

**ORIGINAL**

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

**In Re:** : **11-0340**

**Complaint against** : **Case No. 09-064**

**Georgianna I. Parisi** : **Findings of Fact,**  
**Attorney Reg. No. 0022538** : **Conclusions of Law and**  
: **Recommendation of the**  
**Respondent** : **Board of Commissioners on**  
**Dayton Bar Association** : **Grievances and Discipline of**  
: **the Supreme Court of Ohio**

**Relator**

**FILED**  
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**MAR 02 2011**  
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**CLERK OF COURT**  
**SUPREME COURT OF OHIO**

This matter was heard on September 20 and 21, and November 1 and 2, 2010, before a panel consisting of Lynn B. Jacobs, Bernard K. Bauer, and Lawrence R. Elleman, Chair. None of the panel members is from the appellate district from which the complaint arose or served on the probable cause panel in this matter. Relator was represented by Mark Tuss. Respondent was represented by Dianna M. Anelli and Konrad Kuczak.

**OVERVIEW**

1. This case involves Respondent's representation of two elderly clients (Sylvia Demming and Royal John Greene), each of whom was suffering from at least some diminished mental capacity at some time during the attorney/client relationship. In each case, Respondent caused her client to execute a durable power of attorney to Respondent and then paid herself from her client's funds for legal services rendered (and in the case of Greene, non-legal services) and for cost reimbursement.

2. Relator contends that Respondent obtained the Demming power of attorney and paid herself \$18,820 at a time when she knew Demming was mentally impaired from Alzheimer's disease and further that Respondent had a conflict of interest in representing Demming and also Demming's niece as proposed guardian for Demming. Relator also contends that Respondent's payment of fees to herself while two applications for guardianship were pending was illegal and that she engaged in conduct that is prejudicial to the administration of justice. The panel concludes that Respondent violated Prof. Cond. R. 1.7(a)(2) (conflict of interest) and Prof. Cond. R. 8.4(d) (conduct prejudicial to the administration of justice).

3. Relator contends that Respondent charged and paid herself from Greene's funds a clearly excessive fee for legal and non-legal services in the amount of \$231,520.24 over a three year period, and that during the latter part of that period, Respondent knew that Greene was suffering profound cerebral atrophy and dementia. Relator also contends that Respondent's conduct involved dishonesty, fraud, deceit or misrepresentation and was prejudicial to the administration of justice. The Panel concludes that Respondent violated Prof. Cond. R. 1.5(a) and DR 2-106(A) (forbidding a clearly excessive fee).

## **FINDINGS OF FACT**

### **A. Background Facts**

4. At the hearing, the parties read oral Stipulations of Fact into the record. The panel unanimously adopts the Stipulations of Fact as part of its Findings of Fact in this matter.

5. At the time of the conduct leading to the allegations in the complaint, Respondent was subject to the Ohio Rules of Professional Conduct or the Ohio Code of Professional Responsibility, and the Rules for the Government of the Bar of Ohio.

6. Respondent was admitted to the practice of law in the State of Ohio in 1982. At all times relevant hereto, Respondent has been a sole practitioner in Dayton, Ohio. She is a certified specialist in probate matters. Her practice consists primarily of probate, estate planning and trust matters. She also practices in the area of elder law.

7. Respondent has been involved in community and professional activities, including Bar Association committees. She previously was a member of the certified grievance committee for the Ohio State Bar Association.

8. Several witnesses testified as to Respondent's good character and reputation for truth, veracity, integrity and competence. She also submitted numerous letters from lawyers, judges, former employees and/or friends attesting to her good character and reputation. She has no record of prior discipline.

#### **I. Guardianship of Sylvia Demming**

9. Relator's complaint charged violations of Prof. Cond. R. 1.7 (conflict of interest); 8.4(a) (attempting to violate provisions of the Ohio Rules of Professional Conduct); 8.4(b) (committing an illegal act that reflects adversely on a lawyer's honesty or trustworthiness, specifically a violation of R.C. § 2111.4(D)); and 8.4(d) (conduct prejudicial to the administration of justice).

10. In the Fall 2007, Respondent was introduced to Sylvia Demming, a 93 year old woman who was claiming to be held against her will at a local nursing home. Respondent's time records show that she first performed services for Demming on November 8, 2007. Initially, Respondent assisted Demming in getting her living arrangements straightened out.

11. Demming's long time companion, Norman Cammerer, had recently died, leaving a trust which provided for the allocation of certain trust property for the benefit of Demming.

Respondent became concerned for Demming's financial welfare because the trustee of the trust was withholding benefits from Demming to which Respondent felt Demming was entitled. Respondent therefore decided to file an application for guardianship for Demming in order to allow the Respondent to file a declaratory judgment action against the trustee for the benefits.

12. On November 26, 2007, Respondent filed an application for appointment of guardian of alleged incompetent wherein Respondent requested that the Probate Court of Warren County appoint her as guardian for Demming. In her application, Respondent represented to the court that Demming was incompetent by reason of Alzheimer's disease and memory impairment. (Ex. D, pp. 1 and 2) Respondent attached to her application, a statement of expert evaluation dated November 20, 2007, wherein a licensed physician certified that Demming was impaired in her orientation, thought process, memory, concentration, comprehension, and judgment. Demming was suffering from "dementia." (Ex. D, pp. 3-6) Respondent was also made aware at about this same time that another licensed physician had, on or about November 4, 2007, made similar findings regarding Demming's impairments. (Ex. D, pp. 17-20) In addition, Demming had, in meetings with Respondent, demonstrated confusion and disorientation.

13. On or about December 24, 2007, Demming signed a typewritten letter addressed to the Warren County Probate Court which referenced the fact that Respondent Parisi had filed paperwork to be appointed as guardian and stated, "I do not know Ms. Parisi and do not want her to be my guardian." (Ex. H) This document was filed with the Court on December 31, 2007, and Respondent was aware of the filing as of that date.

14. Respondent did not, at that time, withdraw her application to be the guardian for Demming. On January 2, 2007, she visited Demming and at that time Demming wrote another note stating, "I want Georgianna Parisi to be my attorney. I did not understand what they gave

me to sign." (Ex. A, p. 9) Demming indicated that she had signed the December 24, 2007, letter at the behest of representatives of other heirs to the Cammerer Trust.

15. On January 2, 2008, Respondent received a "Report on Proposed Guardian" dated December 14, 2007, by an investigator for the Warren County Probate Court. This report concluded that Demming was impaired in the various respects that were identified in the statement of expert evaluation that had been filed by Respondent and that Demming was incapable of handling her personal finances. This report stated that Demming opposes the concept of a guardianship, but in the same report, the investigator said that Demming "probably would have been okay with a guardian if it weren't an attorney because she knew they would charge her a fee every month." (Ex. 29, p. 6)

16. Despite Respondent's actual knowledge of Demming's confusion, and despite the her knowledge that two licensed physicians and the court investigator had certified Demming to be incompetent, Respondent had Demming sign a durable power of attorney dated January 2, 2008, in favor of Respondent, giving Respondent broad powers to conduct Demming's financial affairs. (Ex. A, pp. 11-14) Respondent's billing records indicate that Respondent continued to perform services during this time frame for Demming.

17. On January 9, 2008, Lisa Carroll, an individual who worked for some of the other beneficiaries of the Norman Cammerer Trust, filed a competing application for guardianship of Demming.

18. On January 30, 2008, Respondent withdrew her previous application to be appointed as guardian for Demming and separately filed an application for guardianship as attorney for Sylvia Manchi, a niece of Demming, to be Demming's guardian. The stated basis for the application was that Demming was incompetent by reason of Alzheimer's disease and

memory impairment. Respondent did not attach a statement of expert evaluation of Demming, relying instead on the statement that had previously been filed by Respondent in support of her own application.

19. Manchi was not an attorney. At the time that Respondent filed the application on behalf of Manchi to be the guardian for Demming, Respondent was aware that Demming had at various times expressed conflicting views as to whether or not she wanted to have a guardian. Sometimes she did not want a guardian at all. Other times she was okay with a guardianship, so long as the guardian was not an attorney. At other times she expressed the opinion that she was satisfied with Manchi as her guardian. During this period of time, Respondent continued to charge time for legal services to Demming and/or Manchi. (Ex. E)

20. On March 1, 2008, Demming wrote the judge another handwritten note stating that she no longer lived in Warren County and was moving to Florida and that "I don't want anyone -- to be my guardian. I want to be my own person. I don't live in Warren Ohio County any more." (Ex. U) Respondent assumed that the guardianship proceeding would be dismissed because the Probate Court of Warren County would no longer have jurisdiction. She therefore believed that she would not be able to receive the payment of her fees for legal services through the Warren County guardianship proceeding.

21. Respondent sent her bill for legal services for the benefit of Demming to Manchi for review. Manchi had no standing to either object or approve of the payment of Respondent's fee. She testified that she initially had a problem with the invoice because the fee was "a lot of money," but she recognized that Respondent had "done a lot of work for my aunt." Respondent told Manchi that she was going to pay herself approximately \$18,000 pursuant to the durable power of attorney that had previously been executed in Respondent's favor. Manchi expressed

no problem with this because Respondent had been chosen by her aunt and she assumed there had been discussion with her aunt about the fees. (Manchi Depo., pp. 45-47) Respondent paid herself the sum of \$18,820 from Demming's funds in early March 2008.

22. The guardianship matters came on for a hearing before the Magistrate Judge on March 14, 2008. At that time, the Magistrate orally ordered that Respondent be removed as counsel for Demming and Manchi because of a conflict of interest, and ordered that the durable power of attorney be revoked. On March 17, 2008, Respondent returned all of the money that she had received pursuant to the power of attorney.

23. In the meantime, Demming had decided to move back to Warren County. The Magistrate's formal order as to Respondent's disqualification and return of fees was filed on March 26, 2008. (Ex. 2) In that order the Magistrate appointed an interim guardian to make an investigation as to Respondent's conduct. Respondent appealed and the Probate Court upheld the Magistrate's decision by an entry dated April 24, 2008. (Exhibit 3)

#### **DEMMING CONCLUSIONS OF LAW**

24. Conflict of Interest. The panel concludes that Relator has proven by clear and convincing evidence that Respondent's conduct violated Prof. Cond. R. 1.7(a)(2) because there was a substantial risk that her ability to consider, recommend or carry out her professional duties for the proposed guardian (Manchi) would be materially limited by her responsibilities to the ward (Demming). There was no informed consent, confirmed in writing, that Respondent could represent both clients within the meaning of Prof. Cond. R. 1.7(b).

25. No case law has been located under the Rules of Professional Conduct or the Code of Professional Responsibility regarding whether a conflict of interest exists when a lawyer represents both the proposed guardian and the ward. Respondent cited to the panel a series of cases decided in a different context, holding that guardianship proceedings are *in rem* proceedings and therefore the proposed guardian and the ward are not adverse parties. *In re Guardianship of Love*, 19 Ohio St.2d 111, 113; *In re Guardianship of Breece* (1962), 173 Ohio St. 542; *In re Clendernning* (1945), 145 Ohio St. 82. However, these cases do not deal with the question of whether it is a violation of the rules of ethics to represent both the ward and the proposed guardian when the attorney knows that the ward has at various times expressed conflicting views as to whether or not she wanted to have a guardian. Under the circumstances of this case, the ward and the proposed guardian should have had separate attorneys.

26. Respondent contends that she was entitled to seek the appointment of a guardian for Demming because of Prof. Cond. R. 1.14(b) relating to representation of clients with diminished capacity. That rule provides:

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial, or other harm unless action is taken, and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator, or guardian.

However, this rule does not authorize a lawyer to represent both the ward and the proposed guardian when the ward opposes the guardianship. Comment 5 to Prof. Cond. R. 1.14 states that the lawyer should take into account the "wishes and values" of the client with diminished capacity.

27. Conduct prejudicial to the administration of justice. The panel concludes that Relator has proven by clear and convincing evidence that Respondent's conduct violated Prof. Cond. R. 8.4(d) (conduct prejudicial to the administration of justice) by using the power of attorney to pay herself \$18,820 for legal fees when she knew that there were two competing applications for guardianship pending and that the power of attorney had been executed by Demming at a time when Respondent had alleged that Demming was incompetent by reason of Alzheimer's disease and memory impairment.

28. Other alleged violations. The panel concludes that Relator failed to prove the claim that Respondent's conduct violated Prof. Cond. R. 8.4(b) (committing an illegal act that reflects adversely on the lawyer's honesty or trustworthiness) because there was insufficient evidence that Respondent's conduct in paying herself attorney's fees for services actually rendered reflected adversely on her honesty or trustworthiness. The panel concludes that the claimed violation of Prof. Cond. R. 8.4(a) (attempting to violate the provision of the Ohio Rules of Professional Conduct) should not be sustained because it is duplicative of the other claimed violations. The Panel recommends that these charges be dismissed.

## II. Royal John Greene

29. With regard to Mr. Greene, the complaint charged Respondent with violations of Prof. Cond. R. 1.5(a) and former DR 2-106(A) (charging and collecting a clearly excessive fee); Professional Conduct Rule 8.4(a) and former DR 1-102(A)(1) (violating or attempting to violate

disciplinary rules); Prof. Cond. R. 8.4(c) and former DR 1-102(A)(4) (conduct involving dishonesty, fraud, deceit or misrepresentation) and Prof. Cond. R. 8.4(d) and former DR 1-102(A)(5) (conduct prejudicial to the administration of justice).

30. Respondent commenced her representation of Greene in 2004. Greene was, at the time, a widower in his mid-70s and was living in an assisted living facility. He had living siblings, but no children with whom he was in contact. His siblings and their offspring did not make much of an effort to see to his welfare. He was close to Charlene Vayos (his deceased wife's sister) and her husband, Nicholas, but they lived in California and therefore could not assist Greene in his activities of daily living.

31. Before Respondent began representing Greene, another person was managing his affairs pursuant to a power of attorney that had been arranged by Charlene and Nicholas Vayos. Mr. and Mrs. Vayos and Greene became dissatisfied with that person and the Vayoses introduced Greene to Respondent. Respondent took total responsibility for looking after Greene, "his financial, his health, his housing, his daily whatever." (Nicholas Vayos Depo., p. 25)

32. On August 9, 2004, Greene executed a durable power of attorney in favor of Respondent with full powers to conduct all his financial affairs. (Ex. PP) Greene had, at that time, assets valued at \$550,000 to \$600,000.

33. It was understood that some of Respondent's services to Greene would include non-legal as well as legal services. Respondent was to be paid her usual attorney hourly rate for services rendered as the power of attorney as well as for the more traditional legal services. There was no engagement letter. The nature and scope of the legal representation and the basis or rate for fees and expenses were not communicated to Greene in writing at the time the representation was commenced.

34. Respondent represented Greene from August 5, 2004, through July 12, 2007, during which time Respondent was paid \$231,570.24 for attorney and paralegal time and for costs reimbursement. Her fees were generally calculated on an hourly basis at \$200 per hour (later \$225 per hour) and \$100 per hour (later \$125 per hour) for paralegal time. These were the normal hourly rates that Respondent charged her other clients.

35. A minor portion of the services were charged at a fixed fee. In addition, Respondent provided evidence at the hearing (which was uncontested) that Greene was not charged, or charged at a reduced rate, for approximately \$18,000 of attorney time and approximately \$5,000 in paralegal time (based on the hourly rates discussed above) and for certain out-of-pocket type expenses.

36. During the period of her representation of Greene, Respondent paid herself fees pursuant to the durable power of attorney. Respondent kept detailed time records and internal office memos regarding all contacts concerning Greene. She discussed her hourly rates with Greene on at least one occasion, and also explained how she was charging for certain paralegal time. However, it is unclear whether Greene knew or recognized or was even concerned about the total amount that he was spending for her services. On occasion, Respondent suggested steps that could be taken to reduce the cost, but Greene generally rejected these. Greene expressed no problems with her services or the cost thereof.

37. Initially Respondent prepared an invoice for Greene to review, but he told Respondent's paralegal that he did not want to see any additional invoices and authorized Respondent in the future to go ahead and pay herself for the services pursuant to the power of attorney, which she did on a periodic basis until the conclusion of her representation.

38. Respondent and her paralegals, in effect, managed Greene's life for him. Some of the services rendered were traditional legal services, such as preparing some estate planning documents, overseeing the sale of his house which required her to probate his wife's estate, and review and advice concerning the annuities that he had purchased. But most of the time spent was not for traditional legal services. These included (by Respondent or through her paralegals) supervising his medical care, dealing with the assisted living facility staff, helping him with his application for kidney transplant, transporting him to doctors' offices, reviewing and reconciling his bank and brokerage statements, paying his bills, transporting him to dialysis and, on a weekly basis, taking spending money to him at his assisted living facility. These services also included managing the details of his daily life, such as magazine subscriptions, cable TV and periodically taking food to him because he did not like the food at the assisted living facility. Approximately \$13,000 of the fees and expenses were paid to Respondent just for overseeing the restoration of a vintage Jaguar of which Greene was particularly proud.

39. Respondent tried to reduce Greene's expenses. For example, she tried to find a home health care agency to deal with some of these matters but Greene rejected those services. She also tried to get Greene's sister to provide transportation to doctors' appointments and/or dialysis, but she refused to do so.

40. Respondent did a good job taking care of Greene. Greene's goal was to avoid having to go to a nursing home. Without the services of Respondent's firm, he probably would not have been able to stay in the assisted living facility, which was much less expensive than a nursing home or home health care would have been. Respondent testified that nursing home or home health care services would have been less satisfactory to Greene because of the nature and scope of the services that he wanted and she was able to provide.

41. During the representation, Respondent's records demonstrate that Greene became increasingly physically, as well as mentally, impaired. Initially his physical health was poor due to diabetes, renal failure requiring dialysis three to four times a week, and impaired vision. In 2007, he fell and fractured his pelvis. At one time he stopped breathing during dialysis. He was a heavy drinker, sometimes as much as a quart of whiskey a day. He was often irrational and disoriented. Respondent's records show increased memory loss. Respondent's records for August 15, 2006, state he had been diagnosed with "profound cerebral atrophy" (Ex. 7), which one witness described as the destruction of brain cells and is sometimes associated with alcoholism. Respondent's record for December 12, 2006 states that when she visited Greene, he did not appear to recognize her. (Ex. QQ, p. 80) Her record for January 30, 2007 states that "John appears to have almost no short term memory and has severe dementia and cognitive issues." (Ex. QQ, p. 87) Charlene Vayos also thought he was suffering from dementia. (Charlene Vayos Depo., p. 49)

42. In 2007, Greene's health continued to fail and he was moved to different health care facilities. His family became more active in his affairs.

43. On or about July 12, 2007, Greene terminated Respondent's durable power of attorney and appointed his nephew, Robert Langford instead. The Langford power of attorney also nominated Langford to be guardian of Greene's person and estate if proceedings for the appointment of a guardian should be commenced. (Ex. BBB)

44. On July 24, 2007, Respondent filed an application for appointment of guardian of alleged incompetent in which she sought to be appointed guardian for Greene by reason of "dementia-moderate, probable Alzheimer's." This application was contested by a lawyer for

Greene. Langford also filed an application for guardianship. Both applications were later withdrawn. (Ex. CCC and DDD)

45. Greene died on November 19, 2007. The will named Charlene Vayos as Executor. Vayos retained Respondent as attorney for the estate. Respondent filed an application to probate the will in the Probate Court of Montgomery County on behalf of Charlene Vayos. Litigation ensued in the probate court. Eventually Respondent withdrew as counsel for Vayos. Vayos was removed as fiduciary, and a Dayton attorney was appointed administrator with will annexed for Greene's estate.

46. On July 16, 2008, Respondent filed an application for attorney's fees in the probate court in the amount of \$25,370.55 for her legal services in representing Vayos as Executor for Greene's estate. The claim was rejected by the fiduciary of the estate. Thereafter, Respondent, through counsel, filed a complaint in the Court of Common Pleas for Montgomery County seeking payment. The administrator with will annexed filed an answer and counterclaim in that case seeking damages against Respondent for breach of fiduciary duty based on her charging and receiving excessive attorney fees from Greene during his lifetime.

47. On or about February 24, 2010, Respondent settled the complaint and the counterclaim in the Court of Common Pleas by dismissing her \$25,370.55 claim for attorney fees and, in addition, a payment was made on her behalf to the Estate of Royal John Greene in the amount of \$21,000.

**Factors to Determine Reasonableness of a Fee**

48. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly. The attorney time for which Respondent charged Greene over three years, was approximately 850 hours and the paralegal

time charged was approximately 400 hours (Ex. 7). Respondent also charged for expense reimbursements. Most of the work did not require great legal skill. There were generally no novel or difficult legal questions involved.

49. Respondent's paperwork for this client is extremely voluminous and the time entries are quite detailed. There were approximately 1,750 separate time entries for Respondent's attorney time. (Ex. 7) In addition, separate memos were created with regard to each contact or activity. (Ex. AAAA) Respondent reviewed and approved all such memos.

50. At the hearing, Relator selected approximately 80 time entries which totaled \$17,693.79 as illustrative of billing errors or situations where time was spent on trivial matters which resulted in costs to Greene which were disproportionate to their importance. Respondent testified that generally she did not charge paralegal time for routine contacts while the paralegals were working in the office, but that Respondent charged for her own time in supervision of paralegals and for reviewing and approving the office memoranda prepared by the paralegals as to each task involved. Some of the office memoranda regarding the 80 time entries selected by Relator have been assembled by Respondent as Ex. AAAA.

51. Respondent provided explanations at the hearing regarding some of the 80 time entries. Some of the entries involved unintentional and insignificant billing errors. However, many of the entries show that the client's demand for services resulted in costs that were not proportionate to the monetary importance of the matters involved. For example, Greene was charged \$50 for a phone conference with Time Warner for the removal of a \$5 late fee and address change; \$50 for a phone conference with Checks Unlimited to obtain for Greene a \$2 refund of an amount which had been billed to Greene in error; \$100 for a phone conference regarding a television set which the client picked up at Respondent's office; \$50 for a phone

conference regarding Greene's *Penthouse* subscription; \$200 to straighten out the charges for a *Ladies Home Journal* subscription and canceling the subscription; \$50 for various phone calls to find out where Greene was on a particular occasion so that his cash could be delivered to him; \$200 for arranging with Time Warner and the assisted living facility for a cable TV upgrade; \$56.25 for an email to the Kitty Hawk Feline Club regarding Greene's interest in joining the club; \$50 for paralegal online research for cat club and television shows; \$56.25 for a conversation with Greene regarding the need to replace his watch battery; and \$1,131.25 for a preoperative visit with Greene to his ophthalmologist. There are many similar time entries throughout the period of her representation of Greene. (Ex. 7)

52. The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer. Greene's business took approximately 40% of the total time expended in Respondent's office. Greene was very demanding. Respondent testified that she turned away business during this time frame because there was insufficient time to handle additional business. Her legal practice was not especially profitable.

53. The fee customarily charged in the locality for similar legal services. The hourly rates charged by Respondent's law firm are in line with the hourly rates charged by other lawyers in the Dayton, Ohio, locality.

54. The amount involved and the results obtained. Many of the individual tasks that were performed by Respondent's law firm were, from a monetary standpoint, trivial and would have been performed by a normal client for himself or by his relatives, but at the same time, these were tasks that Greene for the most part demanded that Respondent perform, and they were important to him.

55. The time limitations imposed by the client or by the circumstances. Greene was a demanding and sometimes irrational client.

56. The nature and length of the professional relationship with the client. Respondent had not provided any significant representation to Greene prior to the services that are the subject matter of Relator's complaint.

57. The experience, reputation and ability of the lawyer or lawyers performing the services. Respondent has a good reputation in the community and performed the services for which she was hired in an effective manner.

58. Whether the fee is fixed or contingent. The fee was intended to be computed based on Respondent's normal hourly rates for attorney and paralegal time.

#### **GREENE CONCLUSIONS OF LAW**

59. Clearly Excessive Fee. The panel concludes that Relator has proven by clear and convincing evidence that Respondent's conduct violated Prof. Cond. R. 1.5(a) and former DR 2-106(A) (charging and collecting a clearly excessive fee). The panel's analysis of the relevant factors demonstrates the amount she charged the client for many tasks was disproportionate to the importance of the matters involved.

60. The Supreme Court has addressed the issue of charging legal fees for a variety of non-legal services similar to those rendered by Respondent in this case. *Cincinnati Bar Assn. v. Alsfelder*, 103 Ohio St.3d 375, 2004-Ohio-5216; *Cleveland Bar Assn. v. Kurtz* (1995), 72 Ohio St.3d 18; *Disciplinary Counsel v. Hunter*, 106 Ohio St.3d 418, 2005-Ohio-5411. The most complete analysis of the issue is the discussion in *Alsfelder*, where the Court concluded that "[t]he decision to advise a client concerning nonlegal issues and accept compensation for that advice is not a bright-line test, but the propriety of this conduct may be assessed by applying the

standard of a reasonable attorney in the same situation." *Alsfelder*, 103 Ohio St.3d at 380-81. This involves an analysis of the reasonableness of fee factors described in paragraphs 48-58 above.

61. The panel acknowledges that Respondent did a good job taking care of Greene, that many of the non-legal services she performed were demanded by him, and were considered important by him. However, these facts must be balanced against two other important considerations: first, that Greene had diminished mental capacity and it is unclear whether he knew or recognized or was even concerned about the total amounts he was spending for her service; and second, that Respondent's practice of using the power of attorney to pay herself without showing him the bills for services rendered, placed Respondent in the position of self-dealing. These factors required Respondent to employ additional safeguards for the protection of Greene that would not ordinarily be required.

62. For example, Prof. Cond. R. 1.14 (dealing with representing a client with diminished capacity) permits a lawyer to take reasonably necessary action which might include consulting with family members or consulting with support groups to independently evaluate the situation. See comment 5 to Prof. Cond. R.1.14. While Respondent was in regular contact with Greene's sister-in-law (who understood that Respondent was to be paid her usual hourly rate for non-legal services), there is no evidence that the sister-in-law (Charlene Vayos) was made aware of the total amounts Greene was spending for these services. She did not consult with Greene's sisters or other relatives. In addition, there was no engagement letter. The nature and scope of the legal representation and the basis or rate for fees were not expressly communicated to Greene or his family in writing as suggested in Prof. Cond. R. 1.5(b).

63. The interpretation of the Rules of Professional Conduct should be "guided by the basic principles underlying the rules" (Preamble to the Rules ¶ 9). Several rules concern safeguards for the protection of the client regarding transactions between a lawyer and client. A lawyer shall not solicit a substantial gift from a client. A lawyer may not draft a will naming herself as a beneficiary. A lawyer may not enter into a business transaction with a client unless the terms are disclosed in writing in a manner reasonably understood by the client and the client is advised in writing of the desirability of seeking and given a reasonable opportunity to seek the advice of independent legal counsel on the transaction. See Prof. Cond. R. 1.8(a) and (c). The basic principles underlying the rules created a heightened duty upon Respondent to take steps for safeguarding her client when self-dealing with her impaired client's money. She did not do so. Thus, the fact that Greene demanded many of the services, and he considered them important, did not provide a license to charge and collect an excessive fee.

64. Other alleged violations. The panel concludes that Relator failed to provide by clear and convincing evidence that Respondent's conduct violated Prof. Cond. R. 8.4(c) and former DR 1-102(A)(4) (conduct involving dishonesty, fraud, deceit or misrepresentation) and Prof. Cond. R. 8.4(d) and former DR 1-102(A)(5) (conduct prejudicial to the administration of justice). The panel concludes that the claimed violation of Prof. Cond. R. 8.4(a) and former DR 1-102(A)(1) (violating or attempting to violate disciplinary rules) should not be sustained because they are duplicative of rule violations. The panel recommends that these claims be dismissed.

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

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

- a. Respondent's motive in taking the attorney's fees from Demming at the time she did was selfish. However, there is no suggestion in the record that the fees she took were not owed. Respondent's motive with regard to fees from Greene is mixed;
- b. Respondent committed multiple offenses; and
- c. Both Demming and Greene were vulnerable by reason of advanced age and diminished capacity.

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

- a. Respondent has no prior disciplinary record since commencing practice in 1982;
- b. Respondent immediately returned the fee that she received from Demming before the court had entered a formal order that she do so;
- c. Respondent demonstrated a cooperative attitude toward these proceedings;
- d. Respondent has a good reputation for competence, honesty and trustworthiness; and
- e. Respondent denied any violations as was her right to do. However, she fully acknowledged that she should not have taken the Demming fee while there were applications for guardianship pending, and that it would have been better practice to show Greene her bills every month, have him sign and date the monthly bills; and have him personally sign his checks for payment. She also acknowledged that she should have arranged for

someone else to review her bills monthly before they were paid by Greene.

### **RECOMMENDED SANCTION**

67. Relator recommends that Respondent be indefinitely suspended from the practice of law. Respondent recommends that the complaint be dismissed and no sanction imposed. For the reasons set forth below, the panel recommends that Respondent receive a six month stayed suspension.

68. The typical sanction for charging and collecting a clearly excessive fee, but without a finding of fraud or dishonesty, appears to be a stayed suspension. Compare *Cleveland Bar Assn. v. Kurtz* (1995), 72 Ohio St.3d 18 (six-month suspension); *Akron Bar Assn. v. Watkins*, 120 Ohio St.3d 307, 2008-Ohio-6144 (six-month stayed suspension); *Cincinnati Bar Assn. v. Alsfelder*, 103 Ohio St.3d 375, 2004-Ohio-5216 (twelve-month stayed suspension). The Court has imposed a similar sanction for conflicts of interest. *Disciplinary Counsel v. Dettinger*, 121 Ohio St.3d 400, 2009-Ohio-1429 (six-month stayed suspension for representation of an estate without disclosing his personal interest); *Disciplinary Counsel v. Jacobs*, 109 Ohio St.3d 252, 2006-Ohio-2292 (public reprimand for representing both husband and wife while divorce was pending).

69. Representation of elderly clients with diminished capacity poses difficult challenges. "The normal client lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client . . . suffers from diminished mental capacity, however, maintaining the ordinary client lawyer relationship may not be possible in all respects." A client with diminished capacity often has the ability to understand and reach conclusions about certain things, but not

others. (Comment 1 to Rule 1.14.) Sometimes it is difficult for the lawyer to assess her client's mental competence from day-to-day.

70. Respondent was faced with a difficult choice with regard to her representation of Manchi as proposed guardian for Demming. Because of Demming's disorientation and confusion, it was unclear whether or not Demming opposed the guardianship. Moreover, there appears to be no case law regarding whether a conflict of interest exists when a lawyer represents both the proposed guardian and the ward. The decision of the Supreme Court in this disciplinary case may be a question of first impression on that issue.

71. Respondent was also faced with difficult choices with regard to her representation of Greene. She undertook the representation of Greene at a time when he was apparently competent to make his own decisions, but he nevertheless made demands for her service that most other clients would do for themselves, their families would do, or the tasks may not have been of sufficient importance to do at all. As his mental and physical condition deteriorated, he required even more services. Respondent had not built safeguards into the relationship to protect his interests (such as a very specific engagement letter or having a third party review her invoices). She felt she could not comfortably refuse to perform the services which he demanded, because if she refused him, he may have needed a guardian appointed and move to a nursing home which she knew was not his desire.

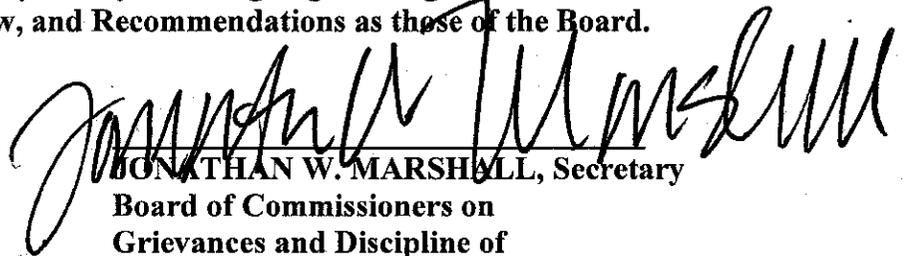
72. The primary purpose of disciplinary sanctions is not to punish the offender, but to protect the public. *Disciplinary Counsel v. O'Neill*, 103 Ohio St.3d 204, 2004-Ohio-4704. The Supreme Court has in other cases taken into account that the respondent is not likely to ever repeat her transgressions. *Stark Cty. Bar Assn. v. Ake*, 111 Ohio St.3d 266, 2006-Ohio-5704. The panel believes that Respondent will not repeat her transgressions.

73. The panel recommends that Respondent be suspended from the practice of law for six months with the entire suspension stayed on condition that Respondent commit no further misconduct.

**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 February 11, 2011. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Panel and recommends that Respondent, Georgianna I. Parisi, be suspended from the practice of law in the State of Ohio for a period of six months with the entire six months stayed. The Board further recommends that the cost of these proceedings be taxed to Respondent in any disciplinary order entered, so that execution may issue.

**Pursuant to the order of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendations as those of the Board.**

A large, stylized handwritten signature in black ink, appearing to read 'Jonathan W. Marshall', is written over the typed name and title below.

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

1 It's a stipulation of fact.

2 MR. TUSS: I was reading the title  
3 and not thinking. Agreed stipulation. Let the  
4 record reflect this an agreed stipulation of fact  
5 Relator, Dayton Bar Association and Respondent,  
6 Georgianna Parisi. Pursuant to Rule 11 of the  
7 rules and regulations governing grievances in  
8 discipline before the Board of Commissioners on  
9 grievances and discipline and Gov, that's GOV --

10 MR. BAUER: Off the record.

11 (WHEREUPON, a discussion was held  
12 off the record.)

13 MR. TUSS: Strike everything that  
14 I've said up to this point. Relator, Dayton Bar  
15 Association, and Respondent, Georgianna I. Parisi,  
16 stipulate as follows:

17 CHAIRMAN ELLEMAN: Perfect.

18 MR. TUSS: Paragraph 1,  
19 Respondent, Georgianna I. Parisi was admitted to  
20 the practice of law in the state of Ohio on  
21 November 15, 1982. Respondent is subject to the  
22 code of professional responsibility rules of  
23 professional conduct and the rules of the  
24 government of the bar of Ohio.

25 CHAIRMAN ELLEMAN: That's okay,

1 Ms. Anelli?

2 MS. ANELLI: I agree.

3 MR. TUSS: Number 2, at all times  
4 relevant hereto, Ms. Parisi has been a sole  
5 practitioner in the law firm of Georgianna I.  
6 Parisi, attorney at law, and certified specialist  
7 in probate matters.

8 MS. ANELLI: That's right.

9 MR. TUSS: Paragraph 3, on  
10 November 26, 2007 Respondent filed an application  
11 with the probate court of Warren County, Ohio to be  
12 appointed as guardian of Sylvia Demming,  
13 D-E-M-M-I-N-G, a 93 year old allegedly incompetent  
14 adult; is that correct?

15 MS. ANELLI: Yes.

16 MR. TUSS: Paragraph 4, while that  
17 case remained pending on December 31, 2007, Demming  
18 executed a durable power of attorney in favor of  
19 Parisi.

20 MS. ANELLI: Period.

21 MR. TUSS: Yes, thank you.

22 CHAIRMAN ELLEMAN: Is that  
23 agreeable?

24 MS. ANELLI: That is agreeable.

25 MR. TUSS: On January 9, 2008,

1 Lisa Carroll, C-A-R-R-O-L-L, unrelated to the ward  
2 retained counsel and separately filed an  
3 application to be appointed as guardian of Sylvia  
4 Demming.

5 MS. ANELLI: I agree, we agree  
6 with that but when you go back to four, my client  
7 tells me that the date actually of the power of  
8 attorney is January 2, 2007.

9 CHAIRMAN ELLEMAN: Paragraph 4  
10 would be while that case remained pending on  
11 December 2 --

12 MR. TUSS: No, no. December.

13 MR. KUCZAK: January 2, 2008.

14 CHAIRMAN ELLEMAN: Executed a  
15 durable power of attorney in favor of Parisi,  
16 period.

17 MS. ANELLI: Yes.

18 CHAIRMAN ELLEMAN: All right.

19 MR. BAUER: Is that agreeable to  
20 both?

21 MR. TUSS: Yes.

22 MS. ANELLI: Yes.

23 MR. TUSS: And was the paragraph  
24 that was read before --

25 MS. ANELLI: Paragraph 5.

1 MR. TUSS: Indicating Lisa  
2 Carroll --

3 MS. ANELLI: Yes.

4 MR. TUSS: Paragraph 6, on January  
5 30, 2008, Respondent withdrew her previous  
6 application to be appointed as guardian for Demming  
7 and separately filed an application on behalf of  
8 Sylvia Manchi, M-A-N-C-H-I, niece of the alleged  
9 incompetent to be appointed as guardian for  
10 Demming.

11 MS. ANELLI: Agreed.

12 MR. TUSS: Paragraph 7, the judge  
13 of the Warren County probate court determined by  
14 entry filed on April 24, 2008 upholding a  
15 magistrate's decision filed on March 26, 2008 that  
16 Respondent had been providing simultaneous legal  
17 representation to both the perspective ward and the  
18 proposed guardian which constituted a conflict of  
19 interest. Respondent told magistrate at the  
20 hearing that she would withdraw and Respondent  
21 immediately returned all legal fees.

22 MS. ANELLI: Yes.

23 MR. TUSS: Paragraph 8, on or  
24 about August 9, 2004, Royal, R-O-Y-A-L, John,  
25 Greene, G-R-E-E-N-E, who Respondent believed to be

1 a competent person executed a power of attorney.

2 MS. ANELLI: Yes.

3 MR. TUSS: On or about, paragraph  
4 9, on or about September 23, 2004, Greene executed  
5 a healthcare power of attorney designating  
6 Respondent as his healthcare attorney-in-fact to  
7 assist him in obtaining a kidney transplant as he  
8 suffered from end stage renal failure requiring  
9 dialysis treatment at least three times per week.  
10 At all times relevant hereto, Mr. Greene was  
11 unmarried and had no children. Greene's family  
12 members were unavailable to assist him.

13 MS. ANELLI: We agree.

14 MR. TUSS: Paragraph 10,  
15 Respondent's task in acting as attorney-in-fact  
16 under the power of attorney was to ensure that Mr.  
17 Greene was kept out of a nursing home and which  
18 Respondent believes enabled him to live his life in  
19 a manner that he determined best.

20 MS. ANELLI: We agree.

21 MR. TUSS: Paragraph 11, as  
22 Respondent was unsuccessful in obtaining assistance  
23 from Mr. Greene's family members, she sought to  
24 engage a home health aide. Mr. Greene refused to  
25 work with any aides.

1 MS. ANELLI: We agree.

2 MR. TUSS: Paragraph 12, between  
3 August 9, 2004 and July 12, 2007, Respondent billed  
4 Greene and paid her law firm over \$220,000 in legal  
5 fees and expenses for services rendered including  
6 charging a legal services rate for non-legal and  
7 personal services. Respondent utilized paralegals,  
8 couriers and support services.

9 MR. BAUER: Is it a fact that  
10 Relator's Exhibit 7 represents the billings of  
11 Respondent to Mr. Greene?

12 MR. TUSS: Yes, Mr. Bauer. I was  
13 struggling how to say it.

14 MS. ANELLI: We agree.

15 MR. TUSS: Paragraph 13, on or  
16 about July 12, 2007 Greene retained new counsel to  
17 revoke Respondent's power of attorney and executed  
18 new power of attorney in favor of Robert Langford,  
19 L-A-N-G-F-O-R-D, a nephew. Those documents were  
20 provided to the Respondent.

21 MS. ANELLI: We agree.

22 MR. TUSS: Paragraph 14,  
23 Respondent opposed the Langford power of attorney  
24 including refusing to honor them, believing Mr.  
25 Greene to be incompetent. By this time Mr.

1 Greene's physical and mental condition had  
2 deteriorated.

3 MS. ANELLI: We agree.

4 MR. TUSS: Paragraph 15, on July  
5 24, 2007, Respondent filed an application with the  
6 probate court of Montgomery County, Ohio seeking to  
7 be appointed as guardian of Mr. Greene as an  
8 alleged mentally incompetent adult.

9 MS. ANELLI: We agree.

10 MR. TUSS: Paragraph 16, members  
11 of the Greene family objected to the application,  
12 resulting in a contested probate proceeding  
13 concluding with Respondent filing a notice on  
14 October 22, 2007 to withdraw her application. Mr.  
15 Greene died on November 19, 2007 at the age of 78.

16 MS. ANELLI: We agree.

17 MR. TUSS: Paragraph 17, on  
18 December 7, 2007 about three weeks after Greene's  
19 death, Respondent filed an application for  
20 authority to administer the Greene estate approved  
21 by entry that same day. On behalf of Charlene  
22 Vayos, V-A-Y-O-S, a relative designated to serve as  
23 the executrix in Greene's will.

24 MS. ANELLI: We agree.

25 MR. TUSS: Paragraph 18, other

1 members of the family filed a petition with the  
2 probate court to remove Vayos as fiduciary.  
3 Respondent withdrew from serving as counsel to the  
4 fiduciary after locating new counsel for the  
5 fiduciary by agreed entry on March 7, 2008.

6 MS. ANELLI: We agree.

7 MR. TUSS: Paragraph 19, a local  
8 attorney was subsequently approved to serve as  
9 administrator with will annexed and has taken  
10 action against Respondent to retain counsel to  
11 recover fees Respondent charged to Greene. Such  
12 action is currently --

13 MS. ANELLI: Completed.

14 MR. TUSS: Currently completed, no  
15 longer pending in Montgomery County Common Pleas  
16 Court case No. 2009-CV-02494.

17 MS. ANELLI: We agree.

18 MR. TUSS: Paragraph 20, during  
19 the Relator's investigation Respondent has  
20 submitted her 404 page legal bill which has been  
21 designated for hearing purposes as Relator's  
22 Exhibit 7. Respondent also submitted documentation  
23 demonstrating that she performed services for which  
24 she did not bill identifying legal services versus  
25 non-legal services.

1 MS. ANELLI: We agree.

2 MR. TUSS: Paragraph 21 and this  
3 is the final paragraph, am I correct, counsel?

4 MS. ANELLI: Yes.

5 MR. TUSS: Okay, very good. The  
6 administrator of Mr. Greene's estate and Respondent  
7 have reached an agreement in Montgomery County  
8 Common Pleas Case No. 2009-CV-0294 that respondent  
9 will and has paid and refunded \$21,000 of the fees  
10 that she charged Mr. Greene from August 7, 2004  
11 through July 12, 2007 and the parties did dismiss,  
12 by way of agreed entry, the action with prejudice.

13 MS. ANELLI: Agreed.

14 CHAIRMAN ELLEMAN: Is there any  
15 further stipulations at this time?

16 MR. TUSS: Mr. Chairman, I believe  
17 that's it.

18 CHAIRMAN ELLEMAN: Okay, are you  
19 okay to start?

20 MS. JACOBS: Sure.

21 MR. BAUER: Sure.

22 CHAIRMAN ELLEMAN: We'll take a  
23 five minute recess and we'll start.

24 (WHEREUPON, a recess was taken.)

25 CHAIRMAN ELLEMAN: We are on the