fees. First, as respondent testified, he had no fee agreement or even an understanding as to his fees with Lay. (T. 100) Respondent apparently indicated he would sit down with Lay at sometime in the future and they would figure out the fee.

(T.99) Respondent even testified there would be no fee if Lay did not prevail on his criminal appeal. (T. 101) The second problem with respondent's claim that the \$25,000 constituted an earned fee, is that he produced no records to support his claim of having performed \$25,000 worth of legal work. (T. 141) The third problem is that the bank records do not reflect respondent withdrawing \$25,000.00. (Stip. Exh. 21) Rather, respondent withdrew differing amounts that as an aggregate were well over \$25,000.

In short, as to the \$113,228.18, respondent helped himself to his client's funds and has no records to support his claim of earned attorney's fees, no accounting that is consistent with the actual bank records and no client approval for his use of the funds. Respondent actions constitute conversion.

After receiving Lay's \$113,228.18 on April 24, respondent proceeded to spend some of the money for his own benefit. One of respondent's methods was to write checks payable to Wesley Walker; Walker cashed the checks and gave the cash to respondent. Between April 24 and June 10, there are four such checks totaling \$7,200. Respondent has no idea what he did with the cash from those checks. (T. 110, 111-112) During that same time period, respondent wrote three checks totaling \$13,200 to Wesley Walker with a notation that referred to other clients. (Stip. Exh. 21 pg 81, 82, 90) Respondent testified these cash amounts were used for expenses on behalf of these other clients, but he has no records to prove he did – no receipts or invoices for any expenses. (T. 127) During this same time period, respondent also wrote checks totaling \$6,000 to Wesley Walker with a notation referring to his client, Mark Lay. (Stip. Exh. 21 pg. 83, 93, 95) Respondent testified he used the cash from these checks for Lay's

expenses. Once again, respondent does not have a single receipt or invoice demonstrating that he in fact used the cash for such expenses. (T. 127-128)

In short, in addition to his inability to substantiate that he was entitled to disbursements because he had earned legal fees, respondent is completely unable to establish that any of the other cash disbursements were for client expenses, as he now claims. Without any proof that he spent funds on client expenses, respondent's actions constitute conversion of client funds.

On June 23, 2008, respondent deposited \$280,000 into his IOLTA. These funds were contributions from Lay's friends for the purpose of creating the "Fund." Respondent used these funds much the same way he used Lay's \$113,228.18, i.e., he transferred funds to his law firm operating account, he obtained cash by writing checks to Wesley Walker, he withdrew cash, and he wrote checks to himself. Between June 23 and August 29, 2008, respondent spent \$84,390.35 belonging to the "Fund." There is no documentation to substantiate his claims that the money was either earned fees or a loan, and respondent's actions constitute conversion.

Respondent's conversion of money belonging to Lay and to the "Fund," was based on his selfish motive, a clear aggravating factor. Respondent's false or deceptive statements to relator, to his client, to Bishop Wagner and ultimately to the panel establish the aggravating factor of submission of false evidence and other deceptive practices during the disciplinary process.

Respondent's conduct involves multiple offenses and a pattern of misconduct. Respondent has refused to acknowledge the wrongful nature of his conduct. Respondent does not deny he made the disbursements, he tries to rationalize them.

Respondent does not deny his contradictory statements; he tries to explain them away. Respondent has no appreciation for all the harm he has caused and is completely unwilling to accept responsibility for his actions.

In addition to the violations in Count Three, Counts One, Two, and Four include six violations involving failing to return unearned fees, , IOLTA record keeping violations, commingling, and a conflict of interest. The combination of these different acts of misconduct along with the serious misconduct in Count Three warrants an indefinite suspension. Respondent's misconduct in these counts reflects his persistent willingness to place his own financial interests above those of his clients and above his fiduciary duties to his clients. Respondent exhibited a pattern of misconduct with the common thread being his financial interests.

Respondent's misconduct in Count Three involves serious IOLTA record-keeping violations, misrepresentations to relator, failing to communicate the basis or rate of the fee, and, most significantly, conversion of funds.

The Supreme Court of Ohio has adopted a very firm approach towards conversion of funds. The starting point in the sanction analysis for these cases is disbarment. *Cuyahoga County Bar Assn. v. Churilla*, 78 Ohio St.3d 348, 1997-Ohio-580, 678 N.E.2d 515. "The continuing public confidence in the judicial system and the bar requires that the strictest discipline be imposed in misappropriation cases." *Cleveland Bar Assn. v. Belock*, 82 Ohio St.3d 98, 100, 1998-Ohio-261, 694 N.E.2d 897. Disbarment is the presumptive sanction for misappropriation. *Disciplinary Counsel v. Connaughton*, 75 Ohio St.3d 644, 645, 1996-Ohio-441, 665 N.E.2d 675.

In a recent case, *Akron Bar Assn. v. Smithern*, 125 Ohio St.3d 72, 2010-Ohio-652, 926 N.E.2d 274, the lawyer converted retainer fees due her firm from over 30 clients. In total, the lawyer converted \$108,000 and was convicted of grand theft, a fourth degree felony. In mitigation, the court acknowledged the lawyer had no prior discipline, had fully cooperated throughout the process, and accepted the lawyer's evidence of gambling and alcohol addictions with appropriate rehabilitation. The lawyer also entered into an agreement to make full restitution and submitted two character letters from attorneys and one from a judge. The court imposed an indefinite suspension.

In *Cleveland Bar Assn. v. Harris*, 96 Ohio St.3d 138, 2002-Ohio-2988, 772 N.E.2d 621, the lawyer converted almost \$30,000.00 in alimony payments that he collected on behalf of his incompetent client. In indefinitely suspending this lawyer, the court recognized as mitigation: the lawyer's prior military service, his participation in his church, his lack of prior discipline and the character letters submitted by clergy and judicial officers.

In *Disciplinary Counsel v. Brown*, 74 Ohio St.3d 594, 1996-Ohio-123, 660 N.E.2d 1147, the lawyer converted \$9,748.88 from an estate. While the lawyer was found guilty of Grand Theft, a third degree felony, he ultimately made restitution. The Board and Court adopted the party's stipulations and proposed sanction: an indefinite suspension.

Respondent engaged in multiple acts of misconduct and converted funds. He continues to deny that he engaged in conversion and yet has no evidence supporting his claims. Respondent misappropriated over \$50,000 from the \$113,228.18 without

any support for his claim of having earned \$25,000 in legal fees and he converted over \$100,000 from the \$280,000 without any documentation supporting his claim that he was only "borrowing" the funds. And despite respondent's testimony to the contrary, neither Smalls nor Lay approved his use of the funds from the \$113,228.18. Smalls had no recollection of approving specific disbursements from the \$280,000. Respondent alone accounts for his actions. Neither documents nor witness testimony supports respondent's explanations.

CONCLUSION

The nature of respondent's misconduct, his selfish motive, his refusal to acknowledge the conversion of funds from his IOLTA along with his ongoing financial difficulties requires a severe sanction for the proper protection of the public. In view of respondent's military service, his character evidence and his lack of a disciplinary history, relator recommends an indefinite suspension.

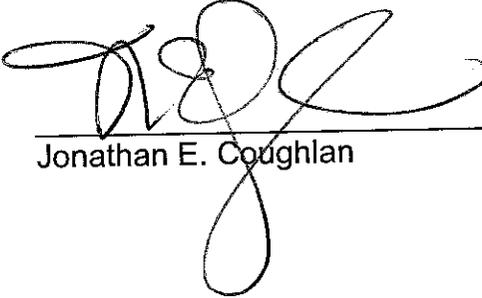
Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Relator's Objections to the Board of Commissioner's Findings of Fact and Conclusions of Law and Brief in Support has been served upon the Board of Commissioners on Grievances and Discipline, c/o Jonathan W. Marshall, Secretary, 65 South Front Street, 5th Floor, Columbus, Ohio 43215-3431, and respondent, Percy Squire, Esq., Percy Squire Co. LLC, 514 S. High St., Columbus, OH 43215 via regular U.S. mail, postage prepaid, this 10th day of January, 2011.



Jonathan E. Coughlan

APPENDIX A

**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 Attorney Reg. No. 0022010	:	Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio
Respondent	:	
Disciplinary Counsel	:	
Relator	:	

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:

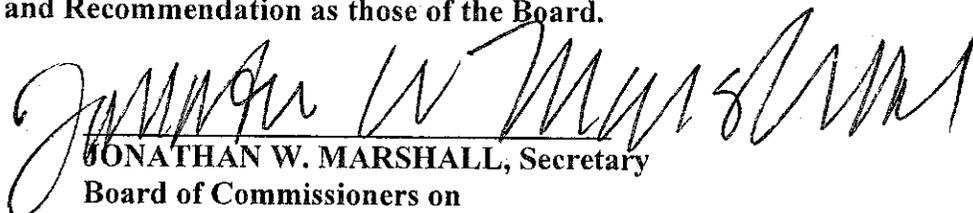
- (1) provide a full accounting to Mark Lay and any related party in interest for all funds contributed to the Mark Lay Defense Fund during Respondent's involvement, showing all payments to Respondent or to him through an intermediary, with supporting documentation as to all fees, loans and expenses;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


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